

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87371; File No. SR-GEMX-2019-16)

October 21, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent Certain Options Market Rules That Are Linked to the Equity Market Plan to Address Extraordinary Market Volatility

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 October 18, 2019, 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 make permanent certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility.

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

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

<sup>2</sup> 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 make permanent certain options market rules in connection with the equity market Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan” or the “Plan”). This change is being proposed in connection with the recently approved amendment to the Limit Up-Limit Down Plan that allows the Plan to continue to operate on a permanent basis (“Amendment 18”).<sup>3</sup> This proposed rule change is substantially similar to a recently-approved rule change by Cboe Exchange, Inc. (“Cboe”).<sup>4</sup>

In an attempt to address extraordinary market volatility in NMS Stocks, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, “Participants”) drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.<sup>5</sup> On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.<sup>6</sup> Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially

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<sup>3</sup> See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving Amendment No. 18).

<sup>4</sup> See Securities Exchange Act Release Nos. 86744 (August 23, 2019), 84 FR 45565 (August 29, 2019) (SR-CBOE-2019-049) (Notice of Filing); and 87311 (October 15, 2019) (SR-CBOE-2019-049) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2). The Exchange understands that the other national securities exchanges will also file similar proposals to make permanent their respective pilot programs.

<sup>5</sup> See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

<sup>6</sup> See Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

impact the options markets as well. Thus, the Exchange has previously adopted and amended Options 3, Section 9(d) and Supplementary Material .01 to Options 3, Section 20 to ensure the option markets were not harmed as a result of the Plan's implementation and has implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (the "Options Pilots").<sup>7</sup> Options 3, Section 9(d) addresses the interplay of the Exchange's rules in response to the Plan, and includes provisions on how the Exchange will treat certain options orders during a limit or straddle state as well as options market maker quoting obligations during a limit or straddle state. In addition, Supplementary Material .01 to Options 3, Section 20 provides that an execution will not be subject to obvious or catastrophic error review if it occurred during a limit or straddle state. A limit or straddle state occurs when at least one side of the National Best Bid ("NBB") or Offer ("NBO") bid/ask is priced at a non-tradable level. Specifically, a straddle state exists when the NBB is below the lower price band while the NBO is inside the prices band or when the NBO is above the upper price band and the NBB is within the band, while a limit state occurs when the NBO equals the lower price band (without crossing the NBB), or the NBB equals the upper price band (without crossing the NBO). The Exchange adopted the Options Pilots to protect investors because when an underlying security is in a limit up-limit down state, there will not be a reliable price for the security to serve as a benchmark for the price of the option. Specifically, the Exchange adopted Supplementary Material .01 to Options 3, Section 20 because the application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during limit and straddle states. When adjusting or busting a trade pursuant to the obvious error rule, the determination of

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<sup>7</sup> See Securities Exchange Act Release Nos. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR-ISEGemini-2015-11) ("Original Obvious Error Proposal"); and 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (SR-ISEGemini-2016-17).

theoretical value of a trade generally references the NBB (for erroneous sell transactions) or NBO (for erroneous buy transactions) just prior to the trade in question, and is therefore not reliable when at least one side of the NBBO is priced at a non-tradeable level, as is the case in limit and straddle states. In such a situation, determining theoretical value may often times be a very subjective rather than an objective determination and could give rise to additional uncertainty and confusion for investors. As a result, application of the obvious and catastrophic error rules would be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and may produce undesirable effects or unanticipated consequences. As noted above, the Exchange adopted additional measures via other Options Pilot rules that are designed to protect investors during limit and straddle states.<sup>8</sup> For example, the Exchange will reject Market Orders (as defined in Options 3, Section 7(a)) and cancel Stop Orders<sup>9</sup> during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state. Furthermore, the Exchange believes that eliminating the application of obvious error rules during a limit or straddle state eliminates the re-evaluation of a transaction executed during such a state that could potentially create an unreasonable adverse selection opportunity due to the lack of a reliable reference price on one side of the market or another and discourage participants from providing liquidity during limit and straddle states, which is contrary to the goal in limiting participants' adverse selection with the application of the obvious error rule during normal trading states. For these reasons, the Exchange believes the Options Pilots and

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<sup>8</sup> As set forth in Options 3, Section 9(d), this includes rules in connection with special handling for Market Orders and Stop Orders, and options market maker quoting obligations during a limit or straddle state.

<sup>9</sup> The Exchange will elect Stop Orders if the condition as provided in Options 3, Section 7(d) is met, and, because they become Market Orders, will then cancel them back. See Options 3, Section 9(d)(3).

related rules are designed to add certainty on the options markets, which encourages more investors to participate in light of the changes associated with the Plan. The Plan was originally implemented on a pilot-basis in order to allow the public, the participating exchanges, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis. As stated, the Exchange adopted the Option Pilots to coincide with this pilot; to continue the protections therein while the industry gains further experience operating the Plan.

In connection with the order approving the establishment of the obvious error pilot, as well as the extensions of the obvious error pilot, the Exchange committed to submit monthly data regarding the program and to submit an overall analysis of the obvious error pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to the Original Obvious Error Proposal, approved on May 7, 2015, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.<sup>10</sup> The Exchange has continued to provide the Commission with this data on a monthly basis. For each trade on the Exchange, the Exchange provides (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or

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<sup>10</sup> See Original Obvious Error Proposal *supra* note 7; see also GEMX LULD Reports, available at: <https://www.nasdaq.com/solutions/options/LULD>.

straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state. In addition, to help evaluate the impact of the pilot program, the Exchange has provided to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) an evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange has concluded that the Options Pilots do not negatively impact market quality during normal market conditions,<sup>11</sup> and that there has been insufficient data to assess whether a lack of obvious error rules is problematic, however, the Exchange believes the continuation of the Options Pilots function to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets.

The Commission recently approved the Plan on a permanent basis (Amendment 18).<sup>12</sup> In connection with this approval, the Exchange now proposes to amend Options 3, Section 9(d) and Supplementary Material .01 to Options 3, Section 20 that currently implement provisions of the Plan on a pilot basis to eliminate the pilot basis, which effectiveness expires on October 18, 2019, and to make such rules permanent. In its approval order to make the Plan permanent, the Commission recognized that, as a result of the Participants' and industry analysis of the Plan's operation, the Limit Up-Limit Down mechanism effectively addresses extraordinary market volatility. Indeed, the Plan benefits markets and market participants by helping to ensure orderly

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<sup>11</sup> See also GEMX LULD Reports, available at: <https://www.nasdaq.com/solutions/options/LULD>. During the most recent Review Period the Exchange did not receive any obvious error review requests for Limit-Up-Limit Down trades, and Limit Up-Limit Down trade volume accounted for nominal overall trade volume.

<sup>12</sup> See supra note 3.

markets, but also, the Exchange believes, based on the data made available to the public and the Commission during the pilot period, that the obvious error pilot does not negatively impact market quality during normal market conditions.<sup>13</sup> Rather, the Exchange believes the obvious error pilot functions to protect against any unanticipated consequences in the options markets during a limit or straddle state and add certainty on the options markets. The Exchange also believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject Market Orders and cancel Stop Orders during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state.<sup>14</sup> This removes impediments to and perfects the mechanism of a free and open market and national market system by encouraging more investors to participate in light of the changes associated with the Plan. The Exchange believes that if approved on a permanent basis, the Options Pilots would permanently provide investors with the above-described additional certainty of market prices and mitigation of unanticipated consequences and unreasonable adverse selection risk during limit and straddle states.

Since the Commission's approval of Amendment 18 allowing the Plan to operate on a permanent basis, the Exchange and other national securities exchanges have determined that no further amendments should be made to the Options Pilots;<sup>15</sup> the current Options Pilots effectively address extraordinary market volatility, are reasonably designed to comply with the requirements of the Plan, facilitate compliance with the Plan and should now operate on a permanent basis,

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<sup>13</sup> See supra note 11.

<sup>14</sup> See supra notes 8 and 9.

<sup>15</sup> See Securities Exchange Act Release No. 85609 (April 11, 2019), 84 FR 16055 (April 17, 2019) (SR-GEMX-2019-04).

consistent with the Plan. The Exchange does not propose any substantive or additional changes to Options 3, Section 9(d) or Supplementary Material .01 to Options 3, Section 20.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>16</sup> in general, and Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that eliminating the pilot basis for the Options Pilots and making such rules permanent facilitates compliance with the Plan by adding certainty to the markets during periods of market volatility, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility in NMS Stocks. It has been determined by the Commission that the Plan benefits markets and market participants by helping to ensure orderly markets, and, based on the data made available to the public and the Commission during the pilot period for Supplementary Material .01 to Options 3, Section 20, the Plan does not negatively impact options market quality during normal market conditions. Rather, the Plan, as it is implemented under the obvious error pilot, functions to protect against any unanticipated consequences in the options markets during a limit or

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

straddle state and add certainty on the options markets. During a limit or straddle state, determining theoretical value of an option may be a subjective rather than an objective determination given the lack of a reliable NBBO, which may create an unreasonable adverse selection opportunity and discourage participants from providing liquidity during limit and straddle states. Therefore, the Exchange believes eliminating obvious error review in such states would, in turn, eliminate uncertainty and confusion for investors and benefit investors by encouraging more participation in light of the changes associated with the Plan. As stated, the Exchange believes the other Options Pilots rules provide additional measures designed to protect investors during limit and straddle states. For example, the Exchange will reject Market Orders and cancel Stop Orders during a Limit Up-Limit Down state to ensure that only those orders with a limit price will be executed during a limit or straddle state given the uncertainty of market prices during such a state.<sup>18</sup> Accordingly, the Exchange believes that making the Options Pilots permanent will further the goals of investor protection and fair and orderly markets as the rules effectively address extraordinary market volatility pursuant to the Plan.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is necessary to reflect that the Plan no longer operates as a pilot and has been approved to operate on a permanent basis by the Commission. As such, Options 3, Section 9(d) and Supplementary Material .01 to Options 3, Section 20, which implement protections in connection with the Plan, should be amended to operate on a permanent basis. The Exchange understands that the other national securities exchanges will also file similar proposals to make

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<sup>18</sup> See supra notes 8 and 9.

permanent their respective pilot programs.<sup>19</sup> Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>22</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>23</sup> 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current

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<sup>19</sup> In addition, the Exchange's proposal is substantially similar to Cboe's recently approved rule change. See *supra* note 4.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 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.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

Options Pilots to continue on a permanent basis without any changes, prior to the pilot expiration on October 18, 2019. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>24</sup>

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 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-2019-16 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.

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<sup>24</sup> 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).

All submissions should refer to File Number SR-GEMX-2019-16. 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-2019-16 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>25</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).