

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80747; File No. SR-GEMX-2017-10)

May 23, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Opening Process

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 May 10, 2017, 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 amend the Opening Process for foreign currency options and also amend a reference to All-or-None Orders.

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

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 this rule change is to amend GEMX Rule 701, entitled "Opening," to: (i) conform certain rule text to that of Nasdaq ISE, LLC; (ii) amend the Opening Process for foreign currency options; and (iii) remove a specific rule text reference in Rule 701 related to All-or-None Orders.

Conform Rule Text

ISE recently filed to adopt a new Opening Process.³ In adopting this rule, certain non-substantive modifications were made to the rule text to further clarify the manner in which the Opening Process occurs. At this time, the Exchange proposes to amend GEMX Rule 701 to conform the text of the rule to ISE Rule 701. Specifically, the Exchange proposes to amend Rule 701(j)(5) to amend the last sentence to make clear that any unexecuted contracts from the imbalance process which are not traded or routed will be cancelled back to the entering participant if they remain unexecuted and priced through the Opening Price, otherwise orders will remain in the Order Book. The additional language adds more detail about the interaction with the Order Book to the rule.

Foreign Currency Options

GEMX Rule 701 provides that Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 AM Eastern Time, or 7:25 AM Eastern Time for U.S. dollar-settled foreign currency options, will be included in the Opening Process. Orders entered at any time

³ See Securities Exchange Act Release No. 80225 (March 13, 2017), 82 FR 14243 (March 17, 2017)(SR-ISE-2017-02).

before an option series opens are included in the Opening Process. The current Opening Process rule states that the submission of Valid Width Quotes and Opening Sweeps for U.S. dollar-settled foreign currency options may begin at 7:25 AM Eastern Time to tie the option Opening Process to quoting in the underlying security⁴; it presumes that option quotes submitted before any indicative quotes have been disseminated for the underlying security may not be reliable or intentional. The Exchange proposes to amend GEMX Rule 701 so that the Opening Process for foreign currency options would initiate on or after 9:30 AM Eastern Time and the Market Maker Valid Width Quotes and Opening Sweeps would be considered for the Opening Process starting at 9:25 AM Eastern Time for foreign currency options.

All-Or-None Orders

The Exchange also proposes to amend Rule 701 to remove a specific reference to the manner in which All-or-None Orders are treated in the Opening Process. The Exchange filed a proposed rule change to amend All-or-None Orders.⁵ The Exchange amended Rule 715(c) to provide that an All-Or-None Order may only be entered into the System with a time-in-force designation of Immediate-Or-Cancel⁶ Order in connection with the Exchange's technology migration to INET. Previously, All-or-None Orders could trade as a limit or market order to be executed in its entirety or not at all. With the amendment, an All-Or-None Order does not persist in the Order Book. The carve out specified in Rule 701(j)(6)(i) is unnecessary since an All-or-

⁴ The underlying security can also be an index.

⁵ See Securities Exchange Act Release No. 80102 (February 24, 2017, 82 FR 12381 (March 2, 2017) (SR-ISEGemini-2017-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to All-or-None Orders).

⁶ An Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled.

None Order will execute immediately or cancel. The Exchange believes removing this reference will eliminate confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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 stated below.

Conform Rule Text

The Exchange believes that conforming the GEMX rule to the ISE rule will avoid confusion for market participants. The Opening Process is the same on these two markets. By conforming the rule text of these two rules will make clear that there is no difference in the operation of these two Opening Processes.

Foreign Currency Options

The Exchange believes that the proposed rule change is consistent with the Act in that it will remove impediments to and perfect the mechanism of a free and open market and a national market system, to initiate the Opening Process for foreign currency options at 9:30 AM Eastern Time and accept for the Opening Process the Market Maker Valid Width Quotes and Opening Sweeps starting at 9:25 AM Eastern Time for foreign currency options, similar to the manner in which other options trade today. Today, on NASDAQ PHLX, LLC (“Phlx”), foreign currency

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

options trade similar to other options.⁹ The Exchange believes that conforming the Opening Process for foreign currency options to that of other options will conform the trading rules so all products would initiate the Opening Process at the same time. The Exchange believes trading all options on the same Opening Process schedule promotes just and equitable principles of trade because all options will continue to be available to participants for trading on GEMX.

All-or-None Orders

The Exchange believes that it is consistent with the Act to remove an unnecessary and confusing reference to Rule 701 in connection with All-or-None Orders, since these orders immediately trade or cancel. The Exchange originally distinguished the manner in which All-or-None Orders would trade in the Opening Process because this order type traded differently at that time as compared to other order types. That distinction has become unnecessary because All-or-None Orders trade the same as other Immediate or Cancel Orders. By updating the rule to remove an unnecessary distinction will protect investors and the public interest by clarifying the rule.

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 believes that adding additional detail to Rule 701 will provide market participants with more information concerning the Opening Process. The proposal does not change the intense competition that exists among the options markets for options business including with respect to

⁹ See Phlx Rules 1014 and 1017. On Phlx, the Specialist assigned in a particular U.S. dollar-settled FCO must enter a Valid Width Quote not later than 30 seconds after the announced market opening. Also, on Phlx, the Opening Process for an option series will be conducted within two minutes of market opening in the case of U.S. dollar-settled FCO or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site.

transacting foreign currency options. In addition, all market participants submitting All-or-None Orders in the Opening Process will be receive similar treatment with respect to those orders.

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 Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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: (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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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.

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-2017-10 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-2017-10. 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-2017-10 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.¹²

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Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).