

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85462; File No. SR-GEMX-2019-02)

March 29, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .01 to Rule 710 to Specify Replacement Issues that May Be Added to the Penny Pilot on a Quarterly Basis Without Altering the Expiration Date of the Pilot

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 March 21, 2019, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I 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 Supplementary Material .01 to Rule 710, “Minimum Increments,” to specify replacement issues that may be added to the Penny Pilot (“Pilot”) on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

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

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

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

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 proposes to amend Commentary .01 to Rule 710, "Minimum Increments," to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.<sup>3</sup> Currently, Commentary .01 to Rule 710 permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Commentary .01 to Rule 710 to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 710 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

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<sup>3</sup> See Securities Exchange Act Release No. 84955 (December 26, 2018), 84 FR 859 (January 31, 2019) (SR-GEMX-2018-44). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018-48.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the “six month lookback”) but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation’s trading volume data from September 1, 2018 through February 28, 2019.<sup>4</sup> The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Priority Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the

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<sup>4</sup> The Exchange would announce any replacement issues via an Options Trader Alert. See Commentary .01 to Rule 710.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Priority Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

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

In accordance with Section 6(b)(8) of the Act,<sup>7</sup> the Exchange does not believe that the

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<sup>7</sup> 15 U.S.C. 78f(b)(8).

proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the 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 prior to 30 days from the date on which it was

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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.

filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may 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 proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (i.e., in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.<sup>12</sup>

At any time within 60 days of the filing of such 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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change 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-2019-02 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-2019-02. 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 Web site (<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.

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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-2019-02 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>14</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).