

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92227; File No. SR-GEMX-2021-05)

June 22, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options 2, Section 4 (Obligations of Market Makers)

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 June 9, 2021, 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 Options 2, Section 4, Obligations of Market Makers. The Exchange also proposes to add a new Options 4C.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, 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 Exchange proposes to amend Options 2, Section 4, Obligations of Market Makers.

The Exchange also proposes to add a new Options 4C.

Options 2, Section 4(a)

The Exchange proposes to remove the following rule text from Options 2, Section 4(a), which has been in place since GEMX's inception:³

...Ordinarily, Market Makers are expected to:

(1) Refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security.

(2) The \$0.25 amount above may be increased, or the provisions of this Rule may be waived, by the Exchange on a series-by-series basis.

³ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Application of Topaz Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

This proposed rule text also previously existed on Cboe Exchange, Inc. within prior Rule 8.7⁴ and was removed from Cboe’s Rulebook in 2019.⁵ The Exchange likewise desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.⁶ The proposed rule text is currently waived on GEMX pursuant to Options 2, Section 4(a)(2). The Exchange proposes to remove this rule text from Options 2, Section 4 as the Exchange does not desire to enforce this provision in the future. The Exchange believes that this market maker provision is no longer necessary. Today, GEMX incentivizes Market Makers through allocation⁷ to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making⁸ in

⁴ Prior Interpretation and Policy .02 to Rule 8.7 provided, “Market-Makers are expected ordinarily to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security. The \$0.25 amount above may be increased, or the provisions of this Interpretation may be waived, by the Exchange on a series-by-series basis.”

⁵ Cboe’s rule change merely noted, with respect to the removal of Cboe’s parity rule, that the filing makes non-substantive changes to the rule governing a Market-Maker’s general obligations (current Rule 8.7, in part), most of which remove redundant provisions that are already covered under the umbrella of a Market-Maker’s obligation to engage in dealing to maintain fair and orderly markets. No specific argument is provided with respect to removing this provision. See Securities Exchange Act 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges).

⁶ See Nasdaq Phlx LLC, The Nasdaq Options Market LLC and Nasdaq BX, Inc. at Options 2, Section 4 (Obligations of Market Makers).

⁷ See Options 3, Section 10 (Priority of Quotes and Orders). Primary Market Makers are offered an enhanced allocation provided the Primary Market Maker is quoting at same price as a non- Priority Customer Order or Market Maker quote.

⁸ See Options 2, Section 4. GEMX Market Makers must for example: (1) compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed; (2) make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange’s System in all

addition to other quoting obligations⁹ that they must abide by when quoting on GEMX. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule¹⁰ which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, GEMX orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.¹¹ Market Makers are relied upon to provide liquidity on GEMX, which benefits other Members who have the opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on GEMX Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

Bid/Ask Differentials

The Exchange proposes to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to centralize the bid/ask differentials. Specifically, the Exchange proposes to state within new Options 2, Section 4(b)(4)(iii) that,

series of options classes to which the Market Maker is appointed; (3) update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed; and (4) price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. See Options 2, Section 4(b).

⁹ See Options 2, Section 5 (Electronic Market Maker Obligations and Quoting Requirements). Further, Options 3, Section 8(c)(3) requires Primary Market Makers to submit a Valid Width Quote during the Opening Process.

¹⁰ See Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

¹¹ See Options 3, Section 4(b)(6).

Bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for equity options and exchange-traded products. Bid/ask differentials shall not apply to any options series until the time to expiration is less than twelve (12) months for index options.

Currently, GEMX Options 4 and Options 4A rules are incorporated by reference to Nasdaq ISE, LLC (“ISE”). The Exchange recently filed a rule change¹² to amend ISE Options 4 and Options 4A rules to relocate text concerning bid/ask differentials for long-term option series from ISE Options 4, Section 8(a)¹³ and ISE Options 4A, Section 12(b)(i).¹⁴ The ISE Rule Change added citations to Options 2, Section 4(b)(4)(iii) to ISE Options 4, Section 8(a) and ISE Options 4A, Section 12(b)(i). The ISE Rule Change indicated that ISE believes relocating the bid/ask differentials to Options 2, Section 4(b)(4)(iii) will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

Business Continuity and Disaster Recovery Plan

The Exchange proposes to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved. The Exchange proposes to title General 2, Section 12 as “Business Continuity and Disaster Recovery Plan Testing Requirements for Members Pursuant to Regulation SCI.” The rule text is being relocated without change. The Exchange proposes to

¹² See SR-ISE-2021-14 (“ISE Rule Change”).

¹³ ISE Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded funds.

¹⁴ ISE Options 4A, Section 12(b)(i) describes the bid/ask differentials for long-term options series for indexes.

relocate this rule text to harmonize GEMX's rules with that of Nasdaq PHLX LLC ("Phlx"), Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.¹⁵ The Exchange also proposes to reserve Sections 7-11 and 13-22 within General 2. Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market.

Technical Amendments

The Exchange proposes to add new Options 4C and mark it as reserved. Phlx added a 4C to its Rulebook and this rule change will harmonize GEMX's Rulebook structure to Phlx's Rulebook Structure.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ 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.

¹⁵ Similar rule changes will also be made for Nasdaq ISE, LLC and Nasdaq MRX, LLC.

¹⁶ See Securities Exchange Act Release No. 91488 (April 6, 2021), 86 FR 19037 (April 12, 2021) (SR-Phlx-2021-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Phlx Options Rules at Options 4 Under the Options 4 Title in the Exchanges Rulebooks Shell Structure).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity is consistent with the Act. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.¹⁹ The proposed rule text is currently waived on GEMX pursuant to Options 2, Section 4(a)(2). The Exchange believes that this market maker provision is no longer necessary. Today, GEMX incentivizes Market Makers through allocation²⁰ to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making²¹ in addition to other quoting obligations²² that they must abide by when quoting on GEMX. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule²³ which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, GEMX orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.²⁴ Market Makers are relied upon to provide liquidity on GEMX, which benefits other Members who have the opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on GEMX Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional

¹⁹ See supra note 6.

²⁰ See supra note 7.

²¹ See supra note 8.

²² See supra note 9.

²³ See supra note 10.

²⁴ See supra note 11.

obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation and the removal of this provision would remove an impediment to and perfect the mechanism of a free and open market and a national market system.

Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4)(i) and Options 4A, Section 12(b)(i) to centralize the bid/ask differentials is consistent with the Act. Currently, GEMX Options 4 and Options 4A rules are incorporated by reference to ISE. The Exchange recently filed a rule change²⁵ to amend ISE Options 4 and Options 4A rules to relocate text concerning bid/ask differentials for long-term option series from ISE Options 4, Section 8(a) and ISE Options 4A, Section 12(b)(i). The ISE Rule Change added citations to Options 2, Section 4(b)(4)(i) to ISE Options 4, Section 8(a) and ISE Options 4A, Section 12(b)(i). GEMX believes centralizing the bid/ask differentials within new Options 2, Section 4(b)(4)(i) will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, is consistent with the Act. This rule text will harmonize GEMX's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.²⁶ Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will

²⁵ See supra note 12.

²⁶ See supra note 15.

make it easier for market participants to review and compare the rules of each Nasdaq market. The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2. These changes are non-substantive as the rule text is not being amended.

Technical Amendments

Adding Options 4C and reserving it is a non-substantive amendment which will harmonize GEMX's Rulebook structure to Phlx's Rulebook Structure.²⁷

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.

Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity does not impose an undue burden on competition. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.²⁸ The proposed rule text is currently waived on GEMX pursuant to Options 2, Section 4(a)(2). Market Makers are relied upon to provide liquidity on GEMX, which benefits other Members who have the opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on GEMX Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not

²⁷ See supra note 16.

²⁸ See supra note 5.

necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, does not impose an undue burden on competition. This rule text will harmonize GEMX's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.²⁹ Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market. This change is non-substantive as the rule text is not being amended.

²⁹ See supra note 6.

Technical Amendments

Adding Options 4C and reserving it is a non-substantive amendment which will harmonize GEMX's Rulebook structure to Phlx's Rulebook Structure.³⁰

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 Act³¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³²

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 necessary or appropriate in the public interest, for the protection of investors, or 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.

³⁰ See supra note 16.

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 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-2021-05 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-2021-05. 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-2021-05 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.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).