



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-85609; File No. SR-GEMX-2019-04]

April 11, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot for Certain Options Market Rules that are Linked to the Equity Market Plan to Address Extraordinary Market Volatility

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 April 5, 2019, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 extend the pilot to the close of business on October 18, 2019, for certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility.

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

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 extend the pilot to the close of business on October 18, 2019, for certain options market rules that are linked to the equity market Plan to Address Extraordinary Market Volatility (the "Limit Up-Limit Down Plan" or the "Plan"). This change is being proposed in connection with a proposed amendment to the Limit Up-Limit Down Plan that would allow the Plan to continue to operate on a permanent basis ("Amendment 18").

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, U.S. national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, "Participants") drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Act.³ On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.⁴ Though the Plan was primarily designed for equity markets, the Exchange believed it would, indirectly, potentially impact the options markets as well. Thus, the Exchange previously adopted Rules 702(d) and Supplementary Material .01 to Rule 720 to ensure the option markets were not harmed as a result of

³ See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

⁴ See Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

the Plan's implementation and has implemented such rules on a pilot basis that has coincided with the pilot period for the Plan (the "Options Pilots").⁵

The Commission recently published an Amendment 18, which would allow the Plan to operate on a permanent, rather than pilot, basis.⁶ In connection with this change, the Exchange proposes to amend the Options Pilots to expire at the close of business on October 18, 2019 – i.e., six months after the expiration of the current pilot period for the Plan. Specifically, the Exchange proposes to amend Exchange Rules 702(d) and Supplementary Material .01 to Rule 720 to untie the Options Pilot's effectiveness from that of the Plan and to extend the Options Pilot's effectiveness to the close of business on October 18, 2019. The Exchange understands that the other national securities exchanges will also file similar proposals to extend their respective pilot programs, the substance of which are identical to the proposal.

The Exchange does not propose any additional changes to Exchange Rules 702 and 720. The Exchange believes the benefits to market participants from the Options Pilots should continue on a limited six month pilot basis after Commission approves the Plan to operate on a permanent basis. Assuming the Plan is approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the Options Pilots. Extending the Options Pilots for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments to their rules in light of proposed Amendment 18.

⁵ See Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR-ISEGemini-2015-11) (amending Rule 702(d) and Supplementary .01 to Rule 720 to coincide with the pilot period for the Plan) [sic].

⁶ See Securities Exchange Act Release Nos. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (Amendment No. 18 Proposing Release).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning rules for options markets adopted to coincide with the Plan. The Exchange believes that extending the Options Pilots for an additional six months would help assure that the rules subject to such Pilots are either similarly made permanent, amended or removed, following additional discussion and analysis by the Exchange and other national securities exchanges. The proposed rule change would also help assure that such rules are not immediately eliminated, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the Options Pilots should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for such rules.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of the Options Pilots while the Exchange and other national securities exchanges consider further amendments to these rules in

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

light of proposed Amendment 18. The Exchange understands that the other national securities exchanges will also file similar proposals to extend their respective pilot programs, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues [sic]

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) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

consistent with the protection of investors and the public interest, as it will allow the current Options Pilots to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider and develop a permanent proposal for the Options Pilots. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹³

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 change 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2019-04 on the subject line.

Paper Comments:

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2019-04. 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 such 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-2019-04 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.¹⁴

Eduardo Aleman,
Deputy Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).

