

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81881; File No. SR-GEMX-2017-44)

October 16, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees to Increase the Monthly Cap on the Fees Assessed for Specialized Quote Feed and SQF Purge Ports that Market Makers Utilize to Connect to the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2017, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 its Schedule of Fees to increase the monthly cap on the fees assessed for Specialized Quote Feed (“SQF”)³ and SQF Purge⁴ Ports that Market Makers⁵ utilize to connect to the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (e.g., opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (e.g., halts, resumes); (5) Execution Messages; (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).

⁴ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker.

⁵ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See GEMX Rule 100(a)(25).

The text of the proposed rule change is available on the Exchange's Website at www.ise.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 Exchange is proposing to amend its Schedule of Fees to increase the monthly cap on the fees assessed for Specialized Quote Feed ("SQF")⁶ and SQF Purge⁷ Ports that Market Makers⁸ utilize to connect to the Exchange. Currently, the Exchange charges monthly SQF and SQF Purge Port Fees of \$1,250 per port, and caps these fees for Market Makers utilizing these ports at \$12,500 per month ("SQF Fee Cap"). The Exchange now proposes to increase the SQF

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⁷ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker.

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Fee Cap from \$12,500 to \$17,500. The monthly \$1,250 per port fees for SQF and SQF Purge Ports will remain unchanged.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the SQF Fee Cap from \$12,500 to \$17,500 is reasonable because it better aligns the fees collected from Market Makers utilizing the SQF and SQF Purge Ports with the costs associated with maintaining and supporting the ports, as well as the initial investment in such ports for the Exchange. The Exchange also believes that the proposed increase of the SQF Fee Cap is reasonable because it will allow the Exchange to recoup costs while continuing to cap infrastructure costs for Market Makers that subscribe to a large number of ports due to their larger market making footprint on the Exchange. Without such a cap, Market Makers may be inhibited from expanding their activity on the Exchange. As a general principal, the Exchange believes that greater participation on the Exchange by members improves market quality for all market participants. Thus, in arriving at a fee cap of \$17,500, the Exchange balanced the desire to improve market quality against the need to cover costs and make a profit. Lastly, the Exchange notes that its affiliate, Nasdaq Phlx (“Phlx”), offers its members a monthly fee cap of \$42,000 for its active SQF ports.¹¹

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See Phlx Pricing Schedule, VII. Other Member Fees, B. Port Fees.

The Exchange believes that the proposed increase of the SQF Fee Cap is equitable and not unfairly discriminatory because the fee cap will apply uniformly to all Market Makers utilizing SQF and SQF Purge Ports.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed increase in the SQF Fee Cap would not burden competition because it would apply uniformly to all Market Makers utilizing SQF and SQF Purge Ports. Accordingly, the Exchange does not believe that the proposed fee changes herein will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹² 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 e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2017-44 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-GEMX-2017-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2017-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).