

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84860; File No. SR-GEMX-2018-42)

December 19, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers Trading in Non-Appointed Options Classes

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 December 12, 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 amend Rule 805(b) relating to Market Makers³ trading in non-appointed options classes.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(33).

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 this rule change is to amend Rule 805(b) relating to Market Makers trading in non-appointed options classes.

Rule 805(b) presently governs the submission of orders by Market Makers in non-appointed options classes. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed options classes. Specifically, subparagraph (b)(2) limits a Competitive Market Maker's ("CMM") total number of contracts executed in non-appointed options classes to 25% of the CMM's total number of contracts executed in its appointed options classes and with respect to which it was quoting pursuant to Rule 804(e)(1), and subparagraph (b)(3) limits a Primary Market Maker's ("PMM") total number of contracts executed in non-appointed options classes to 10% of the PMM's total number of contracts executed in its appointed classes.

The Exchange now proposes in subparagraph (b)(3) to increase the overall percentage of executions that can occur in a PMM's non-appointed options classes from 10% to 25% to align with the CMM allowance as well as other options exchanges, including its affiliated options market, BX Options.⁴ The Exchange adopted the 10% volume limitation for PMMs as part of its

⁴ BX Options Market Makers (including Lead Market Makers) can execute no more than 25% of their total volume outside of their registered options classes. See BX Options Rules, Chapter VII, Section 6(e). In addition, CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a Market-Maker's total contract volume must be in

application to be registered as a national securities exchange, and initially restricted PMMs in this manner because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. The Exchange does not believe that its proposal will adversely impact the quality of the Exchange's market or lead to a material decrease in liquidity. As noted above, other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange believes that its proposed increase will likewise not result in a decrease of market quality.⁵ Furthermore, Market Makers and in particular, PMMs, will continue to be subject to the highest standard applicable on the Exchange to provide liquidity. For instance as set forth in Rule 804(e)(2), PMMs are held to the highest quoting standards on the Exchange. Specifically, PMMs are required to provide two-sided quotations in 90% of the cumulative number of seconds for which that PMM's appointed options class is open for trading.⁶ Furthermore, PMMs are required to quote in certain options series of their appointed classes that are excluded from the quoting requirements of CMMs (i.e., Quarterly Options Series, Adjusted Options Series, and long-term options). In addition, the Exchange can announce a higher percentage than the current 90% quoting requirement if doing so would be in the interest

classes to which the Market-Maker is appointed. Accordingly, only 25% of a CBOE Market-Maker's contract volume can be in non-appointed classes. CBOE Rule 8.7 applies equally to Lead Market-Makers and Designated Primary Market-Makers in the same manner as Market-Makers. The Exchange also notes that NYSE Arca Options does not impose a strict percentage limitation on its market makers for transacting in non-appointed classes. See NYSE Arca Options Rules 6.37-O(d) and 6.37B-O.

⁵ Id.

⁶ See Rule 804(e)(2).

of a fair and orderly market.⁷ PMMs are also required to enter quotes in their appointed options classes and participate in the Opening Process.⁸ Accordingly, the Exchange believes that the foregoing obligations will continue to ensure that PMMs will provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.

In addition, the Exchange believes that the proposed increase in the overall percentage from 10% to 25% will bring GEMX in line with other options exchanges, and permit its Market Makers to effectively compete with market makers on other options exchanges. Moreover, applying requirements that are substantially similar to other options exchanges will remove a significant compliance burden on market makers who provide liquidity across multiple options exchanges.

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 Section 6(b)(5) of the Act,¹⁰ 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. In particular, the Exchange believes that the proposed rule change promotes just and equitable principles of trade because it reduces an outdated restriction on PMMs, and simplifies the application of the rule by imposing the same 25% volume limitation on all Market Makers. The purpose of limiting the number of contracts executed in

⁷ See Rule 804(e)(2). See also Securities Exchange Act Release No. 84581 (November 14, 2018), 83 FR 58657 (November 20, 2018) (SR-GEMX-2018-37).

⁸ See Rule 701(c)(3).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. As discussed above, the Exchange initially adopted the 10% volume limitation for PMMs because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. Other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange therefore believes that the proposed increase will not result in a decrease of quality on its own market.¹¹ In addition, the Exchange believes that the heightened obligations for PMMs to participate in the Opening Process and provide intra-day quotes will continue to ensure that PMMs provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.¹² As discussed above, the proposed rule change will also conform GEMX's Market Maker obligations to the requirements of other options markets, which will promote the application of consistent compliance standards for market makers who provide liquidity across multiple options exchanges.

Furthermore, such volume limitations were traditionally put in place and especially important at "floor-based" exchanges, since market makers were limited in the number of classes in which they could physically make markets, and it was in the floor-based exchange's interest

¹¹ See note 4 above.

¹² See notes 6 – 8 above, with accompanying text.

that market makers focus their market making abilities on their appointed classes.¹³ Although limitations on trading in non-appointed classes may be less important on a fully electronic exchange since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more options classes than on a floor-based exchange, GEMX still believes focusing its Market Makers on trading in their appointed classes is important for providing liquidity in those classes. In this respect, the Exchange believes that its proposal would continue to meet that objective because the proposed limitation for PMMs would still require that a substantial percentage (i.e., 75%) of a PMM's transactions be effected in their appointed classes.

Finally, in determining to revise requirements for its Market Makers, the Exchange is mindful of the balance between the obligations and benefits provided to Market Makers. While the proposal will change obligations currently in place for Market Makers, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange still imposes many obligations on Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity.¹⁴ In addition, Market Makers are required to abide by quoting requirements in their appointed options classes in order to maintain the status of a Market Maker, and PMMs in particular are held to the highest quoting standards on the Exchange.¹⁵ As further discussed above, PMMs are also required to enter quotes and participate during the Opening Process, pursuant to Rule 701. Lastly, the Exchange also notes that for non-appointed options

¹³ See e.g., Securities Exchange Act Release No. 35786 (May 31, 1995), 60 FR 30122 (June 7, 1995) (SR-Amex-94-51) (order approving proposal by American Stock Exchange, Inc. relating to the in person trading volume requirement for registered options traders).

¹⁴ See Rule 803(b)(1) – (4).

¹⁵ See notes 6 and 7 above, with accompanying text.

classes of Market Makers, Rule 803(d) would continue to prohibit a Market Maker from engaging in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its obligations as specified in Rule 803(b) with respect to its appointed options classes. In particular, Market Makers would be prohibited from (1) individually or as a group, intentionally or unintentionally, dominating the market in options contracts of a particular class and (2) effecting purchases or sales on the Exchange except in a reasonable and orderly manner.¹⁶ Accordingly, the proposal supports the quality of the Exchange's markets by helping to ensure that Market Makers and in particular, PMMs, will continue to be obligated to and have incentives to provide liquidity in their appointed classes. Ultimately, the benefit that the proposed rule change confers upon PMMs by increasing the percentage of contracts executed in the PMM's non-appointed classes from 10% to 25% is offset by the PMM's continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

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 does not believe that its proposal will impose an undue burden on intra-market competition because it will align the percentage limitations for both PMMs and CMMs to 25% of their non-appointed classes, and will treat all Market Makers uniformly in this respect. In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposal to increase the

¹⁶ See Rule 803(d)(1) and (2).

limitation on the percentage of contracts executed in a PMM's non-appointed classes from 10% to 25% will serve to better align the Exchange's requirements with those in place at other options exchanges, which enhances the ability of its Market Makers to effectively compete with market makers on other options exchanges.¹⁷

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 Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. GEMX has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). The Commission believes that

¹⁷ See note 4 above.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal raises no novel issues. As the Exchange notes, other options markets require their market makers to a 25% restriction for trading in non-appointed classes. Further, pursuant to the proposal, PMMs' obligation to their appointed classes would remain unchanged. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.²²

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. Please include File Number SR-GEMX-2018-42 on the subject line.

²² 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-2018-42. 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-2018-42 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.²³

Brent J. Fields
Secretary

²³ 17 CFR 200.30-3(a)(12).