

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85481; File No. SR-GEMX-2019-03)

April 2, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Term “Professional Customer”

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 March 20, 2019, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 adopt the term “Professional Customer” and reorganize the Rulebook as well as other technical amendments.

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 purpose of the proposed rule change is to: (1) adopt a definition specifically for Professional Customer; (2) reorganize Rule 716, “Auction Mechanisms;” (3) add titles to Rule 721, “Crossing Orders,” and (4) renumber parts of Rule 723, “Price Improvement Mechanism for Crossing Transactions.” These changes are to conform the Rulebook to Nasdaq ISE, LLC (“ISE”).³ Each change will be discussed below.

Universal Change

In addition to the amendments described below, the Exchange proposes to capitalize references to “member” to reflect the defined term “Member.”⁴

Professional Customer

The Exchange proposes to add a new definition for the term “Professional Customer” at proposed new Rule 100(a)(52A) to conform to a recent definition added to the ISE Rulebook. This new term would mean a non-broker/dealer participant who enters at least 390 orders per day on average during a calendar month for its own beneficial account(s). The concept of a Professional is established on GEMX,⁵ this new term permits a Professional Customer to be more specifically identified within the Rules. By adopting the new term “Professional

³ See Securities Exchange Act Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR-ISE-2019-05).

⁴ The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See Rule 100(a)(31).

⁵ See Rule 100(a)(52).

Customer” the Exchange believes it can more specifically identify a market participant within its rules.

Rule 716

The Exchange proposes to retitle Rule 716, currently titled “Block Trades,” as “Auction Mechanisms” because the new title more accurately describes the rule text contained in this rule. The Exchange proposes to relocate the text of Rule 716(a) within current Rule 716(c) and re-letter that Rule as 716(a). The Exchange proposes to remove the “(b)” from Rule 716 so that the following text would apply to the entirety of Rule 716 and all mechanisms within the rule, including proposed relocated text, “For purposes of this Rule, a “broadcast message” means an electronic message that is sent by the Exchange to all Members, and a “Response” means an electronic message that is sent by Members in response to a broadcast message.” This rule text, as written, is being amended so that it is clear that the rule text applies to all mechanisms within this rule, including the mechanisms proposed to be relocated within the rule. In addition, the Exchange proposes to relocate and expand rule text within Supplementary Material .04 to Rule 716⁶ to this introductory paragraph so that with the relocation it also would apply to the entire rule. The Exchange proposes to provide, “Also for purposes of this rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.” Today, this rule text applies to all mechanisms within the rule, the Block Order Mechanism, Facilitation Mechanism and Solicitation Mechanism. As amended, the rule text would apply to all the relocated mechanisms as well.

⁶ Supplementary Material .04 to Rule 716 provides, “The time given to Members to enter Responses under paragraphs (c)(1), (d)(1) and (e)(1) shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.”

The Exchange proposes to amend the Facilitation Mechanism to re-letter “d” as “b.” The Exchange proposes to reserve “c”. The Exchange proposes to re-letter Solicited Order Mechanism at “e” as new “d.”

The Exchange proposes to eliminate Supplementary Material .03, which is currently reserved, and .04 to Rule 716, which is being relocated as discussed above. The Exchange proposes to amend Supplementary Material .05 to Rule 716 to renumber it .03. The Exchange proposes to renumber Supplementary Material .06 to Rule 716 as .04. The Exchange proposes to eliminate references to Supplementary Material .07 and .08 to Rule 716, which are currently reserved. The Exchange proposes to renumber Supplementary Material .09 to Rule 716 as .05.

Rule 721

The Exchange proposes to amend Rule 721, Crossing Orders. The Exchange proposes to add a title within Rule 721(a), “Customer Cross Orders.” The Exchange proposes to reserve “b.” The Exchange proposes to re-letter 721(b) as 721(c) and add a title “Qualified Contingent Cross Orders.”

Finally, the Exchange proposes to remove the following outdated rule text, “Qualified Contingent Cross Order functionality will not be available as of a certain date in the first quarter of 2017 to be announced in a notice. The Exchange will recommence Qualified Contingent Cross Order functionality on Nasdaq GEMX on or before March 31, 2018. The Exchange will issue an Options Trader Alert notifying Members when this functionality will be available.” Qualified Contingent Cross functionality was recommenced on GEMX on February 26, 2018⁷ and therefore this rule text is outdated.

⁷ The Exchange issued the following Options Trader Alert notifying GEMX Members that Qualified Contingent Cross functionality would be re-introduced:
<http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2017-76>.

Rule 723

The Exchange proposes to delete Supplementary Material .07 to Rule 723.

Supplementary Material .08 to Rule 723 is being renumbered as .07 and Supplementary Material .09 to Rule 723 is being renumbered as .08.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 for the reasons described below.

Professional Customer

The Exchange believes that adopting the term “Professional Customer” will enable the Exchange to easily reference this market participant in rules and rule changes when differentiating various market participants. It is consistent with the Act to have clearly defined terms to avoid confusion. Adding this reference will enable the Exchange to clearly refer to various market participants. Today, the concept of a Professional is contained in the Rulebook.¹⁰

Reorganization of the Rulebook and Other Technical Amendments

The Exchange’s proposal to relocate various provisions and add titles to conform its current rules to those of ISE is consistent with the Act because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also,

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See note 5 above.

making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

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 the proposed rule change will impact the intense competition that exists in the options market.

The Exchange’s proposal to introduce the term “Professional Customer” will enable the Exchange to distinguish this market participant from other participants. Today, the concept of a Professional is contained in the Rulebook.¹¹

The Exchange’s proposal to relocate various rules and create new titles to conform its current rules to those of ISE will not impose an undue burden on intra-market or inter-market competition because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also, making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

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;

¹¹ Id.

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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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-2019-03 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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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.

All submissions should refer to File Number SR-GEMX-2019-03. 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-2019-03 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.¹⁴

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).