

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-01388 Filed 2-6-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85024; File No. SR-GEMX-2018-45]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Provisions for Excluding a Day From Its Volume Calculations

February 1, 2019.

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 21, 2018, 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 provisions for excluding a day from its volume calculations for purposes of determining pricing tiers.

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 purpose of the proposed rule change is to amend the Exchange's provisions for excluding a day from its volume calculations for purposes of determining pricing tiers. The Exchange is standardizing its practice for removing a day from volume calculations in its Pricing Schedule with its affiliated options market, Nasdaq PHLX LLC ("Phlx").<sup>3</sup> Each change is discussed below.

##### Background

To avoid penalizing members when aberrant low volume days result from systems or other issues at the Exchange, or where the Exchange closes early for holiday observance, the Exchange currently has language in its Pricing Schedule allowing it to exclude certain days from its average daily volume ("ADV") calculations. Currently, language in the Exchange's Pricing Schedule provides that, for purposes of determining ADV for certain incentive programs,<sup>4</sup> any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The proviso language (hereinafter, the "better of rule") ensures that members would only have the day removed when doing so is beneficial for the member. As such, the Exchange only applies the better of rule to ADV calculations, and not for other volume-based pricing where members would not benefit from having the day excluded (e.g., straight volume accumulations).

##### Proposal

In Options 7, Section 1, the Exchange proposes to adopt subsection (a) with the title "Removal of Days for Purposes of Pricing Tiers," and renumber the

<sup>3</sup> See Phlx Pricing Schedule, Options 7, Section 1(b). The Exchange's other affiliated options markets, Nasdaq ISE, Nasdaq MRX, Nasdaq BX, and The Nasdaq Options Market will also file similar rule change proposals to conform to Phlx's rule.

<sup>4</sup> The current language in the Pricing Schedule applies to the calculations of Total Affiliated Member ADV and Priority Customer Maker ADV used to determine tiered maker rebates and taker fees for members. See Options 7, Section 3, Table 1 (Qualifying Tier Thresholds).

existing first paragraph (related to fee disputes) as subsection (b). The Exchange also proposes to adopt new language in subsection (a) that is substantially similar to language currently in place on Phlx.<sup>5</sup> Specifically, as proposed:

(1)(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (3) below.

(2) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (3) below, specifically any day that:

(A) The market is not open for the entire trading day, (B) the Exchange instructs members in writing to route their orders to other markets, (C) the Exchange is inaccessible to members during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(3) If a day is to be excluded as a result of paragraph (1)(B) or (2) above, the Exchange will exclude the day from any member's monthly options tier calculations as follows:

(A) The Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; or

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (3)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for members that would have a lower Tier Calculation with the day included.

The proposed language: (i) Applies the rule for excluding days to all volume based calculations rather than specified incentive programs,<sup>6</sup> (ii) expands upon the existing scenarios where the Exchange may remove a day to adopt two additional situations related to Exchange systems disruptions, (iii)

<sup>5</sup> See note 3 above.

<sup>6</sup> See note 4 above. Since the proposed language will now apply to all current and future programs administered by the Exchange that are based on ADV and other applicable volume calculations, the current rule in Options 7, Section 3 will be replaced by the proposed language in Section 1(a) with the modifications described above, including language providing that the rule will apply to all Tier Calculations in its Pricing Schedule.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

categorizes the potential excluded days into days that are known in advance (*i.e.*, days in proposed paragraph (1), including Scheduled Early Closes) and days that are not (*i.e.*, Unanticipated Events in proposed paragraph (2)). (iv) clarifies how the potential excluded days proposed above would be removed from the ADV and other applicable volume based tier calculations in the Pricing Schedule, and (v) generally adds more detail to clarify the application of the better of rule. As it relates to Unanticipated Events, the Exchange will inform all members if any such day will be excluded from its Tier Calculations through a system status message disseminated to all members. The Exchange notes that it is not proposing to amend the thresholds a member must achieve to become eligible for, or the dollar amount associated with, the tiered rebates or fees.

#### Rule Application

Currently, the Exchange's rule for removing a day from its ADV calculations applies to specific ADV calculations of Total Affiliated Member ADV<sup>7</sup> and Priority Customer Maker ADV.<sup>8</sup> As applied, the Exchange can remove a day from tier calculations for the maker rebates<sup>9</sup> and taker fees<sup>10</sup> assessed to members.<sup>11</sup> The Exchange now believes it is appropriate to expand

<sup>7</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms. For purposes of determining a member's eligibility for the volume-based tiers in the Total Affiliated Member ADV category, the Exchange uses either numeric thresholds that measure a member's absolute volume or, as an alternative, a percentage-based calculation that considers a member's volume relative to total customer industry volume (*i.e.*, the "Customer Total Consolidated Volume"). For purposes of measuring Total Affiliated Member ADV, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

<sup>8</sup> The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

<sup>9</sup> The Exchange provides tiered maker rebates to Market Maker and Priority Customer orders in Penny Symbols and SPY, as well as in Non-Penny Symbols (excluding index options), all of which are based on Total Affiliated Member ADV and Priority Customer Maker ADV. See Option 7, Section 3.

<sup>10</sup> Members are charged tiered taker fees in Penny Symbols and SPY, as well as in Non-Penny Symbols (excluding index options), all of which are based on Total Affiliated Member ADV and Priority Customer Maker ADV. See Option 7, Section 3.

<sup>11</sup> All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

this provision to cover all volume based calculations including ADV rather than limit it to specific enumerated programs. Applying this rule to all volume based calculations will benefit members by permitting the Exchange to exclude atypical low volume days from its volume calculations regardless of the specific pricing program impacted. As is the case today, the Exchange would only remove the day for members that would have a lower volume calculation with the day included. This change will standardize the Exchange's practice with Phlx, which currently applies its rule to cover all ADV and other volume calculations set forth in its pricing schedule rather than specified programs.<sup>12</sup>

#### Exchange Systems Disruptions

The Exchange proposes to adopt two additional scenarios as "Unanticipated Events" that the Exchange may determine to exclude from its Tier Calculations. First, the Exchange proposes to exclude days where the Exchange is inaccessible to members during the 30-minute period before the opening of trade (*i.e.*, between 9:00 a.m. to 9:30 a.m. Eastern Time) due to an Exchange system disruption, even if the Exchange does not instruct members to route away to other markets. As discussed above, the Exchange's current ability to remove days is limited to days where the market is not open for the entire trading day, and where the Exchange instructs members to route away to other markets. This allows the Exchange to exclude days, for example, where the Exchange honors a market-wide trading halt declared by another market, closes early for holiday observance, or instructs members to route away to other markets because of a systems issue in the morning, which ultimately does not carry over into the trading day. The Exchange notes, however, that it may not always instruct members to route away. For instance, the Exchange may be inaccessible to members in the morning due to a systems disruption but the Exchange resolves the issue shortly before 9:30 a.m. and as a result, the Exchange does not instruct members to route away. In such cases, the Exchange is not permitted to exclude the day from its ADV calculations. The Exchange generally experiences a high volume of member participation within the 30-minute window leading up to the opening of trade from members who submit eligible interest be included in the Exchange's opening process. As a result, days where members are

precluded from submitting eligible interest during this 30-minute time period due to an Exchange systems disruption, even if the issue is ultimately resolved by the Exchange before the market opens (and members therefore are not instructed to route away), are likely to have lower trading volume. Including such days in calculations of ADV will therefore make it more difficult for members to achieve particular pricing tiers for that month. Accordingly, excluding such days will diminish the likelihood of a cost increase occurring because a member is not able to reach a pricing tier on that date that it would reach on other trading days during the month. Phlx currently has identical language allowing it to remove such days from its volume based tiers.<sup>13</sup>

Second, the Exchange proposes to exclude days where there is an Exchange system disruption that lasts for more than 60 minutes during regular trading hours (*i.e.*, 9:30 a.m. to 4:00 p.m. Eastern Time), even if such disruption would not be categorized as a complete outage of the Exchange's system. Such a disruption may occur where a certain options series traded on the Exchange is unavailable for trading due to an Exchange systems issue, or where the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead members who rely on such processes to avoid using the Exchange until the Exchange's entire system was operational. The Exchange believes that certain system disruptions that are not complete system outages could preclude some members from submitting orders to the Exchange. The Exchange notes that this proposal is consistent with the rules of Phlx and other options exchanges.<sup>14</sup>

The Exchange believes that the two scenarios proposed above are reasonable and equitable because the intent of the current rule has always been to avoid penalizing members that might otherwise qualify for certain tiered pricing but that because of aberrant low volume days resulting, for instance, from Exchange systems disruptions, did not participate on the Exchange to the

<sup>13</sup> See *id.* at paragraph 2(C).

<sup>14</sup> See *id.* at paragraph 2(D). See also BATS [sic] BZX Options Exchange Fee Schedule (defining an "Exchange System Disruption" as any day that the exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours); and NYSE Arca Options Fee Schedule (defining an "Exchange System Disruption" as a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours).

<sup>12</sup> See note 3 above.

extent they might have otherwise participated.

In addition, to avoid penalizing members that step up and trade on a day with artificially low volume, the Exchange currently only removes days for members that would have a lower ADV calculation with the day included (*i.e.*, the better of rule). The Exchange believes that applying the better of rule to the proposed system disruption-related scenarios would be similarly helpful as it would ensure that members that continue to execute a large volume of contracts on such days are not inadvertently disadvantaged when the Exchange removes a systems disruption-related day from its calculations of ADV. This is consistent with the treatment of such days on Phlx.<sup>15</sup>

#### Categories of Excluded Days

Similar to Phlx, the Exchange seeks to restructure the existing rule by separating out the different scenarios between days that are known in paragraph (1) and days that are not in paragraph (2), and define the latter as Unanticipated Events.

For planned days, the Exchange proposes to further distinguish between days that the Exchange announces in advance that it will not be open for trading in paragraph (1)(A) (*e.g.*, Thanksgiving), and Scheduled Early Closes in paragraph (1)(B) (*e.g.*, the trading day after Thanksgiving). The Exchange notes that it currently considers Scheduled Early Closes as a subset of days that the market is not open for the entire trading day. The Exchange believes it would be more clear to distinguish Scheduled Early Closes in paragraph (1) as a day that is planned for in advance, and separately consider days that are not open for the entire trading day as Unanticipated Events in paragraph (2)(A). As proposed, (2)(A) would continue to cover unplanned days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. The other scenarios that will be categorized as Unanticipated Events in paragraph (2) are the two systems-related disruptions proposed above, and days that the Exchange instructs members in writing to route their orders to other markets, which is an existing scenario covered under the current rule as described above.

#### Exclusion of Days by Tier Calculation

The Exchange proposes to further amend the existing rule to align with the Phlx rule by specifying how the days in

paragraphs (1) and (2) will be excluded from its Tier Calculations. As it relates to days where the Exchange announces in advance that it will not be open for trading, the Exchange notes that it will exclude those days from all options tier calculations set forth in its Pricing Schedule.<sup>16</sup> This is also the case today since no trading activity occurs on those days, and the Exchange is only clarifying its current practice within the proposed rule text in paragraph (1)(A).

As discussed above, the Exchange currently removes Scheduled Early Closes as provided in paragraph (1)(B), and the Unanticipated Events in paragraphs (2)(A) and (2)(B), from its calculations of ADV only for members that would have a lower ADV with the day included. The Exchange is not changing how it currently excludes these days from the ADV calculations. And as further discussed above, the Exchange is proposing to adopt the same principle-based approach for excluding the two Unanticipated Events related to Exchange system disruptions as provided in paragraphs (2)(C) and (2)(D). Accordingly, the proposed language in paragraph (3)(A) will clarify for the ADV calculation that the Exchange may exclude any Scheduled Early Close or Unanticipated Event, subject to the better of rule.<sup>17</sup>

Similar to Phlx, the proposal also adds a “catch-all” provision in paragraph (3)(B) that would apply to other applicable volume based tier calculations that are set forth in its Pricing Schedule, but are not specified within paragraph (3)(A) (*i.e.*, not an ADV calculation).<sup>18</sup> This catch-all provision will provide the Exchange with flexibility to apply the better of rule going forward to all pricing programs administered by the Exchange that are based on volume calculations. The Exchange believes that adopting a similar principle-based approach for its options volume calculations would ensure that days are removed from such calculations only if doing so would be beneficial for the member. Accordingly, the proposed language will not apply to straight volume accumulations, as is the case today, and the Exchange will continue to not exclude days from such calculations as members do not benefit when volume executed on an excluded day is removed from straight volume accumulations.

#### Clarifying Changes

The Exchange proposes to add further details similar to Phlx’s rule to bring greater transparency as to how the Exchange will apply the better of rule when removing days from its Tier Calculations. In particular, the Exchange proposes to make clear that it will only remove days pursuant to the better of rule by specifying in paragraphs (1)(B) and (2) that such days may be excluded from the Tier Calculations only pursuant to paragraph (3).<sup>19</sup> Paragraph (3) will then provide that if a day is to be excluded as a result of paragraph (1)(B) or (2), the Exchange will be required to exclude the day from any member’s monthly options volume tier calculations as detailed within paragraph (3).<sup>20</sup> With the proposed changes, the Exchange seeks to clarify that it will exclude days from any member’s Tier Calculations in a uniform manner to ensure that days are removed only in situations where the member benefits. The Exchange will look at each potential excluded day in a month and determine for every member their ADV or other applicable volume calculation based on their trading volume on that day. If any member would have a lower Tier Calculation with the particular day included, the Exchange will exclude that day for that member. This is how the Exchange applies the better of rule today for ADV calculations. As such, the proposed changes are intended to make clear that the Exchange will apply the better of rule in a uniform manner for all members, and that there is no arbitrary selection of “winners” or “losers” when the Exchange excludes days. In addition, the Exchange proposes to make two technical changes within the better of rule; first, to clarify that the rule applies in each case of the tier calculations specified in paragraph (3), and second, to use the defined term Tier Calculations instead of ADV to reflect the changes proposed herein.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>22</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

<sup>16</sup> See *id.* at paragraph (1)(A) for similar language on Phlx.

<sup>17</sup> See *id.* at paragraph (3)(A) for similar language on Phlx.

<sup>18</sup> See *id.* at paragraph (3)(C) for similar language on Phlx.

<sup>19</sup> See *id.* at paragraphs (1)(B) and (2) for similar language on Phlx.

<sup>20</sup> See *id.* at paragraph (3) for similar language on Phlx.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> See note 3 above at paragraph 3.

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume calculations that the Exchange believes is beneficial to members and consistent with similar provisions already in place on Phlx. The proposed rule change would permit the Exchange to remove a day from its pricing tiers in more circumstances, and ensures that the Exchange will only do so in circumstances where beneficial for the member because the member would have a lower volume calculation with the day included.

By applying the rule to all volume based calculations rather than specified incentive programs based on Total Affiliated Member ADV and Priority Customer Maker ADV, the Exchange believes that members will be further protected if the Exchange experiences a systems or other issue that results in a day being excluded from the Exchange's volume calculations. Without this change, members would only have the day excluded for the specific ADV based pricing programs described above, and would not get the benefit for other unenumerated programs.

The Exchange believes it is reasonable and equitable to exclude a day from its volume based calculations when the Exchange's system experiences a disruption during the 30-minute period prior to the opening of trade that renders the Exchange inaccessible to members as this preserves the Exchange's intent behind adopting volume-based pricing. Without this change, members that are precluded from submitting eligible interest during the 30-minute window before the opening of trade may be negatively impacted, even if the Exchange resolves the issue before the market opens and as a result, does not instruct members to route away. The proposed change to exclude such days will diminish the likelihood of a cost increase occurring because a member is not able to reach a volume tier calculation on that date that it would reach on other trading days during the month.

Similarly, excluding a day where the Exchange's system experiences a disruption that lasts for more than 60 minutes intra-day is reasonable and equitable because the proposal seeks to avoid penalizing members that might otherwise qualify for certain tiered pricing but that, because of an Exchange systems disruption, did not participate on the Exchange to the extent they might have otherwise participated. The Exchange believes that certain systems

disruptions could preclude some members from sending order flow to the Exchange even if such issue is not actually a complete systems outage.

In addition, the Exchange believes that it is reasonable and equitable to apply the better of rule to both systems disruption-related scenarios. Without these changes, members that step up and trade significant volume on excluded trading days may be negatively impacted, resulting in an effective cost increase for those members. The proposal would align the Exchange's approach to how it applies this rule today for days where the market is not open for the entire trading day or where the Exchange instructs members to route away.

Furthermore, the Exchange believes that categorizing the potential excluded days is reasonable and equitable because it will bring greater transparency to the application of its rule. Specifically, the Exchange is distinguishing between planned and unplanned days in paragraphs (1) and (2), defining the latter as Unanticipated Events, and stipulating how the Exchange will exclude such days pursuant to this rule. Categorizing days in this manner will clarify the application of its rule in light of the Exchange's proposal to expand the rule to adopt additional days that may be excluded from its tier calculations. Providing in paragraph (1)(A) that the Exchange will always exclude from its tier calculations days that it announces in advance it will not be open for trading will clarify current practice. Furthermore, the Exchange believes that the proposed changes to specify how days in paragraphs (1) and (2) may be excluded from its tier calculations will bring greater transparency by delineating the various circumstances in which the better of rule will apply. Providing in paragraph (3) that the Exchange may exclude any Scheduled Early Close or Unanticipated Event from the ADV and other Tier Calculations, subject to the better of rule, will make clear that the Exchange will take a consistent approach when excluding days for purposes of its volume based pricing tiers. In addition, having a catch-all in paragraph (3)(B) so that the better of rule applies to other options volume calculations than ADV to allow the Exchange to apply the rule going forward to all pricing programs based on volume calculations will further protect members. The Exchange notes that aberrant low volume days resulting from, for instance, an Unanticipated Event, impacts all volume-based calculations, and allowing the Exchange to exclude such days from any Tier

Calculation if the member would have a lower Tier Calculation with the day included will further protect members from being inadvertently penalized.

Furthermore, the proposed changes specifying that the days in paragraphs (1)(B) and (2) may be excluded only pursuant to paragraph (3), and requiring the Exchange to exclude such days pursuant to the specifications in paragraph (3) will likewise make clear that the Exchange will take a consistent approach with respect to excluding days from its volume calculations. As discussed above, these modifications will clarify that the Exchange will apply the better of rule in a uniform manner to all members, and that there is no arbitrary selection of "winners" or "losers." The Exchange also believes that the two technical changes proposed in the better of rule to reflect the changes proposed herein will likewise bring greater clarity to its rule.

Finally, the Exchange further believes that the proposed rule change is not unfairly discriminatory because it will apply equally to all members. While the Exchange currently has rules in place for removing a day from its pricing, the Exchange believes that the proposed changes will benefit all members by providing more circumstances to remove a day, and ensuring that such days are removed only in situations where the member benefits.

#### *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. The proposed rule change is designed to protect members from the possibility of a cost increase by excluding days when overall member participation might be significantly lower than a typical trading day. The Exchange believes that the proposed modifications to its tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Furthermore, other options exchanges have adopted rules that are substantially similar to the Exchange's proposal.<sup>23</sup>

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the

<sup>23</sup> See notes 3 and 14 above.

Exchange believes that the proposed fee changes reflect this competitive environment.

*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>24</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-2018-45 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-2018-45*. 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-2018-45* and should be submitted on or before February 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-01381 Filed 2-6-19; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85046; File No. 4-618]

**Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX, Inc., NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.**

February 4, 2019.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on January 18, 2019, pursuant to Rule 17d-2 of the Act,<sup>2</sup> by Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BATS Y"), BOX Exchange LLC ("BOX"), Cboe Exchange, Inc. ("Cboe"), Cboe C2 Exchange, Inc. ("C2"), Chicago Stock Exchange, Inc. ("CHX"), Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Investors Exchange LLC ("IEX"), Miami International Securities Exchange, LLC ("MIAX"), MIAX PEARL, LLC ("MIAX PEARL"), MIAX Emerald, LLC ("MIAX Emerald"), The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX, Inc. ("PHLX"), NYSE National, Inc. ("NYSE National"), New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), and NYSE Arca, Inc. ("NYSE Arca") (each, a "Participating Organization," and together, the "Participating Organizations" or the "Parties"). This Agreement amends and restates the

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>25</sup> 17 CFR 200.30-3(a)(12).