

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83365; File No. SR-GEMX-2018-17)

June 4, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Memorialize Order and Execution Information into GEMX Rule 718

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 May 23, 2018, 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 memorialize its order and execution information into GEMX Rule 718, entitled “Data Feeds.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to add order and execution information into GEMX Rule 718, entitled “Data Feeds.” The Exchange proposes to rename this rule “Data Feeds and Trade Information.” The Exchange also proposes to amend Rule 100 to add definitions.

GEMX Rule 718(a)

The Exchange proposes to amend the Nasdaq GEMX Top Quote Feed. The Exchange stated in that description that this feed calculates and disseminates GEMX’s best bid and offer position, with aggregated size (including total size in aggregate, for Public Customer³ size in the aggregate and Priority Customer⁴ size in the aggregate), based on displayable order and quote interest in the System. The Exchange proposes to amend this rule text to instead provide, “this feed calculates and disseminates GEMX’s best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order⁵ size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System.” The Exchange intended to specify that Professional Orders and Priority Customer Orders are segregated and aggregated. The Public Customer definition is too broad because it

³ The term “Public Customer” means a person or entity that is not a broker or dealer in securities. See Rule 100(a)(44).

⁴ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See 100(a)(41A). The term “Priority Customer Order” means an order for the account of a Priority Customer. See Rule 100(a)(43A).

⁵ The term “Professional Order” means an order that is for the account of a person or entity that is not a Priority Customer. See Rule 100(a)(43C).

includes a portion of Priority Customer, which was already specified within the description. The Exchange proposes to remove Public Customer and replace it with Professional Order to be more specific and amend Priority Customer to Priority Customer Order to reference the types of orders that are aggregated to conform the rule text.

GEMX Rule 718(b)

The Exchange proposes to add its order and execution information into GEMX Rule 718, entitled “Data Feeds.” The Exchange proposes to rename this rule “Data Feeds and Trade Information.” The Exchange also proposes to amend Rule 100 to add definitions.

The Exchange proposes to adopt a new GEMX Rule 718(b) and memorialize the following order and execution information which was discussed in other rule filings by the Exchange: (i) Clearing Trade Information or “CTI”; and (ii) FIX DROP.⁶ The Exchange is also adding a description for TradeInfo. The TradeInfo user interface is being offered today on GEMX at no cost.

The Exchange notes that while CTI and FIX Drop information are accessible through a port, TradeInfo is an interface. The Exchange notes this distinction to make clear the manner of delivery for each of these information types.

CTI

The Exchange stated in its Prior Filing that “CTI is a real-time clearing trade message that is sent to a Member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange

⁶ See Securities Exchange Act Release No. 81136 (July 13, 2017), 82 FR 33168 (July 19, 2017) (SR-GEMX-2017-29) (“Prior Filing”).

badge or house number; (iii) the Exchange internal firm identifier; and (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; (vi) capacity.”⁷

The Exchange is proposing to amend the CTI description and memorialize it within GEMX Rule 718(b)(1). The Exchange proposes to eliminate the sentence which states, “The message containing the trade details is also simultaneously sent to The Options Clearing Corporation.” The Exchange’s System sends clearing information to OCC for each transaction. This sentence does not add information that is useful or relevant and therefore the Exchange proposes to remove it. The Exchange also proposes to delete the words “an indicator which will distinguish electronic and non-electronically delivered orders.” The only method on GEMX to deliver an order is electronically.

The Exchange is also adopting definitions for “account number,”⁸ “badge,”⁹ and “mnemonic”¹⁰ to be utilized within the CTI definition and uniformly throughout the Rulebook. The Exchange proposes to renumber Rule 100 to accommodate the new definitions. The Exchange is reserving 2 numbers for future use of other definitions. The Exchange proposes to replace the phrase in Rule 718(b)(1) subsection (ii) from previously filed Exchange badge or house number to proposed definitions for badge or mnemonic. The Exchange proposes to replace the phrase in Rule 718(b)(1) subsection (iii) from Exchange internal firm identifier to

⁷ Id.

⁸ An “account number” shall mean a number assigned to a Member. Members may have more than one account number. See proposed Rule 100(a)(1).

⁹ A “badge” shall mean an account number with a letter suffix assigned to Market Makers. A Market Maker account may be associated with multiple badges. See proposed Rule 100(a)(5).

¹⁰ A “mnemonic” shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. See proposed Rule 100(a)(34).

proposed definition for account number. The Exchange proposes to expand on Rule 718(b)(1) subsection (iv) by replacing the phrase “an indicator which will distinguish electronic and non-electronically delivered orders” with “information which identifies the transaction type (e.g. auction type) for billing purposes.” Finally, the Exchange Further, the Exchange is adding an “and” before “(v) capacity” and changing the wording to “market participant capacity.” The Exchange has renumbered the CTI sections to account for the language that was removed from the description. Finally, the Exchange is adding an “and” before Rule 718(b)(1) subsection (v) “capacity” and changing the wording to “market participant capacity.” The Exchange is expressing more specifically the type of data contained in CTI.

FIX DROP

The Exchange stated in its Prior Filing that “FIX DROP provides real-time order and execution update is a message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details. The information includes, among other things, the following: (1) executions; (2) cancellations; (3) modifications to an existing order; and (4) busts or post-trade corrections.”¹¹

The Exchange proposes to memorialize FIX DROP within GEMX Rule 718(b)(3). The Exchange notes that at the end of the first sentence of the description it is adding “specific to that Member” to make clear that FIX DROP only provides a Member its specific trade information. Also, an “and” is included before new (iv) as the numbers have been changed to roman numerals.

¹¹ Id.

TradeInfo

The Exchange proposes to establish its TradeInfo offering at GEMX Rule 718(b)(2). TradeInfo, a user interface, permits a Member to: (i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) view orders and executions; and (iii) download orders and executions for recordkeeping purposes. TradeInfo users may also cancel open orders at the order, port or firm mnemonic level through TradeInfo. TradeInfo is offered today to Members on GEMX at no cost.

The Exchange considers it appropriate to establish and memorialize the order and execution information available on GEMX within a rule so that Members may understand the trade information which is available on the Exchange as it pertains to a firm's trading information. This data is available to all Members and is specific to a Member's transactions on GEMX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing greater transparency as to the order and execution information offered on GEMX. Each proposal is described in more detail below.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

GEMX Rule 718(a)

The Exchange's proposal to amend the Nasdaq GEMX Top Quote Feed to specify that Professional Orders and Priority Customer Orders are segregated and aggregated is consistent with the protection of investors and the public interest because the Exchange is correcting the categories of orders, which are segregated and aggregated. The Public Customer definition is too broad because it includes a portion of Priority Customer, which was already specified within the description. The Exchange proposes to remove Public Customer and replace it with Professional Order to be more specific and amend Priority Customer to Priority Customer Order to reference the types of orders that are aggregated to conform the rule text. The Exchange believes that this amendment will bring more transparency to the information within the feed.

GEMX Rule 718(b)

The Exchange believes that memorializing CTI and FIX DROP within a rule will provide Members with transparency as to the order and information offerings available on GEMX specific to their trading on GEMX. The Exchange's proposal to establish TradeInfo is consistent with the Act because the Exchange is detailing the contents of this offering as well as providing transparency as to the availability of TradeInfo. The Exchange believes that offering Members TradeInfo, which allows Members to view executions as well as other capabilities with respect to order management, enhances the ability of a Member to manage its orders. The Exchange believes that providing Members with tools to manage orders is consistent with the Act and serves to protect investors and the public interest. Further, the Exchange believes that this proposal is consistent with the Act because TradeInfo provides information regarding information available to market participants, specifically with respect to trades they execute on GEMX. The information is available to all Members.

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

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not impose an undue burden on competition, rather the Exchange is seeking to provide greater transparency within its rules with respect to the Nasdaq GEMX Top Quote Feed as well as order and execution information offered on GEMX. The information is available to all Members. Specifically, TradeInfo is available to any Member that requests this service. The TradeInfo product will provide a Member information regarding that Member's executions.

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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to correct the Nasdaq GEMX Top Quote Feed and update its rules immediately regarding order and execution information offered on GEMX. The Exchange further states that it believes the waiver will further the protection of investors and the public interest because it will provide greater transparency as to the Nasdaq GEMX Top Quote Feed as well as trade detail available to market participants. Further, the Exchange states that memorializing TradeInfo will provide Members with greater information concerning a Member's executions on GEMX and make its availability transparent. 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 hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁹

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,

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2018-17 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-2018-17. 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-2018-17 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.²⁰

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Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).