

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82326; File No. SR-GEMX-2017-56)

December 14, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Primary Market Maker Obligations

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 November 29, 2017, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Rule 701, entitled “Openings,” to specify the obligations of a Primary Market Maker (“PMM”) when entering Valid Width Quotes<sup>3</sup> during the Opening Process.

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.

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

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

<sup>3</sup> A “Valid Width Quote” is a two-sided electronic quotation submitted by a Market Maker that consists of a bid/ask differential that is compliant with Rule 803(b)(4). See Rule 701(a)(8).

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 Rule 701, Openings, to amend the obligations of a PMM when entering Valid Width Quotes during the Opening Process. In addition, the Exchange proposes to make clear the obligations of a PMM and a Competitive Market Maker ("CMM") once an options series has opened.

Currently, Rule 701(c)(1) provides, the Opening Process for an option series will be conducted pursuant to paragraphs (f) – (j) of GEMX Rule 701 on or after 9:30 AM Eastern Time if: the ABBO, if any, is not crossed; and the system has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site), or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site) any of the following: (i) the PMM's Valid Width Quote; (ii) the Valid

Width Quotes of at least two CMM or (iii) if neither the PMM's Valid Width Quote nor the Valid Width Quotes of two CMMs have been submitted within such timeframe, one CMM has submitted a Valid Width Quote.

Thereafter, Rule 701(c)(3) specifies that the PMM assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening.

The Exchange proposes to make clear that a PMM has the obligations specified in GEMX Rule 701(c)(3) to promptly enter a Valid Width Quote in the remainder of their assigned series in cases where the PMM's assigned series was not already opened by a CMM as permitted by Rule 701(c)(1)(ii) and (iii) as noted herein. The PMM would continue to have the ultimate obligation to open each assigned series, however this rule change would not require the PMM to enter a Valid Width Quote for the 10% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index during the Opening Process if an options series has opened pursuant to Rule 701(c)(1)(ii) and

(iii) within the timeframe specified for the PMM to enter a Valid Width Quote as noted in Rule 701(c)(3). Also, the PMM assigned in a particular U.S. dollar-settled foreign currency option would not be required to enter a Valid Width Quote for 10% of their assigned series, not later than one minute after the announced market opening during the Opening Process if an options series opened pursuant to Rule 701(c)(1)(ii) and (iii) within the timeframe specified for the PMM to enter a Valid Width Quote as noted in Rule 701(c)(3).

Today GEMX Rule 701 requires a PMM to open the market and provides an alternative mechanism to permit an alternative opening by a CMM.<sup>4</sup> The proposal seeks to make clear the obligations of the PMM with respect to options series that were open by a CMM as well as the quoting obligations of a CMM that opened the options series. The Exchange proposes to amend GEMX Rule 701(c)(3) to state that once an option series has opened pursuant to Rule 701(c)(1)(i) – (iii), a PMM must submit continuous, two-sided quotes in such option series pursuant to Supplementary .01 to GEMX Rule 804. The Exchange also proposes to amend Rule 701(c)(4) to state that a CMM that submits a quote during the opening in any option series pursuant to Rule 701(c)(1)(ii) or (iii) must submit continuous, two-sided quotes in such options series pursuant to GEMX Rule 804(e)(2)(iii) once an option series has opened. Specifically, the Exchange proposes to add rule text to Rule 701(c)(3) to provide that “once an options series has opened pursuant to Rule 701(c)(1)(i)- (iii), a PMM must submit continuous, two-sided quotes in such options series pursuant to Supplementary Material .01 to Rule 804.” Further, the Exchange proposes to add rule text to Rule 701(c)(4) to states that “A CMM that submits a quote pursuant to Rule 701 in any option series when the PMM’s quote has not been submitted shall be

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<sup>4</sup> See GEMX Rule 701(c)(1)(i) – (iii).

required, once an options series has opened, to submit continuous, two-sided quotes in such option series pursuant to Rule 804(e)(2)(iii).”

The Exchange proposes to make clear that a PMM has an obligation to enter Valid Width Quotes during the Opening Process within the timeframes specified in Rule 701(c)(3). In the event that an options series opened pursuant to Rule 701(c)(1)(ii) and (iii), a PMM would be required to submit continuous, two-sided quotes in such options series pursuant to Supplementary Material .01 to Rule 804. Also, in this instance, a CMM would be required to submit continuous, two-sided quotes in such option series pursuant to Rule 804(e)(2)(iii). The Exchange notes that a CMM would not have an obligation to quote in such option series pursuant to Rule 804(e)(2)(iii), unless the CMM submitted a quote pursuant to Rule 701 or otherwise submitted a quote intra-day.<sup>5</sup> The purpose of this new rule text is to make clear the quoting obligations for both PMMs and CMMs during the opening and the manner in which Rule 701, relating to the Opening Process, and Rule 804, relating to Market Maker quoting obligations, interact with each other.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by amending GEMX Rule 701(c)(3) to further specify a PMM’s

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<sup>5</sup> See GEMX Rule 804(e)(2)(i) which states, “On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed.”

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

obligations during the Opening Process and once an options series as opened as well as the obligations of a CMM to the extent that an options series opened pursuant to Rule 701(c)(1)(ii) and (iii). The Exchange believes that this proposal is consistent with the Act because a PMM continues to be responsible to enter Valid Width Quotes during the Opening Process and thereafter submit continuous, two-sided quotes in such options series pursuant to Supplementary Material .01 to Rule 804. In the event that an options series opened pursuant to Rule 701(c)(1)(ii) and (iii), the CMM must submit continuous, two-sided quotes in such option series, once the options series has opened, pursuant to Rule 804(e)(2)(iii). The Exchange believes that this proposed rule change will make clear the obligations of the PMM with respect to submitting Valid Width Quotes and thereafter, once an options series has opened, submitting continuous two-sided quotes, when a CMM may have already entered a quote to open an options series. The Exchange's proposal to add rule text to clearly specify the quoting obligations of a PMM and CMM during the Opening Process and once an option series has opened will provide greater clarity to the Opening Process and also to the interplay between quoting obligations during the Opening Process and intra-day quoting obligations noted within Rule 804.

**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. Once an options series has opened, [sic] a PMM continues to be responsible to enter Valid Width Quotes during the Opening Process and thereafter submit continuous, two-sided quotes in such options series pursuant to Supplementary Material .01 to Rule 804. Also, if an options series opened pursuant to GEMX Rule 701(c)(1)(ii) or (iii), a CMM shall be required to submit continuous, two-sided quotes in such option series, once an option series has opened, pursuant to Rule 804(e)(2)(iii). This proposed rule text makes clear that CMMs are required to submit

continuous, two-sided quotes in such option series pursuant to Rule 804(e)(2)(iii), in the event an options series opened pursuant to Rule 701(c)(1)(ii) and (iii). The proposal provides greater clarity to the Opening Process and also to the interplay between quoting obligations during the Opening Process and intra-day quoting obligations noted within Rule 804.

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>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange represents that the proposed rule change would clarify the quoting obligations for both PMMs and CMMs during the Opening

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</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>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

Process and the manner in which Rule 701, relating to the Opening Process, and Rule 804, relating to Market Maker quoting obligations, interact with each other. According to the Exchange, these obligations should be immediately clarified to prevent confusion and uncertainty for Market Makers quoting on the Exchange. For the reasons articulated by the Exchange, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>11</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or 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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-56 on the subject line.

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<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-56. This file number should be included on the subject line if e-mail 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-2017-56 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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