

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83270; File No. SR-GEMX-2018-16]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .03 to Rule 804 To Enhance Anti-Internalization Functionality

May 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .03 to Rule 804 to enhance anti-internalization functionality.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to enhance the anti-internalization (“AIQ”) functionality provided to Market Makers on the Exchange by giving members the flexibility to choose to have this protection apply at the market participant identifier level (*i.e.*, existing functionality),<sup>3</sup> at the Exchange account level, or at the member firm level. The Exchange believes that this enhancement will provide helpful flexibility for Market Makers that wish to prevent trading against all quotes and orders entered by their firm, or Exchange account, instead of just quotes and orders that are entered under the same market participant identifier. Similar functionality was also recently introduced on the Exchange’s affiliated exchanges, Nasdaq PHLX LLC (“Phlx”) and NOM.<sup>4</sup> The Exchange believes that introducing this functionality now on GEMX will ensure that GEMX Market Makers on will benefit from similar flexibility in applying this protection.

Currently, the Exchange provides mandatory AIQ functionality whereby quotes and orders entered by Market Makers using the same market participant identifier will not be executed against quotes and orders entered on the opposite side of the market by the same Market Maker using the same market participant identifier.<sup>5</sup> When a quote or order entered by a Market Maker would trade with other quotes or orders from the same market participant identifier, the trading system cancels the resting quote or order back to the entering party prior to execution.<sup>6</sup>

<sup>3</sup> Currently, the rule uses the term “member identifier” for this concept. The Exchange proposes to rename “member identifier” to “market participant identifier” to be consistent with terminology used on the Nasdaq Options Market (“NOM”) and to avoid member confusion that could result in using the similar terms “member identifier” and “member firm identifier” in this rule.

<sup>4</sup> See Phlx Rule 1080(p)(2); NOM Chapter VI, Sec. 10. See also Securities Exchange Act Release Nos. 82012 (November 3, 2017), 82 FR 52082 (November 9, 2017) (SR-Phlx-2017-93); 81171 (July 19, 2017), 82 FR 34557 (July 25, 2017) (SR-Nasdaq-2017-069).

<sup>5</sup> See Supplementary Material .03 to Rule 804. This functionality shall not apply in any auction.

<sup>6</sup> *Id.* A quote or order entered by a Market Maker only triggers AIQ when it would trade with other quotes or orders from the same Market Maker. Thus, an incoming quote or order entered by a Market Maker may interact with other interest with priority on the book prior to triggering AIQ. After AIQ is triggered, the incoming quote or order may continue to trade with resting interest from other participants.

This functionality shall not apply in any auction or with respect to complex order transactions. AIQ assists Market Makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

Today, this protection prevents Market Makers from trading against their own quotes and orders at the market participant identifier level. The proposed enhancement to this functionality would allow members to choose to have this protection applied at the market participant identifier level as implemented today, at the Exchange account level, or at the member firm level. If members choose to have this protection applied at the Exchange account level, AIQ would prohibit quotes and orders from different market participant identifiers associated with the same Exchange account from trading against one another. Similarly, if the members choose to have this protection applied at the member firm level, AIQ would prohibit quotes and orders from different market participant identifiers within the member firm from trading against one another. Members that do not select to have this protection applied at the Exchange account level or member firm level will have their AIQ protection defaulted to the market participant identifier level protection applied today. The Exchange believes that the proposed AIQ enhancement will provide members with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the members’ business needs. While the Exchange believes that some firms will want to restrict AIQ to trading against interest from the same market participant identifier—*i.e.*, as implemented today—the Exchange believes that other firms will find it helpful to be able to configure AIQ to apply at the Exchange account level or at the member firm level so that they are protected regardless of which market participant identifier the order or quote originated from. Similar flexibility is offered on the Exchange’s affiliates, Phlx and NOM, and also on the CBOE BZX Exchange, Inc. (“BZX”), which provides members the ability to apply Match Trade Prevention (“MTP”) modifiers—*i.e.*, BZX’s version of self-trade protection—based on market participant, Exchange Member, trading group, or Exchange Sponsored Participant identifiers.<sup>7</sup>

The examples below illustrate how AIQ would operate based on the market

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>7</sup> See BZX Rule 21.1(g).

participant identifier level protection, the Exchange account level, or for members that choose to apply AIQ at the member firm level:

#### Example 1

1. Member ABC (market participant identifier 123A & 555B) with AIQ configured at the market participant identifier level.

2. 123A Quote: \$1.00 (5) × \$1.10 (20).

3. 555B Buy Order entered for 10 contracts at \$1.10.

4. 555B Buy Order executes 10 contracts against 123A Quote. 123A and 555B are not prevented by the system from trading against one another because Member ABC has configured AIQ to apply at the market participant identifier level. This is the same as existing functionality.

#### Example 2

1. Member ABC (Account 999 with market participant identifiers 123A and 555B, and Account 888 with market participant identifier 789A) with AIQ configured at the Exchange account level

2. 123A Quote: \$1.00 (5) × \$1.10 (20).

3. 789A Quote: \$1.05(10) × \$1.10 (20).

4. 555B Buy Order entered for 30 contracts at \$1.10.

5. 555B Buy Order executes against 789A Quote but 555B Buy Order does not execute against 123A Quote. AIQ purges the 123A Quote and the remaining contracts of the 555B Buy Order rests on the book at \$1.10. 123A and 555B are not permitted trade against one another because Member ABC has configured AIQ to apply at the Exchange account level. This is new functionality as the member has opted to have AIQ operate at the Exchange account level.

#### Example 3

1. Same as Example 2 above but Member ABC has AIQ configured at the member level.

2. AIQ purges the 123A Quote and the 789A Quote and the 555B Buy Order rests on the book at \$1.10. This is new functionality as the member has opted to have AIQ operate at the member level.

#### Implementation

The Exchange proposes to launch the AIQ functionality described in this proposed rule change in either Q2 or Q4 2018. The Exchange will announce the implementation date of this functionality in an Options Trader Alert issued to members prior to the launch date.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it is designed to provide Market Makers with additional flexibility with respect to how to implement self-trade protections provided by AIQ. Currently, all Market Makers are provided functionality that prevents quotes and orders from one market participant identifier from trading with quotes and orders from the same market participant identifier. This allows Market Makers to better manage their order flow and prevent undesirable executions where the Market Maker, using the same market participant identifier, would be on both sides of the trade. While this functionality is helpful to our members, some members would prefer not to trade with quotes and orders entered by different market participant identifiers within the same Exchange account or member. Thus, the Exchange is proposing to provide members with flexibility with respect to how AIQ is implemented. While members that like the current functionality can continue to use it, members who would prefer to prevent self-trades across different market participant identifiers within the same Exchange account or at the member level will now be provided with functionality that lets them do this. Similar flexibility is offered on Phlx and NOM, as well as BZX.<sup>10</sup> The Exchange believes that flexibility to apply AIQ at the Exchange account or member firm level would be useful for the Exchange's members too. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market as it will further enhance self-trade protections provided to Market Makers similar to those protections provided on other markets. This functionality does not relieve or otherwise modify the duty

of best execution owed to orders received from public customers.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enhance AIQ functionality provided to Exchange Market Makers, and will benefit members that wish to protect their quotes and orders against trading with other quotes and orders within the same Exchange account or member, rather than the more limited market participant identifier standard applied today. The new functionality, which provides similar flexibility to that offered on Phlx, NOM, and BZX, is also completely voluntary, and members that wish to use the current functionality can also continue to do so. The Exchange does not believe that providing more flexibility to members will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change is evidence of the competitive environment in the options industry where exchanges must continually improve their offerings to maintain competitive standing.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra notes 4 and 7.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2018-16 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2018-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2018-16 and should be submitted on or before June 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83278; File No. SR-ISE-2018-16]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce the ATR Protection for Orders That Are Routed to Away Markets

May 17, 2018.

#### I. Introduction

On February 23, 2018, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 714 regarding the Acceptable Trade Range ("ATR") functionality for orders that are routed to away markets. The proposed rule change was published for comment in the *Federal Register* on March 14, 2018.<sup>3</sup> On April 20, 2018, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety.<sup>4</sup> On April 26, 2018, the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 82846 (March 9, 2018), 83 FR 11254 ("Notice").

<sup>4</sup> See Letter to Brent J. Fields, Secretary, Commission, from Adrian Griffiths, Senior Associate General Counsel, Nasdaq, Inc., dated April 20, 2018 ("Amendment No. 1"). Amendment No. 1 revises the proposed rule change to: (i) Provide further discussion of the current application of the ATR to orders routed away; (ii) modify the proposed rule text regarding the recalculation of the ATR for orders routed away pursuant to Supplementary Material to Exchange Rule 1901, if the applicable National Best Bid ("NBB") or the National Best Offer ("NBO") price is improved at the time of routing; (iii) expand the discussion and justification for recalculating the

Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to June 22, 2018.<sup>5</sup> The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>6</sup>

The ATR is a functionality designed to prevent the Exchange's System<sup>7</sup> from experiencing dramatic price swings by preventing the execution of orders beyond set thresholds.<sup>8</sup> Pursuant to Exchange Rule 714(b)(1), the System calculates an ATR to limit the range of prices at which an order or quote will be allowed to execute.<sup>9</sup> Upon receipt of a new order or quote, the ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange, where the reference price is the NBB for sell orders/quotes and the NBO for buy orders/quotes.<sup>10</sup> Accordingly, the ATR is: The reference price - (x) for sell orders/quotes; and the reference price + (x) for buy orders.<sup>11</sup> If an order or quote reaches the outer limit of the ATR without being fully executed, then any unexecuted balance will be cancelled.<sup>12</sup>

ATR for such orders; and (iv) make other amendments to the proposed rule text to improve the understandability of the current ATR calculation. Amendment No. 1 was also submitted as a comment to the proposed rule change. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-ise-2018-16/ise201816-3483594-162248.pdf>.

<sup>5</sup> See Securities Exchange Act Release No. 83119 (April 26, 2018), 83 FR 19367 (May 2, 2018).

<sup>6</sup> For a more detailed description of the proposal, see Notice, *supra* note 3; Amendment No. 1, *supra* note 4.

<sup>7</sup> The term "System" means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See Exchange Rule 100(a)(53).

<sup>8</sup> See Amendment No. 1, *supra* note 4.

<sup>9</sup> See Exchange Rule 714(b)(1).

<sup>10</sup> See Notice, *supra* note 3, at 11254-55. For purposes of determining the value that will be added or subtracted from the reference price, there are three categories of options for the ATR: (1) Penny Pilot Options trading in one-cent increments for options trading at less than \$3.00 and increments of five cents for options trading at \$3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options. See *id.*

<sup>11</sup> See Exchange Rule 714(b)(1)(i).

<sup>12</sup> See Exchange Rule 714(b)(1)(ii). The ATR is not available for All-or-None Orders or Complex Orders