

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83279; File No. SR-GEMX-2018-09)

May 17, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce the ATR Protection for Orders that are Routed to Away Markets

I. Introduction

On February 26, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 714 regarding the Acceptable Trade Range (“ATR”) functionality for orders that are routed to away markets. The proposed rule change was published for comment in the Federal Register on March 14, 2018.³ On April 23, 2018, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety.⁴ On April 26, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82847 (March 9, 2018), 83 FR 11259 (“Notice”).

⁴ See Letter to Brent J. Fields, Secretary, Commission, from Adrian Griffiths, Senior Associate General Counsel, Nasdaq, Inc., dated April 23, 2018 (“Amendment No. 1”). Amendment No. 1 revises the proposed rule change to: (i) provide further discussion of the current application of the ATR to orders routed away; (ii) modify the proposed rule text regarding the recalculation of the ATR for orders routed away pursuant to Supplementary Material to Exchange Rule 1901, if the applicable National Best Bid (“NBB”) or the National Best Offer (“NBO”) price is improved at the time of routing; (iii) expand the discussion and justification for recalculating the ATR for such orders; and (iv) make other amendments to the proposed rule text to improve the understandability of the current ATR calculation. Amendment No. 1 was also submitted as a comment to the proposed rule change. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-gemx-2018-09/gemx201809-3490578-162256.pdf>.

to determine whether to disapprove the proposed rule change to June 22, 2018.⁵ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁶

The ATR is a functionality designed to prevent the Exchange's System⁷ from experiencing dramatic price swings by preventing the execution of orders beyond set thresholds.⁸ Pursuant to Exchange Rule 714(b)(1), the System calculates an ATR to limit the range of prices at which an order or quote will be allowed to execute.⁹ Upon receipt of a new order or quote, the ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange, where the reference price is the NBB for sell orders/quotes and the NBO for buy orders/quotes.¹⁰ Accordingly, the ATR is: the reference price - (x) for sell orders/quotes; and

⁵ See Securities Exchange Act Release No. 83118 (April 26, 2018), 83 FR 19369 (May 2, 2018).

⁶ For a more detailed description of the proposal, see Notice, supra note 3; Amendment No. 1, supra note 4.

⁷ The term "System" means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See Exchange Rule 100(a)(55).

⁸ See Amendment No. 1, supra note 4.

⁹ See Exchange Rule 714(b)(1).

¹⁰ See Notice, supra note 3, at 11259. For purposes of determining the value that will be added or subtracted from the reference price, there are three categories of options for the ATR: (1) Penny Pilot Options trading in one cent increments for options trading at less than \$3.00 and increments of five cents for options trading at \$3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options. See id.

the reference price + (x) for buy orders.¹¹ If an order or quote reaches the outer limit of the ATR without being fully executed, then any unexecuted balance will be cancelled.¹²

The Exchange states that, currently, the System calculates a reference price for an incoming order or quote only when that order or quote rests or trades on the regular order book.¹³ Accordingly, orders that route to away exchanges do not always receive the ATR. Orders that first trade on the Exchange prior to being routed away receive the ATR, but orders that are routed away upon entry (or otherwise do not rest or trade on the regular order book) are not currently subject to the ATR.¹⁴

The Exchange now proposes to amend the ATR to modify how it applies to orders that are routed by the Exchange. First, the Exchange proposes to apply the ATR to orders that are routed to away markets without first trading on the Exchange.¹⁵ This means that, unlike today, the System will calculate an ATR for orders even if the order does not rest or trade on the regular order book prior to being routed.¹⁶

In addition, the Exchange proposes that, for orders routed to away markets pursuant to the Supplementary Material to Exchange Rule 1901,¹⁷ if the applicable NBB or NBO price is

¹¹ See Exchange Rule 714(b)(1)(i).

¹² See Exchange Rule 714(b)(1)(ii). The ATR is not available for All-or-None Orders. See Notice, supra note 3, at 11259, n.3.

¹³ See Notice, supra note 3, at 11259.

¹⁴ See Amendment No. 1, supra note 4.

¹⁵ See Notice, supra note 3, at 11259.

¹⁶ See Amendment No. 1, supra note 4.

¹⁷ This could occur: (1) if an order is routed to an away market pursuant to Supplementary Material .02 to Rule 1901 (the “Flash” auction) without first trading against any Exchange interest in the “Flash” auction; (2) if an order is a “Sweep Order” as defined in Rule 715(s) and processed pursuant to Supplementary Material .05 to Rule 1901 instead of the “Flash” auction; or (3) if a Non-Customer Order opts out of the “Flash” auction

improved at the time the order is routed, a new ATR would be calculated based on the reference price at that time.¹⁸ The Exchange notes that the NBB or NBO price for a security may change during the “Flash” auction process described in Supplementary Material .02 to Rule 1901, and the proposed rule change would provide additional protection if the reference price was improved at the time the order is routed.¹⁹ Similarly, the Exchange represents that other routable orders not subject to the “Flash” auction process must still be processed by the System prior to routing, and during this processing time the market may have moved.²⁰ Under the proposed rule change, if the NBB or NBO price has not improved at the time an order is routed, the ATR that was applied to the order upon entry into the System would apply.²¹

The Exchange states that it intends to implement the ATR functionality described in the proposed rule change no later than October 31, 2018.²²

and is processed pursuant to Supplementary Material .04 to Rule 1901. See Amendment No. 1, supra note 4.

Supplementary Material .02 to Rule 1901 provides that orders to be routed to away markets may be eligible for a “Flash” auction wherein Exchange members are allowed the opportunity to enter responses to trade with the order prior to routing. See Notice, supra note 3, at 11259.

¹⁸ See Amendment No. 1, supra note 4; proposed Exchange Rule 714(b)(1)(ii). In the Notice, the Exchange provides examples of how the ATR will be applied to orders routed to away markets. See Notice, supra note 3, at 11259-60.

¹⁹ See Amendment No. 1, supra note 4.

²⁰ See Amendment No. 1, supra note 4.

²¹ The Exchange states that the ATR is not again recalculated for orders after routing, so orders that are routed but not executed in full by an away market, and subsequently return to trade on the Exchange, would not receive a new ATR. See Amendment No. 1, supra note 4.

²² See Notice, supra note 3, at 11260. The Exchange further states that it will announce the implementation date of this functionality in an Options Trader Alert prior to the launch date. See id.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that the ATR is reasonably designed to prevent executions of orders and quotes at prices that are significantly worse than the NBBO at the time of an order's submission and may reduce the potential negative impacts of unanticipated volatility in individual options.²⁵ The Commission notes that the proposed rule change extends the application of the ATR to orders that route away immediately upon entry, thus offering these orders the same protections that the ATR provides to orders that first trade on the Exchange before being routed. The Commission also believes that recalculating the ATR for orders routed to away markets pursuant to the Supplementary Material to Rule 1901, if the applicable NBB or

²³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See Securities Exchange Act Release No. 80011 (February 10, 2017), 82 FR 10927, 10929-30 (February 16, 2017) (SR-ISEGemini-2016-17) (Order approving, among other things, proposal to establish ATR).

NBO price is improved at the time the order is routed, should help provide such orders with a price protection that better reflects the NBB or NBO. The Commission further believes that the proposed rule change will provide transparency and enhance investors' understanding of the operation of the ATR. The Commission notes that the Exchange will continue to use the NBB or NBO as the reference price for the ATR. For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

III. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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-2018-09 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-2018-09. 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-2018-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As discussed above, Amendment No. 1 adds detail to the proposal and the proposed rule text regarding the operation of the ATR. Amendment No. 1 revises the proposed rule text to specify that for orders routed to away markets pursuant to the Supplementary Material to Rule 1901, if the applicable NBB or NBO price is improved at the time the order is routed, a new ATR will be calculated based on the reference price at that time. Amendment No. 1 also sets forth additional justification for the proposed rule change. The Commission believes that these revisions provide greater clarity with respect to the current and proposed application of the ATR for routed away orders. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,²⁶ to approve the proposed rule

²⁶ 15 U.S.C. 78s(b)(2).

change, as modified by Amendment No. 1 on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²⁷ that the proposed rule change (SR-GEMX-2018-09), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).