

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80573; File No. SR-GEMX-2017-04)

May 2, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Quote Mitigation

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 April 26, 2017, 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 GEMX Rule 804(h) regarding quote mitigation.

The text of the proposed rule change is available on the Exchange’s Website at www.ise.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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 GEMX Rule 804, entitled "Market Maker Quotations," to specifically amend Rule 804(h) which addresses the Exchange's quote traffic mitigation plan to adopt a similar quote mitigation plan to that of NASDAQ PHLX LLC ("Phlx").

Topaz implemented its quote mitigation plan in 2013, at the time it filed its Form 1 application.³ At that time, Topaz adopted the same quote mitigation plan that was in effect on ISE.⁴

Currently, GEMX Rule 804(h) provides that GEMX shall utilize a mechanism so that newly-received quotations and other changes to the Exchange's best bid and offer are not disseminated for a period of up to, but not more than one second. Commencing on February 27, 2017, GEMX initiated a migration to Nasdaq's INET system over a six week symbol rollout.⁵ GEMX completed its symbol migration to INET and began mitigating quotes pursuant to a mitigation strategy utilized by Phlx today.⁶ GEMX is no longer utilizing the same mitigation strategy that it utilized while it operated on its legacy system. INET does not currently support the quote mitigation strategy in the current GEMX Rule 804(h). The Exchange is proposing to change its quote mitigation strategy to one supported by INET. Phlx operates on INET today,

³ See Securities Exchange Release Act. No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209) (Application of Topaz Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission). This pilot has since been extended several times.

⁴ See Securities Exchange Release Act. No. 55161 (February 1, 2007), 72 FR 4754 (January 24, 2007) (SR-ISE-2006-62) (Order Granting Approval to Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, To Implement a Penny Pilot Program To Quote Certain Options in Pennies).

⁵ See Options Trader Alert #2017-13.

⁶ See Options Technical Update #2017-17.

the same system that GEMX now operates on. The Exchange proposes to amend its current rule to adopt a plan for quote mitigation similar to Phlx's rule and properly reflect its mitigation process. Phlx's strategy has been operating on the INET platform since 2007.

Phlx Rule 1082(a)(ii)(C) sets forth the conditions under which Phlx disseminates updated quotations based on changes in the Exchange's disseminated price and/or size. Phlx disseminates an updated bid and offer price, together with the size associated with such bid and offer, when: (1) Phlx's disseminated bid or offer price increases or decreases; (2) the size associated with Phlx's disseminated bid or offer decreases; or (3) the size associated with Phlx's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%)⁷ of the size associated with the previously disseminated bid (offer). Such percentage, which would never exceed 20%, would be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular. The percentage size increase necessary to give rise to a refreshed quote may vary from issue to issue, depending, without limitation, on the liquidity, average volume, and average number of quotations submitted in the issue. The mitigation would apply to all options traded on GEMX.

The Exchange will not be adopting Phlx Rule 1082(a)(ii)(C)(4). This functionality is not necessary on INET. Phlx adopted 1082(a)(ii)(C)(4) when it was not operating on INET, with its subsequent replatform to INET functionality, 1082(a)(ii)(C)(4) was no longer necessary because of the real-time features which exist on INET. The INET functionality rendered the rule text in 1082(a)(ii)(C)(4) as unnecessary.

⁷ Phlx has set its percentage to 10%. See <http://www.nasdaqtrader.com/content/phlxmemos/2007/jan/0197-07.pdf>.

With the migration to INET, GEMX has set an initial percentage of 3% as announced in an Options Trader Alert.⁸ GEMX will continue to monitor the quote activity on the market and would not notify participants of any incremental increase in the size of the Exchange's quote until such quote is disseminated to OPRA.

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, by reducing the number of options quotations required to be submitted on the Exchange and, therefore, mitigating the Exchange's quote message traffic and capacity. By adopting a quote mitigation plan similar to Phlx, the Exchange will continue to mitigate quotes and monitor its quote capacity, as is the case today. While the Phlx method differs from that of GEMX's rule, the Exchange believes that Phlx's method today successfully mitigates quotes on that market. In addition, GEMX desires to adopt a similar mitigation as currently utilized by its affiliated market, as it now operates on the same architecture.

The Phlx quote mitigation process has been in place since 2007. Phlx is operating on the INET system today, the same system that GEMX was recently migrated to for its operating system. The Exchange believes that Phlx's quote mitigation process has successfully controlled Phlx's quote capacity. The Exchange believes that it is reasonable to utilize a similar process as Phlx to mitigate quotes for GEMX given the system architecture is utilized on both of these

⁸ See Options Technical Update #2017-17.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

markets. Nasdaq, Inc., a common parent to Phlx and GEMX, has experience with this quote mitigation strategy on INET. The Exchange has selected to mitigate GEMX at 3% initially because, unlike Phlx, which is a mature market with various auction offerings and higher volumes, GEMX is not as large in volume and has fewer functional offerings, e.g. complex orders and floor trading. The Exchange notes that it will continue to monitor quotes on GEMX and make adjustments as necessary.

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 proposes to mitigate all options trading on GEMX. All options exchanges have a quote mitigation process in place in connection with their participation in the Penny Pilot Program.

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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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,

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ 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 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 Commission notes that GEMX (formerly known as Topaz Exchange, LLC) was approved as an Exchange on July 26, 2013, and its rules at that time provided for a quote mitigation plan.¹⁵ According to the Exchange, GEMX transitioned to a new operating platform (INET) on April 3, 2017; however, this platform does not support the quote mitigation strategy in current GEMX Rule 804(h). The Exchange represents that since GEMX transitioned to INET, it has been mitigating quotes pursuant to the quote mitigation strategy used by Phlx today. The Exchange represents that the proposal would allow the Exchange to operate a quote mitigation plan on the INET platform and effectively mitigate the amount of options quote traffic on the Exchange. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

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

or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See note 3, supra.

¹⁶ 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).

action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2017-04 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-2017-04. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2017-04 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).