

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82460; File No. SR-GEMX-2017-62)

January 8, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers' Regulatory Fees

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 December 26, 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 Exchange's Schedule of Fees, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2018.

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

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

<sup>2</sup> 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 Exchange's Schedule of Fees to (i) eliminate the annual regulatory fee currently assessed to Market Makers (i.e., Primary Market Makers and Competitive Market Makers) at Section III.C and (ii) make a number of non-substantive clean-up changes to update the Table of Contents. Each change is discussed further below.

***Eliminate Annual Regulatory Fee***

GEMX currently charges its members various non-transaction fees to trade on the Exchange and use its facilities, including a tiered annual regulatory fee. This fee is assessed to all Primary Market Makers ("PMMs") and Competitive Market Makers ("CMMs") to help defray the regulatory and administrative costs associated with a member's use of the Exchange's facilities. In particular, the regulatory fee is \$1,000 per year for a PMM membership, and, for PMMs that are also CMMs, \$250 per year for each CMM membership. For CMMs that are not also PMMs the regulatory fee is \$500 per year for the first CMM membership, and \$250 per year for each additional CMM membership.<sup>3</sup> The Exchange does not charge a regulatory fee to Electronic Access Members ("EAMs").

The Exchange proposes to eliminate the annual regulatory fee and all related references from the Schedule of Fees because it has determined that this fee is outdated and no longer

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<sup>3</sup> See GEMX Schedule of Fees, Section III.C Regulatory Fees.

reflects the costs associated with supporting and regulating its members today. The annual regulatory fee was adopted in 2013, and has not been amended since that time.<sup>4</sup> And because GEMX charges its members various non-transaction fees outside of the annual regulatory fee to help defray such costs, as noted above, the Exchange believes that the proposed fee change will be a more accurate reflection of the administration and regulatory costs associated with a member's use of the Exchange today.

### *Update Table of Contents*

Currently, the Exchange's Schedule of Fees contains a number of section headings that are not currently reflected in the Table of Contents. The Exchange added, eliminated, or renamed these headings as part of a previously-approved rule change, and inadvertently did not make the corresponding updates to the Table of Contents.<sup>5</sup> Accordingly, the Exchange proposes to update the Table of Contents to make its Schedule of Fees easier to read.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>4</sup> See Securities Exchange Act Release No. 71149 (December 19, 2013), 78 FR 78447 (December 26, 2013) (SR-Topaz-2013-16).

<sup>5</sup> In particular, the Exchange renamed Section IV, deleted Section IV.C, and added Sections IV.F – IV.I as part of a previous rule change to amend GEMX's connectivity fees. See Securities Exchange Release No. 81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

### ***Eliminate Annual Regulatory Fee***

The Exchange believes that the proposed elimination of the annual regulatory fee and all related references from the Schedule of Fees is reasonable because the Exchange has determined that the annual regulatory fee is outdated and no longer reflects the costs associated with supporting and regulating its members. This fee has not been amended since its adoption in 2013. Furthermore, GEMX charges its members various non-transaction fees outside of the annual regulatory fee to help defray such costs, as noted above. The Exchange therefore believes that the proposed fee change will be a more accurate reflection of the administration and regulatory costs associated with a member's use of the Exchange today.

The Exchange also believes that the proposed elimination of the annual regulatory fee is equitable and not unfairly discriminatory because the proposed change will apply equally to all similarly situated members.

### ***Update Table of Contents***

The Exchange believes that the clean-up changes to update the Table of Contents is reasonable, equitable and not unfairly discriminatory because these are non-substantive changes intended to make the Schedule of Fees more transparent to members and investors.

#### **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. As discussed above, the proposed changes are intended to more accurately reflect the regulatory and administrative costs associated with a member's use of the Exchange, or are clean-ups to make the Schedule of Fees more transparent to members and investors. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at

other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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.<sup>8</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: (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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-62 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-2017-62. 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-2017-62 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>9</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).