

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87180; File No. SR-GEMX-2019-13]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Submission of Quotes and Orders

October 1, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 17, 2019, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (the “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 amend Options 3 at Section 4, “Acceptance of Quotes and Orders,” adopt a new Section 5, “Entry and Display of Orders,” Section 7, “Types of Order,” at Supplementary Material .03 and Section 22 titled “Limitations on Orders.” The Exchange proposes to amend Options 3, Section 15, “Simple Order Risk Protections.”

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 Options 3 at Section 4, “Acceptance of Quotes and Orders,” adopt a new Section 5, “Entry and Display of Orders,” Section 7, “Types of Order,” at Supplementary Material .03 and Section 22 titled “Limitations on Orders.” The Exchange proposes to amend Options 3, Section 15, “Simple Order Risk Protections.” Each rule change will be discussed in greater detail below.

##### Options 3, Section 4, Acceptance of Orders and Quotes

Currently, Options 3, Section 4 is titled “Acceptance of Quotes or Orders.” The Exchange proposes to retitle Options 3, Section 4 as “Entry and Display of Quotes.” The Exchange proposes to add a new section (b) to Options 3, Section 4 to describe the current requirements and conditions for submitting quotes. These requirements reflect the current System operation today. The Exchange proposes to memorialize the various requirements for the submission of quotes into the System for greater transparency. The Exchange proposes to provide at new Options 3, Section 4(b), “Quotes are subject to the following requirements and conditions:”. The Exchange proposes to add at Options 3, Section 4(b)(1) that “Market Makers may generate and submit option quotations.” Current Options 2, Section 5 makes clear that Market Makers may submit quotes.<sup>4</sup> The Exchange proposes to create a list of rules related to quote submission within this rule for ease of reference. The Exchange proposes to provide at proposed new Options 3, Section 4(b)(2) that “The System shall time-stamp a quote which shall determine the time ranking of the quote for purposes of processing the quote.” The Exchange notes that all quotes today are time-stamped for purposes of processing quotes. Proposed Options 3, Section 4(b)(3) states that “Market Makers may enter bids and/or offers in the form of a two-sided quote. Only one quote may be submitted at a time for an option series.” The Exchange believes that this information will provide Market Makers with information on submitting a quote. The Exchange notes

that bid or offer may be a “0,” however a price is required to be entered for both the bid and offer to be entered into the System. Further, the Exchange proposes at Options 3, Section 4(b)(4) to provide clarity for entering quotes and proposes to specify, “The System accepts quotes for the Opening Process as specified in Options 3, Section 8.”<sup>5</sup> The Exchange believes that this information will bring greater transparency to the Rulebook with respect to limitations for submitting quotations into the System.

The Exchange proposes a provision regarding firm quote within proposed Options 3, Section 4(b)(5):

*Firm Quote.* Where quotes in options on another market or markets are subject to relief from the firm quote requirement set forth in the Rule 602 of Regulation NMS under the Exchange Act orders and quotes will receive an automatic execution at or better than the NBBO based on the best bid or offer in markets whose quotes are not subject to such relief. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (“OPRA”); quotes received from another market designated as “not firm” using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. The Exchange shall maintain a record of each instance in which another exchange’s quotes are excluded from the Exchange’s calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Where quotes in options on another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from OPRA; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm.

GEMX’s Options 2, Section 5(d) describes Firm Quote for purposes of Market Maker quote submission. The Exchange proposes to memorialize within its Rules the requirement for the dissemination of quotations pursuant to Reg NMS.<sup>6</sup> The Exchange is proposing to add the above rule text to provide context as to this restriction for submitting quotes. The Exchange proposes to make clear the manner in which quote relief will occur. Specifically, this proposed rule text indicates the manner in which a

<sup>4</sup> Options 2, Section 5(a) provides, “Options Classes. A quotation only may be entered by a Market Maker, and only in the options classes to which the market maker is appointed under Options 2, Section 3.” Options 2, Section 5(d) provides for Firm Quotes.

<sup>5</sup> Options 3, Section 8(c) provides, “Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 a.m. Eastern Time are included in the Opening Process. Orders entered at any time before an option series opens are included in the Opening Process.”

<sup>6</sup> 17 CFR 242.602.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

determination for quote relief is made. Further, the rule notes the Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Also, when relief is no longer available, such quotations will be included in the calculation of NBBO for such options. The Exchange notes how the determination is made that relief is no longer available. The proposed rule text adds greater context to the manner in which Firm Quote relief is applied. This rule text represents the current practice.

Similarly, the Exchange proposes to provide the following at proposed new Options 3, Section 4(b)(6):

*Trade-Through Compliance and Locked or Crossed Markets.* A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will either re-priced and displayed at one minimum price variance above (for offers) or below (for bids) the national best price or immediately cancelled, as configured by the Member.

Today, quotations may not be executed against at prices that trade-through an away market as provided for in the Options Order Protection and Locked/Crossed Market Plan which is described within Options 5. Also, quotations may not lock or cross an away market. By stating this limitation in the rule, Market Makers will have greater clarity as to this limitation. Further, the Exchange is making clear that a quote that would cause a locked or crossed market violation or would cause a trade-through violation will be re-priced. The Exchange would display the quote at one minimum price variation ("MPV") above (for offers) or below (for bids) the national best price or the quote would be immediately cancelled if requested by the Member. Repricing quotes is consistent with the Act because the Exchange is not permitted to lock or cross an away market's quote or order. The Exchange reprices the quotes one MPV inferior to cause the displayed price to reflect the available market on the Exchange.

Finally, the Exchange proposes at Options 3, Section 4(b)(7) to provide, "Quotes submitted to the System are subject to the following: minimum increments provided for in Options 3, Section 3 and risk protections provided for in Options 3, Section 15." If the Market Maker does not submit a quotation compliant with Options 3, Section 3, the quote will not be accepted

by the System. The Exchange is noting herein the manner in which a quote may be rejected by the System to provide market participants with expectations as to the interplay among the various Exchange Rules. Specifically, if the Market Maker does not submit a quotation compliant with Options 3, Section 3, the quote will not be accepted by the System because market participants are required to abide by Options 3, Section 3 which describes the increments with which options series are to be quoted. Options 3, Section 15 provides a list of all protections applicable to quotes that may be rejected. The Exchange believes that this rule will provide Members with requirements and conditions for submitting quotations and provide transparency as to limitations that cause a quote to be rejected.

The Exchange proposes to provide at Options 3, Section 4(c), "Quotes will be displayed in the System as described in Options 3, Section 23." Options 3, Section 23, titled "Data Fees and Trade Information" provides for the available feeds that Members may access on the Exchange. This list represents the available data feeds and the content of those data feeds which are offered today by the Exchange.

As discussed in more detail below, the Exchange proposes to relocate current Options 3, Section 4(b)<sup>7</sup> to new Options 3, Section 5(a)(5) as described below in greater detail.

The amendment to Options 3, Section 4 to create a list of all the requirements and conditions for submitting quotes on the Exchange within one rule is consistent with the Act because it will provide greater transparency to market participants of the applicable requirements. Further, this proposal will make the current rule clear and understandable for market participants thereby protecting investors and the general public. The Exchange notes that while some of these requirements appear in other rules, for ease of reference the requirements are located within a single rule with this proposal. The proposal reflects the Exchange's current practice with respect to quoting requirements. This proposal will conform this Rule to other Nasdaq affiliated markets filing similar rules.<sup>8</sup>

<sup>7</sup> Current Options 3, Section 4(b) provides, "A trade may be nullified if all parties participating in the trade agree to the nullification. In such case, one party must notify the Exchange and the Exchange promptly will disseminate the nullification to OPRA."

<sup>8</sup> See Phlx Rule 1019. Nasdaq BX, Inc. and Nasdaq Stock Market LLC intend to file similar rules. Phlx Rule 1019 is similar to GEMX Options 3, Section 4 except that Phlx displays and reprices

The Exchange's proposal is intended to provide greater information with respect to Firm Quote within new Options 3, Section 4(b)(5) and regarding trade-through and locked and crossed markets Options 3, Section 4(b)(6). The addition rule text is consistent with the Act because the Exchange is adding detail regarding the method in which orders which are firm or locked and crossed will be handled in the System. The notifications for Firm Quote are made clear with the proposed rule text. The Exchange believes that it is consistent with the Act to specify when quotes are firm and the handling of such quotes by the System for the protection of investors and the general public. The clarity is designed to promote just and equitable principles of trade by notifying all participants engaged in market making of potential outcomes. Today, quotations may not be executed against at prices that trade-through an away market. Also, quotations may not lock or cross an away market. The repricing of quotations is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. The Exchange is required avoiding displaying a quotation that would lock or cross a quotation of another market center at the time it is displayed. Preventing inferior prices from displaying perfects the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Options 3, Section 5, Entry and Display of Orders

Similar to Options 3, Section 4, which describes requirements for quotes, the Exchange proposes to adopt a new Options 3, Section 5, "Entry and Display of Orders" and describe the current requirements and conditions for entering orders. The Exchange notes that the requirements provided for within this rule represent the current practice. The purpose of Options 3, Section 5 is to memorialize this information within a single rule.

The Exchange proposes to state within new Options 3, Section 5(a), "Members can enter orders into the

quotes differently than GEMX for purposes of trade-through. Phlx re-prices to the current national best offer (for bids) or the current national best bid (for offers) but displays at one minimum price variance above (for offers) or below (for bids) the national best price. GEMX re-prices and displays quotes at one minimum price variance above (for offers) or below (for bids) the national best price, or, in the alternative if elected by the Member, the quote is otherwise immediately cancelled if it would cause a locked or crossed market. Further, while Phlx has a Quote Exhaust feature as described in Phlx Rule 1082, GEMX has no similar feature.

System, subject to the following requirements and conditions:”. The Exchange proposes within new Options 3, Section 5(a)(1), “Members shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels.” The Exchange’s new rule text at Options 3, Section 5(a) proposes to make clear that multiple orders may be transmitted to the System as single or multiple price levels. This is the case today. The Exchange proposes to memorialize the manner in which orders may be submitted to the System to add more detail to its rules. The Exchange proposes at new Options 3, Section 5(a)(2), “The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange’s website.” The System accepts orders beginning at a time specified by the Exchange and communicated on the Exchange’s website.<sup>9</sup>

The Exchange proposes at new Options 3, Section 5(a)(3), “The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.” Further, all orders are time-stamped to determine the time ranking of the order within the System. This is also the case today and the Exchange is adding this detail to its rules to describe the time-stamp.

The Exchange proposes to add at new Options 3, Section 5(a)(4), “Orders submitted to the System are subject to the following: Minimum increments provided for in Options 3, Section 3, risk protections provided for in Options 3, Section 15, and the restrictions of any order type as provided for in Options 3, Section 7. Orders may execute at multiple prices.” All orders must adhere to other rule requirements such as minimum increments, risk protection rules and order types. Similar to the rule text for quotes, order are currently subject the minimum increment requirements in Options 3, Section 3 and also the risk protections for orders which are listed within current Options 3, Section 15. This rule provides a list of other requirements which may impact the execution of an order. Finally, orders may execute at multiple prices.

The Exchange proposes to add to new Options 3, Section 5(a)(5) the following, “Nullification by Mutual Agreement. Trades may be nullified if all parties participating in the trade agree to the

nullification. In such case, one party must notify the Exchange and the Exchange promptly will disseminate the nullification to OPRA. It is considered conduct inconsistent with just and equitable principles of trade for a party to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.” The rule text of new Options 3, Section 5(a)(5) is relocated from Options 3, Section 4(b) because it related to orders. The Exchange proposes to caption proposed Options 3, Section 5(a)(5) as “Nullification by Mutual Agreement” and add the following sentence to this provision, “It is considered conduct inconsistent with just and equitable principles of trade for a party to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.” The Exchange believes that it is consistent with the Act to permit parties to agree to a nullification provided the nullification does not violate other exchange rules. The Exchange notes that parties may not agree to a mutual agreement for purposes that would cause another rule to be violated. The Exchange believes that it is consistent with the Act and protection of investors and general public to make clear the expected behavior with respect to nullifications.

The rule text at proposed Options 3, Section 5(b) is relocated from Options 3, Section 15(a). The Exchange notes that this NBBO Protection applies to orders and therefore is being discussed within proposed Options 3, Section 5, which applies to all market participants. In contrast, Options 3, Section 4, which applies to quotes entered by Market Makers, describes the Firm Quote protections and the interplay of NBBO with respect to quotes. Trade-Through is described in both Options 3, Sections 4 and 5. The Exchange proposes to change the word “rejected” to “cancelled” within new Options 3, Section 5(b) because an order may be accepted by the System and then immediately cancelled. New Options 3, Section 5(c) seeks to define the Exchange’s best bid and offer as the “BBO.” The Exchange provides, “The System automatically executes eligible orders using the Exchange’s displayed best bid and offer (“BBO”).”

Similar to Options 3, Section 4(b)(6), the Exchange proposes to note at new Options 3, Section 5(d),

Trade-Through Compliance and Locked or Crossed Markets. An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order

that is designated by the Member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. Orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt.

Today, orders may not be executed at a price that trades through an away market. Also, orders may not lock or cross an away market. Routable orders must comply with Trade-Through and Locked and Crossed Markets restrictions. Finally, the Exchange proposes to cross-reference Supplementary Material .02 to Options 5, Section 2 to describe the manner in which orders that are not automatically executed are handled. Today, Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt. By including this information within this rule, the Exchange proposes to provide Members with information related to trade-through in one location with cross-references to provide transparency. This rule text is similar to rule text within BX Chapter VI, Section 7(b)(3)(C). Noting these limitations within the rule is consistent with the Act because Members will have greater clarity as to limitations.

Finally, the Exchange proposes to add rule text at new Options 3, Section 5(e), similar to Options 3, Section 4(c) which states, “Orders will be displayed in the System as described in Options 3, Section 23.”

The Exchange’s proposal to adopt a new Options 3, Section 5, “Entry and Display of Orders” and describe the current requirements and conditions for entering orders, similar to proposed changes to Options 3, Section 4 for quotes is consistent with the Act because it will provide transparency as to manner in which orders may be submitted to the System. The Exchange’s new rule reflects the current requirements for submitting orders into the System. Similar to proposed Options 3, Section 4, the Exchange proposes to memorialize requirements and limitations within one rule for ease of reference.<sup>10</sup>

<sup>10</sup> Phlx Rule 1096 is similar to GEMX Options 3, Section 5. With respect to NBBO Protection, unlike Phlx, GEMX Orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be accepted and immediately cancelled automatically by the System at the time of receipt. Phlx does not have a similar exposure mechanism. Also, with respect to trade-

<sup>9</sup> The Exchange’s website makes the timeframes in which orders may be submitted to the System: [https://business.nasdaq.com/media/GEMXSystemSetting\\_tcm5044-41351.pdf](https://business.nasdaq.com/media/GEMXSystemSetting_tcm5044-41351.pdf).

## Options 3, Section 7, Types of Orders

The Exchange proposes to amend Supplementary Material .03(c) to Options 3, Section 7 to add the following sentence to Specialized Quote Feed (“SQF”), “Market Makers may only enter interest into SQF in their assigned options series.” The Exchange notes that today Market Makers may utilize SQF to quote only in their assigned options series as provided for in Options 2, Section 3, Appointment of Market Makers. Adding this information to the SQF protocol is consistent with the Act because the Exchange desires to make clear the manner in which Market Makers may submit quotes through the protocol. Market Makers are obligated to provide liquidity on GEMX in the options series to which they are assigned, which liquidity benefits all market participants. This amendment is similar to language currently within Phlx Rule 1080(a)(i)(B).

## Options 3, Section 15 Simple Order Risk Protections

The Exchange proposes to delete the first sentence introductory sentence of Options 3, Section 15 which provides, “Incoming orders that are executable against orders and quotes in the System will be executed automatically by the System subject to the following:” and relocate the rule text to Options 3, Section 5 as described herein as well as Section 15(a)(1) and (a)(2), into proposed new Options 3, Section 5(b) and renumber Options 3, Section 15(b) as new “a.” The Exchange proposes to relocate current Options 3, Section 15(b)(1)(C) to Options 3, Section 15(b)(2)(B). Current Options 3, Section 15(b)(1)(D) will be re-lettered as “C”. Options 3, Section 15(b)(1) provides for order risk protections. The Exchange proposes to relocate the Size Limitation protection to Options 3, Section 15(b)(2) because this section applies to order and quote risk protections. Size Limitation protection applies to both orders and quotes and is therefore properly placed within this section. The Exchange proposes to add the words “or quote” to the description to make clear that this protection applies to both orders and quotes. The Exchange believes that

through, Phlx re-prices an order that would cause a locked or crossed market violation or would cause a trade-through violation to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price. While GEMX will not execute an order at a price that trades through another market or display an order at a price that would lock or cross another market, GEMX does not re-price orders. GEMX Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt.

relocating this rule and adding “or quotes” is consistent with the Act because the Exchange will make clear that the Size Limitation risk protection would apply to all interest on the Exchange.

## Options 3, Section 22, Limitation on Orders

The Exchange proposes to amend Options 3, Section 22 to retitle the Section from “Limitations on Orders” to “Limitations on Order Entry.” The Exchange believes that this title is more appropriate for these rules.

The Exchange proposes to amend Options 3, Section 22(b) to amend the title of the section from “Principal Transactions” to “Limitations on Principal Transactions.” This rule provides for the exposure of orders entered on the Exchange. Specifically, with respect to orders entered when a Member is acting as agent and principal on an order, the order must be exposed for one second prior to execution to allow an opportunity for price improvement. The Exchange has filed for certain functionalities which are exceptions to the general standard of one second exposure. These functionalities have provisions which describe the manner in which orders can be entered into the Facilitation Mechanism,<sup>11</sup> Price Improvement Mechanism,<sup>12</sup> Qualified Contingent Cross Orders,<sup>13</sup> and Customer Cross Orders.<sup>14</sup> The Exchange proposes to separately note that with respect to the Solicitation Mechanism,<sup>15</sup> that an Options Member may electronically submit for execution an order it represents as agent against solicited order(s). Options 3, Section 11(d) and (e) provide that an Agency Order must be for at least the minimum size designated by the Exchange, which may not be less than 500 standard option contracts, and the order be entered into the Solicited Order Mechanism shall be designated as all-or-none. Because a Member may not execute as principal on the order, there must be an Agency Order which executes against the solicited order; therefore, the Solicitation Mechanism is explicitly carved out from proposed Options 3, Section 22(b), whereas the other auctions noted are exceptions to the general one second rule. The Exchange believes it is consistent with the Act and the protection of investors and the general public to describe the

<sup>11</sup> See Options 3, Section 11(b) and (c).

<sup>12</sup> See Options 3, Section 13.

<sup>13</sup> See Options 3, Section 12(c) and (d).

<sup>14</sup> See Options 3, Section 12(a) and (b).

<sup>15</sup> See Options 3, Section 11(d) and (e).

functionalities available on the Exchange into which a Member may enter principal orders they represent as agent. Options 3, Section 22 is intended to encourage price discovery and price improvement of all orders entered on the Exchange.

The Exchange proposes to relocate Supplementary Material .01 to Options 3, Section 22 to new Section 22(b)(i) and state “This Rule” instead of “Options 3, Section 22(d).” The Exchange notes that the references to “d” should refer to “b” and those cross-references are being updated.

The Exchange proposes to amend the title of Options 3, Section 22(c), from “Solicitation Orders” to “Limitation on Solicitation Orders.” The Exchange proposes to add exceptions for *Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d) and Customer Cross Order pursuant to Options 3, Sections 12(a) or (b)* similar to proposed Options 3, Section 22(b).

The Exchange proposes to re-letter current “d” as “e” as the Exchange proposes new rule text at proposed Options 3, Section 22(d) which provides, “Prior to or after submitting an order to GEMX, a Member cannot inform another Member or any other third party of any of the terms of the order for purposes of violating this Rule.” Similar rule text is contained in The Nasdaq Options Market LLC (“NOM”) Rules.<sup>16</sup> The Exchange believes that adding this language will better inform participants that Options 3, Section 22 prohibits such behavior. The Exchange desires to conform the language in this rule to that of affiliated Nasdaq markets. The Exchange notes that similar language is currently contained within Supplementary Material .02 to Options 3, Section 22 which provides,

It will be a violation of Options 3, Section 22(e) for an Electronic Access Member to cause the execution of an order it represents as agent on the Exchange by orders it solicited from Members and non-Member broker-dealers to transact with such orders, whether such solicited orders are entered into the System directly by the Electronic Access Member or by the solicited party (either directly or through another Member), if the Member fails to expose orders on the Exchange as required by Options 3, Section 22(e).

This rule text is repetitive of the provisions within current Options 3, Section 22(c). The Exchange is clearly providing within Options 3, Section 22(c) that a Member must expose an order for one second. Further, the

<sup>16</sup> See NOM Rules at Chapter VII, Section 12 at Commentary .04.

Member cannot inform another Member or third party of the terms of the order, which would be a violation of the rule pursuant to proposed Options 3, Section 22(c). The Exchange does not believe that the rule text within Supplementary Material .02 to Options 3, Section 22 provides additional information, but rather is repetitive of the prohibitions within the rule, as proposed.

The Exchange proposes to update the rule citations in Supplementary Material .01 to Options 3, Section 22 to refer to paragraph “b” instead of “d”. The Exchange proposes to update the rule numbers for the remainder of the Rule and also update the cross-reference in Supplementary Material .04 to Options 3, Section 22.

The Exchange proposes to make clear with this Rule that Members may not gain by failing to expose orders submitted on an agency basis. The Exchange is promoting transparency of orders to prevent Members from seeking price discovery and potentially preventing price improvement, which may result from exposing an order. The Exchange’s proposal to amend Options 3, Section 22 will conform this Rule to other Nasdaq affiliated markets filing similar rules.<sup>17</sup> The Exchange’s proposal to add rule text to describe potential violations of this Rule will bring greater clarity to current limitations that exist when entering orders. The amendments to Options 3, Section 22 are consistent with the Act because the Rule provides a list of limitations when entering order on the Exchange. The Exchange believes the proposed rule will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will continue to make clear the requirement to expose orders as well as present more specific limitations on order entry which would violate Exchange Rules. Providing Members with more information as to the type of behavior that is violative with respect to order exposure will prevent inadvertent violations of Exchange rules and ensure that orders are subject to appropriate price discovery.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> 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.

## Options 3, Section 4, Acceptance of Quote and Orders

The Exchange’s proposal to add a new section (b) to Options 3, Section 4 to describe the current requirements and conditions for submitting quotes are consistent with the Act. The Exchange is memorializing its current practice by reflecting the various requirements and limitations for quote entry in one rule for ease of reference and clarity. The Exchange is also proposing to conform this rule to similar rules across other Nasdaq affiliated exchanges. Making clear the manner in which Market Makers may generate and submit option quotations will provide these market participants with clear guidance within the rules. The Exchange notes that other rules already limit the use of quotations on the Exchange. Options 2, Section 5 makes clear that Market Makers may submit quotes.<sup>20</sup> Supplementary Material .03(c) to Options 3, Section 7 describes the SQF interface.<sup>21</sup> Options 2, Section 4(b)(4) provides the allowable spread for entering bids and offers on the Exchange. Further, the Exchange is making clear that only one quote may be submitted at a time for a series. The Exchange believes that memorializing these restrictions will bring greater clarity to the Exchange’s rules. Also, the Exchange believes that making clear that quotes may be entered as specified by the Exchange makes clear that all Market Makers are subject to uniform requirements for quoting.

The Exchange’s proposal to add a provision regarding Firm Quote within new Options 3, Section 4(b)(5) will bring greater transparency to the limitations that Market Makers have today with respect to firm quote. GEMX’s Options 2, Section 5(d) describes firm quote for purposes of Market Maker quote submission. The Exchange is proposing to add rule text to provide context as to this restriction for submitting quotes. The proposed

rule text makes clear the manner in which Firm Quote relief is applied. The Exchange believes it is consistent with the Act to provide greater detail as to the current obligations for Market Makers with respect to firm quote. The addition rule text is consistent with the Act because the Exchange is adding detail regarding the method in which orders which are firm or locked and crossed will be handled in the System. The notifications for Firm Quote are made clear with the proposed rule text. The Exchange believes that it is consistent with the Act to specify when quotes are firm and the handling of such quotes by the System for the protection of investors and the general public. The clarity is designed to promote just and equitable principles of trade by notifying all participants engaged in market making of potential outcomes. Further, the Exchange’s proposal to add more detail at proposed new Options 3, Section 4(b)(6) regarding trade-through and locked and crossed markets is consistent with the Act. Today, quotations may not be executed against at prices that trade-through an away market. Also, quotations may not lock or cross an away market. Also, quotations may not lock or cross an away market. By stating this limitation in the rule, Members will have greater clarity as to this limitation. The repricing of quotations is consistent with the Act because repricing prevents the Exchange from disseminating a price which locks or crosses another market. The Exchange’s proposal to note that quotes are subject to minimum increments provided for in Options 3, Section 3 and risk protections provided for in Options 3, Section 15 is consistent with the Act because this rule brings greater transparency to these requirements which are already noted in the aforementioned rules. Options 2, Section 5(b)(1) similarly requires a Market Maker to quote in the minimum increments specified in Options 3, Section 3. Options 3, Section 15, titled “Simple Order Risk Protections” provides a list of all protections applicable to quotes that may cause an order to be rejected. The Exchange believes that this rule will provide Market Makers with requirements and conditions for submitting quotations and provide transparency as to limitations that cause a quote to be rejected.

The Exchange’s proposal to make clear that quotes will be displayed in the System as described in Options 3, Section 23 is intended to bring greater transparency as to the data available on the Exchange. Options 3, Section 23,

<sup>17</sup> Nasdaq BX, Inc. and Nasdaq Stock Market LLC are also adopting similar rules to Phlx Rule 1097.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> Options 2, Section 5(a) provides, “Options Classes. A quotation only may be entered by a market maker, and only in the options classes to which the market maker is appointed under Options 2, Section 3.” Options 2, Section 5(d) provides for Firm Quote.

<sup>21</sup> Supplementary Material .03(c) to Options 3, Section 7 provides “Specialized Quote Feed” or “SQF” is an interface that allows market makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Market Makers on GEMX can only submit quotes and orders through SQF in their assigned options series.

titled “Data Fees and Trade Information” provides for the available feeds that Members may access on the Exchange.

#### Options 3, Section 5, Entry and Display of Orders

The Exchange proposes to retitle Options 3, Section 5 as “Entry and Display of Orders” to describe the current requirements and conditions for entering orders, similar to proposed changes to Options 3, Section 5 for quotes is consistent with the Act because it will provide transparency as to manner in which orders may be submitted to the System. The Exchange’s new rule text memorializes the current requirements for submitting orders into the System. Similar to proposed Options 3, Section 4, the Exchange proposes to memorialize requirements and limitations within one rule for ease of reference.

The Exchange’s new rule text at Options 3, Section 5(a) proposes to make clear that multiple orders may be transmitted to the System as single or multiple price levels to add greater transparency to the Exchange’s rules. The Exchange proposes to memorialize the manner in which orders may be submitted to the System to add more detail to its rules. For example, the time the System begins accepting orders, information concerning the time-stamp, which determines the time ranking of the order, as well as restrictions to order entry. Orders submitted to the System are subject to minimum increments specified in Options 3, Section 3 risk protections provided for in Options 3, Section 15, and the restrictions of any order type as provided for in Options 3, Section 7. The Exchange believes that listing the requirements and limitations is consistent with the Act because it will provide Members with the information necessary to process orders on GEMX. In addition, noting that parties may not agree to a mutual agreement for purposes that would cause another rule to be violated is consistent with the Act because it provides transparency to Members that certain behavior would cause a rule violation. The Exchange believes that this provision protects investors and the public interest because it specifically prohibits market manipulation within propose new rule. The Exchange’s proposal to define both the Exchange’s best bid and offer as the “BBO” is consistent with the Act because it provides context to the usage of these terms in the Rulebook. The Exchange notes, within Options 3, Section 7, the orders are displayed and non-displayed.

Further, the Exchange’s proposal to add more detail at proposed new Options 3, Section 5(d) regarding trade-through and locked and crossed markets is consistent with the Act. Today, orders may not be executed against at prices that trade-through an away market. Also, orders may not lock or cross an away market. Routable orders must comply with Trade-Through and Locked and Crossed Markets restrictions. By stating this limitation in the rule, Members will have greater clarity as to this limitation. The rule also seeks to aggregate information relating to trading-through so as to provide Members with clear guidelines for submitting orders.

The Exchange’s proposal to make clear that orders will be displayed in the System as described in Options 3, Section 23 is intended to bring greater transparency as to the data available on the Exchange. Options 3, Section 23 titled “Data Fees and Trade Information” provides for the available feeds that Members may access on the Exchange.

#### Options 3, Section 7, Types of Orders

The Exchange’s proposal to amend Supplementary Material .03(c) to Options 3, Section 7 to make clear that Market Makers may only enter interest into SQF in their assigned options series is consistent with the Act. Options 2, Section 3, Appointment of Market Makers, describes the manner in which Market Makers are appointed in options series. This sentence simply provides that SQF may only be utilized for quoting in assigned options series.

#### Options 3, Section 15, Simple Order Risk Protections

The Exchange’s proposal to relocate Options 3, Section 15(a)<sup>22</sup> into proposed new Options 3, Section 5(b) is consistent with the Act because this rule text relates to orders, which topic is described within new Options 3, Section 5. The proposal to relocate Size Limitation to make clear that this risk protection impacts orders and quotes will bring greater transparency to this risk protection.

<sup>22</sup> Options 3, Section 15(a) provides, “NBBO Price Protection. Orders, other than Intermarket Sweep Orders (as defined in Options 5, Section 1(h)), will not be automatically executed by the System at prices inferior to the NBBO (as defined in Options 5, Section 1(j)). (1) Orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 3; provided that Members may specify that a Non-Customer order should instead be rejected automatically by the System at the time of receipt. (2) There is no NBBO price protection with respect to any other market whose quotations are Non-Firm (as defined in Options 5, Section 1(k)).”

#### Options 3, Section 22, Limitation on Orders

The Exchange’s proposal to amend Options 3, Section 22 to list all the exceptions to the exposure requirement is consistent with the Act because this rule change will bring greater clarity to the Rulebook. The Exchange is adding rule text currently contained in a NOM rule to describe the required period that orders are to be exposed.<sup>23</sup> The Exchange believes the additional language provided context and further explains the exceptions. The Exchange believes that this rule is consistent with the Act because with the addition of this language the rule more specifically describes the limitations to behavior on the Exchange with respect to order exposure and the necessity to conduct price discovery. The rule also describes behavior that would violate Options 3, Section 22 depending on the relationship of the parties and exchange of information. Listing all of the relevant mechanisms available on the Exchange will make clear the manner in which a Member may execute as principal orders they represent as agent. Further, explicitly excluding the Solicitation Mechanism will make clear that the particular auction is not an exception to the one second rule. The Exchange’s proposal to relocate rule text to create topic headings and discuss each topic discretely will bring greater clarity to this rule text. The Exchange’s proposal to add a new Options 3, Section 22(c) will make clear that a Member cannot inform another Member or any other third party of any of the terms of the order in violation of this rule. Options 9, Section 9, titled “Prevention of the Misuse of Material Nonpublic Information,” prohibits such activity today. This rule text is contained in NOM Rules.<sup>24</sup> The Exchange desires to conform the language in this rule to that of affiliated Nasdaq markets. Finally, updating the cross-references will make clear the manner in which a Member may enter orders on the Exchange.

#### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Options 3, Section 4, Acceptance of Quote and Orders

The Exchange’s proposal to add a new section (b) to Options 3, Section 4 to describe the current requirements and

<sup>23</sup> See Chapter VII, Section 12.

<sup>24</sup> See Chapter VII, Section 12 at Commentary .04.

conditions for submitting quotes does not impose an undue burden on competition because the Exchange is memorializing its current practice by reflecting the various requirements and limitations in one rule for ease of reference and clarity and all Market Makers are subject to the these requirements today. The Exchange is memorializing its current practice by reflecting the various requirements and limitations for quote entry in one rule for ease of reference and clarity. The Exchange is also proposing to conform this rule to similar rules across other Nasdaq affiliated exchanges.

#### Options 3, Section 5, Entry and Display of Orders

The Exchange's proposed new Options 3, Section 5 describes the requirements and conditions pursuant to which Members can enter orders into the System. The Exchange's proposal does not impose an undue burden on competition because it applies uniformly to all Members. This rule memorializes the manner in which orders may be submitted to the System and provides transparency as to manner in which orders may be submitted to the System. The Exchange is also proposing to conform this rule to similar rules across other Nasdaq affiliated exchanges.

#### Options 3, Section 7, Types of Order

The Exchange's proposal to amend Supplementary Material .03(c) to Options 3, Section 7 to make clear that Market Makers may only enter interest into SQF in their assigned options series does not impose an undue burden on competition, rather it makes clear that SQF may only be utilized for quoting in assigned options series. This rule is applicable to all Market Makers.

#### Options 3, Section 15, Simple Order Risk Protections

The Exchange's proposal to relocate Options 3, Section 15(a) into proposed new Options 3, Section 5(b) does not impose an undue burden on competition because this rule text relates to orders, which topic is described within new Options 3, Section 5. Relocating the Size Limitation protection to another section of the rule to make clear it applies to quotes and orders will bring greater transparency to this rule.

#### Options 3, Section 22, Limitation on Orders

The Exchange's proposal to amend Options 3, Section 22 to list all the exceptions to the exposure requirement does not impose an undue burden on

competition because this rule change will bring greater clarity to the Rulebook. The Exchange's proposal to relocate rule text to create topic headings and discuss each topic discretely will bring greater clarity to this rule text. The Exchange's proposal to add a new Options 3, Section (c) will make clear the type of behavior that would cause a Member to violate Options 3, Section 22 when disclosing information to another Member or any other third party with respect to the terms of the order.

#### 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 Act<sup>25</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>26</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 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.

### 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:

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 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.

#### 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-2019-13 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-2019-13. 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 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-2019-13, and should be submitted on or before October 28, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>27</sup> 17 CFR 200.30-3(a)(12).