

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81756; File No. SR-GEMX-2017-40)

September 28, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees to Make It Clear That the Nasdaq GEMX Trades Feed Is a Free Offering of the Exchange

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 September 15, 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 Schedule of Fees to make it clear that the Nasdaq GEMX Trades Feed is a free offering of the Exchange provided to subscribers of at least one of the fee liable real-time market data products offered on the Exchange.

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

¹ 15 U.S.C. 78s(b)(1).

² 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 purpose of the proposed rule change is to amend the Schedule of Fees to make it clear that the Nasdaq GEMX Trades Feed (“Trades Feed”) is a free offering of the Exchange provided to subscribers of at least one of the fee liable real-time market data products offered on the Exchange. On April 27, 2017 the Exchange filed a proposed rule change to establish ports that members use to connect to the Exchange with the migration of the Exchange’s trading system to the Nasdaq INET architecture.³ In that proposed rule change, the Exchange also established the Trades Feed, which is a market data offering that displays last trade information along with opening price, cumulative volume, high and low prices for the day. The data provided for each instrument includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and trading status. The Trades Feed is a free market data product provided to subscribers of at least one of the fee liable real-time market data products offered on the Exchange – *i.e.*, the Nasdaq GEMX Real-time Depth of Market Raw Data Feed (“Depth Feed”), the Nasdaq GEMX Order Feed (“Order Feed”), and the Nasdaq GEMX Top Quote Feed (“Top Quote Feed”). To make it clear that the Trades Feed is a free offering of the Exchange, the Exchange now proposes to add the Trades Feed to the Schedule of

³ See Securities Exchange Act Release No. 80649 (May 10, 2017), 82 FR 22595 (May 16, 2017) (SR-GEMX-2017-07).

Fees at a price of \$0 per month for subscribers of the Depth Feed, Order Feed, or Top Quote Feed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to add the Trades Feed to the Schedule of Fees at a cost of \$0 per month for subscribers of the Depth Feed, Order Feed, or Top Quote Feed to alert members to the availability of this free market data product. The Exchange notes that the Trades Feed is a current market data offering that the Exchange is adding to its Schedule of Fees at this time to increase transparency to members. While the Exchange previously noted this free product in the proposed rule change that established the Trades Feed, the Exchange believes that adding it to the Schedule of Fees will ensure that all members are adequately apprised of its availability free of cost for subscribers of the Depth Feed, Order Feed, or Top Quote Feed. The Exchange does not believe that it is unfairly discriminatory to offer the Trades Feed only to subscribers of one of the fee liable market data products described above because those subscribers already have the appropriate connections to receive real-time market data, and the fees paid for those other products can offset costs associated with offering the Trades Feed. Furthermore, the Exchange notes that the Trades Feed is available to any interest [sic] market participant by paying the fees associated with one of the fee liable real-time market data products.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

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

In accordance with Section 6(b)(8) of the Act,⁶ the Exchange does not believe that the 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. As explained above, the Exchange is adding the Trades Feed to the Schedule of Fees at a cost of \$0 per month for subscribers of the Depth Feed, Order Feed, or Top Quote Feed to alert members to the availability of this free market data product. The Exchange does not believe that adding this free market data product to the Schedule of Fees will have any significant competitive impact. All market participants can gain access to the information contained in the Trades Feed by subscribing to any of the fee liable real-time market data products described above.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷ 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.

⁶ 15 U.S.C. 78f(b)(8).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-40 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-2017-40. 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-2017-40, 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.⁸

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Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).