

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82319; File No. SR–GEMX–2017–55]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Market Access and Routing Subsidy Program

December 14, 2017

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 November 29, 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 a subsidy program, the Market Access and Routing Subsidy (“MARS”), for GEMX Members that provide certain order routing functionalities<sup>3</sup> to other GEMX Members and/or use such functionalities themselves.

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 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 Exchange proposes to amend the definition of Eligible Contracts to exclude options overlying NDX<sup>4</sup> as Eligible Contracts from MARS. Options overlying NDX would not be eligible for MARS Payments.

By way of background, MARS pays a subsidy to GEMX Members that provide certain order routing functionalities to other GEMX Members and/or use such functionalities themselves. GEMX pays participating GEMX Members to subsidize their costs of providing routing services to route orders to GEMX. The Exchange believes that MARS will attract higher volumes of equity and ETF options volume to the Exchange from non-GEMX market participants as well as GEMX Members.

##### MARS System Eligibility

To qualify for MARS, a GEMX Member’s order routing functionality would be required to meet certain criteria. Specifically the Member’s routing system (hereinafter “System”) would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including GEMX; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with GEMX’s API to access current GEMX match engine functionality. The Member’s System would also need to cause GEMX to be one of the top four default destination exchanges for (a) individually executed marketable orders if GEMX is at the national best bid or offer (“NBBO”), regardless of size or time or (b) orders that establish a new NBBO on GEMX’s Order Book, but allow any user to manually override GEMX as the default destination on an order-by-order basis. Any GEMX Member may apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System.

##### MARS Eligible Contracts

A MARS Payment is paid to GEMX Members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on GEMX. For the

purpose of qualifying for the MARS Payment, Eligible Contracts include Non-Nasdaq GEMX Market Maker (FARM),<sup>5</sup> Firm Proprietary<sup>6</sup>/Broker-Dealer<sup>7</sup> and Professional Customer<sup>8</sup> Orders that are executed. Eligible Contracts do not include qualified contingent cross or “QCC” Orders<sup>9</sup> or Price Improvement Mechanism or “PIM” Orders.<sup>10</sup>

##### MARS Payment

GEMX Members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid the following per contract rebates:

| Tiers   | Average daily volume (“ADV”) | MARS payment |
|---------|------------------------------|--------------|
| 1 ..... | 10,000                       | \$0.07       |
| 2 ..... | 15,000                       | 0.10         |
| 3 ..... | 20,000                       | 0.13         |

The specified MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to GEMX through a participating GEMX Member’s System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to GEMX, but not executed.

##### Proposal

The Exchange proposes to exclude options overlying NDX from Eligible Contracts for purposes of qualifying for a MARS Payment. Only Eligible Contracts are paid rebates, therefore no MARS Payment would be paid on options overlying NDX.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the

<sup>5</sup> A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>6</sup> A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account.

<sup>7</sup> A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

<sup>8</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>9</sup> A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 of GEMX Rule 715, coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 715(j).

<sup>10</sup> Price Improvement Mechanism (“PIM”) is the Exchange’s price improvement mechanism for crossing transactions. See Rule 723.

<sup>11</sup> 15 U.S.C. 78f(b).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The order routing functionalities permit a GEMX Member to provide access and connectivity to other Members as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one GEMX Member to be eligible for payments under MARS, while another GEMX Member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a GEMX Member’s connection to the Exchange and that Member qualified for the MARS Payment.

<sup>4</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</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.

The Exchange's proposal to exclude options overlying NDX from MARS Eligible Contracts is reasonable because the Exchange believes that despite the exclusion of NDX, the MARS program will continue to attract higher volumes of equity and ETF options volume to the Exchange, which will benefit all GEMX Members by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

The Exchange's proposal to exclude options overlying NDX from MARS Eligible Contracts is equitable and not unfairly discriminatory because any qualifying GEMX Member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts, excluding NDX. The Exchange would not pay any MARS Payment on options overlying NDX because options overlying NDX will uniformly be excluded from the volume calculation for all qualifying GEMX Members for MARS. Further, MARS Payments are only made on Eligible Contracts so no GEMX Member would be paid a MARS rebate on options overlying NDX.

#### *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. In terms of inter-market competition, the Exchange notes that it 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 with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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.

The Exchange believes that excluding option overlying NDX from the Eligible Contracts does not create an undue burden on intra-market competition because options overlying NDX will uniformly be excluded from the volume calculation for all qualifying GEMX Members for MARS. Further, MARS Payments are only made on Eligible Contracts so no GEMX Member would be paid a MARS rebate on options overlying NDX. The MARS Program should continue to generate increased order flow which should bring increased liquidity to the Exchange for the benefit of all market participants. To the extent the purpose of the proposed MARS program is achieved, all market participants should benefit from the improved market liquidity.

#### *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>13</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

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-55 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-2017-55. This file number should be included on the subject line if email 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-2017-55 and should be submitted on or before January 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 200.30-3(a)(12).