

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90704; File No. 4-663)

December 17, 2020

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq GEMX, LLC

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on November 19, 2020, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Nasdaq GEMX, LLC (“GEMX”) (collectively, “Participating Organizations” or “parties”). This agreement amends and restates the agreement entered into between FINRA and Topaz Exchange, LLC (n/k/a GEMX) on June 21, 2013, entitled “Agreement Between Financial Industry Regulatory Authority, Inc. and Topaz Exchange Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

On August 19, 2013, the Commission declared effective the Plan entered into between FINRA and GEMX for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and GEMX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every GEMX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to GEMX members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On November 19, 2020, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act and to reflect the name change of Topaz Exchange, LLC to Nasdaq GEMX, LLC. The text of the proposed Amended Plan is as follows (additions are underlined; deletions are [bracketed]):

* * * * *

AGREEMENT BETWEEN
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND
[TOPAZ EXCHANGE]NASDAQ GEMX, LLC PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

¹¹ See Securities Exchange Act Release No. 70228 (August 19, 2013), 78 FR 52587 (August 23, 2013).

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (“FINRA”) and [Topaz Exchange, LLC (“Topaz”)]Nasdaq GEMX, LLC (“GEMX”), is made this [21st]16th day of [June]November, 20[13]20 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and [Topaz]GEMX may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates this agreement entered into between FINRA and GEMX on June 21, 2013, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Topaz Exchange, LLC Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, FINRA and [Topaz]GEMX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and [Topaz]GEMX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and [Topaz]GEMX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they

have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “[Topaz]GEMX Rules” or “FINRA Rules” shall mean the rules of [Topaz]GEMX or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the [Topaz]GEMX Rules that are substantially similar to the applicable FINRA Rules in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such rule.

(c) “Dual Members” shall mean those [Topaz]GEMX members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall have the meaning set forth in paragraph 13.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA’s Code of Procedure and sanctions guidelines. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from GEMX, (ii) incorporation by reference of GEMX Rules that are not Common Rules, (iii) exercise of

discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by GEMX, (iv) prior written approval of GEMX and (v) payment of fees or fines to GEMX.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto. The term “Regulatory Responsibilities” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e-4 of the Securities Exchange Act (“Rule 14e-4”), with a focus on the standardized call option provision of Rule 14e-4(a)(1)(ii)(D).

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, [Topaz]GEMX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the [Topaz]GEMX Rules or FINRA Rules, [Topaz]GEMX shall submit an updated list of Common Rules to FINRA for review which shall add [Topaz]GEMX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete [Topaz]GEMX Rules

included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be [Topaz]GEMX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and [Topaz]GEMX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

(a) surveillance and enforcement with respect to trading activities or practices involving [Topaz]GEMX's own marketplaces, including without limitation [Topaz]GEMX's Rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any [Topaz]GEMX Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, [Topaz]GEMX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to [Topaz]GEMX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this

Agreement except as hereinafter provided. FINRA shall provide [Topaz]GEMX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to [Topaz]GEMX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, [Topaz]GEMX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or effective industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any [Topaz]GEMX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify [Topaz]GEMX of those apparent violations for such response as [Topaz]GEMX deems appropriate. In the event [Topaz]GEMX becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, [Topaz]GEMX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules shall be processed by, and

enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on [Topaz]GEMX, [Topaz]GEMX may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance. FINRA shall make available to [Topaz]GEMX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish [Topaz]GEMX any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, [Topaz]GEMX acknowledges and agrees to take all reasonable steps to maintain its confidentiality. [Topaz]GEMX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the [Topaz]GEMX Rules and FINRA Rules or associated with Dual Members thereof. Upon request,

FINRA shall advise [Topaz]GEMX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the [Topaz]GEMX Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep [Topaz]GEMX advised of its actions in this regard for such subsequent proceedings as [Topaz]GEMX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) meets the [Topaz]GEMX requirements for general membership or for specified categories of membership or participation in [Topaz]GEMX, such as (A) Primary Market Maker Membership (“PMM”); (B) Competitive Market Maker Membership (“CMM”); (C) Electronic Access Membership (“EAM”) (or any similar type of [Topaz]GEMX membership or participation that is created after this Agreement is executed); or (ii) meets the [Topaz]GEMX requirements

to be associated with, or employed by, a [Topaz]GEMX member or participant in any capacity, such a Designated Trading Representative (“DTR”) (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of [Topaz]GEMX, or a person associated with, or requesting association with, a member or participant of [Topaz]GEMX.

9. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise [Topaz]GEMX of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. Customer Complaints. [Topaz]GEMX shall forward to FINRA copies of all customer complaints involving Dual Members received by [Topaz]GEMX relating to FINRA’s Regulatory Responsibilities under this Agreement. It shall be FINRA’s responsibility to review and take appropriate action in respect to such complaints.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of

or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by [Topaz]GEMX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, [Topaz]GEMX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Separate Agreement. This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among [BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX, LLC] NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE,

LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC approved by the Commission on [December 5, 2012]February 12, 2019 involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among [NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC,] NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC approved by the Commission on [December 5, 2012]February 11, 2019 involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. Notification of Members. [Topaz]GEMX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. Limitation of Liability. Neither FINRA nor [Topaz]GEMX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or [Topaz]GEMX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or [Topaz]GEMX with respect to any of the responsibilities to be performed by each of them hereunder.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and [Topaz]GEMX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve [Topaz]GEMX of any and all responsibilities with respect to matters allocated to

FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.

By _____
Name:
Title:

[TOPAZ EXCHANGE] NASDAQ GEMX,
LLC

By _____
Name:
Title:

NOTE: The entire existing table of rules should be deleted and replaced with the table below.

EXHIBIT 1

[TOPAZ]GEMX CERTIFICATION OF COMMON RULES

[Topaz]GEMX hereby certifies that the requirements contained in the rules listed below for [Topaz]GEMX are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from GEMX, (ii) incorporations by reference to other GEMX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by GEMX, (iv) prior written approval of GEMX, and (v) payment of fees or fines to GEMX.

GEMX RULE	FINRA or SEC RULE
<u>General 3, Section 3(b) – Persons Associated with Members; General 4 – Nasdaq Stock Market General 4, Rule 1.1250 Electronic Filing Requirements for Uniform Forms incorporated by reference[#]</u>	<u>FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms; FINRA By-Laws Article IV, Sec. 1(c) Application for Membership; FINRA By-Laws, Article V, Section 1 Qualification Requirements; FINRA By-Laws, Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification</u>
<u>General 4 – Nasdaq Stock Market General 4, Section 1.1240 Continuing Education Requirements incorporated by reference[#]</u>	<u>FINRA Rule 1240 Continuing Education Requirements</u>
<u>Options 9, Nasdaq ISE Options 9, Section 1 Just and Equitable Principles of Trade incorporated by reference¹</u>	<u>FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade;</u> <u>FINRA Rule 0140(a) Applicability</u>
<u>Options 9 – Nasdaq ISE Options 9, Section 9(a)(1) Prevention of the Misuse of Material, Nonpublic Information incorporated by reference[#]</u>	<u>Section 15(g) of the Securities Exchange Act of 1934, and FINRA Rule 3110(b)(1), (d) Supervision</u>
<u>Options 9 – Nasdaq ISE Options 9, Section 10 Disciplinary Action by Other Organizations incorporated by reference[#]</u>	<u>FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3</u>
<u>Options 9 – Nasdaq ISE Options 9, Section 21 Anti-Money Laundering Compliance Program incorporated by reference[#]</u>	<u>FINRA Rule 3310 Anti-Money Laundering Compliance Program</u>
<u>Options 10 – Nasdaq ISE Options 10, Section 12 Statements of Financial Condition to Customers incorporated by reference</u>	<u>Rule 17a-5 of the Securities Exchange Act of 1934</u>
<u>Options 10 – Nasdaq ISE Options 10, Section 19 Transfer of Accounts incorporated by reference[#]</u>	<u>FINRA Rule 11870 Customer Account Transfer Contracts</u>

¹ FINRA shall not have Regulatory Responsibilities with respect to the Supplementary Material to Nasdaq ISE Options 9, Section 1. Responsibility for such shall remain with GEMX.

<u>Options 10 – Nasdaq ISE Options 10, Section 23 Telemarketing incorporated by reference</u>	<u>FINRA Rule 3230 Telemarketing</u>
<u>Options 6E – Nasdaq ISE Options 6E, Section 1 Maintenance, Retention, and Furnishing of Books, Records and Other Information incorporated by reference#</u>	<u>FINRA Rule 4511(a) Books and Records - Requirements</u>

In addition, the following provisions shall be part of this 17d-2 Agreement:

SEA Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers^

^FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e-4(a)1(ii)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-663 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 4-663. 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 plan that are filed

with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and GEMX. 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 4-663 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and GEMX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because GEMX and

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, GEMX and FINRA have allocated regulatory responsibility for those GEMX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, GEMX will review the Certification at least annually, or more frequently if required by changes in either the rules of GEMX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add GEMX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete GEMX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be GEMX rules that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, GEMX also will provide FINRA with a current list of Common Members and will update the list

¹⁴ See paragraph 2 of the Amended Plan.

no less frequently than once each quarter.¹⁵ The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all GEMX rules that are substantially similar to the rules of FINRA for Common Members of GEMX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to GEMX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a GEMX rule to the Certification that is not substantially similar to a FINRA rule; delete a GEMX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a GEMX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁶

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, to reflect the name change of Topaz

¹⁵ See paragraph 3 of the Amended Plan.

¹⁶ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

Exchange, LLC to Nasdaq GEMX, LLC. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-663. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-663, between the FINRA and GEMX, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that GEMX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-663.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ See supra note 11 (citing to Securities Exchange Act Release No. 70228).

¹⁸ 17 CFR 200.30-3(a)(34).