Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 01
Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend ISO functionality

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.kim@nasdaq.com

Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq GEMX, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/19/2023

By John Zecca
(Name *)

(Title *) EVP and Chief Legal Officer

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2023.01.19 12:31:51 -05'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-GEMX-2023-01 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-GEMX-2023-01 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-GEMX-2023-01 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC ("GEMX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal related to intermarket sweep order ("ISO") functionality.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board"). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism ("Facilitation ISO"), and Solicited Order Mechanism ("Solicitation ISO"), to codify current System functionality.[3]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any

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3 This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.[4] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO[5] are functionally similar to the Exchange's Price Improvement Mechanism[6] ISO ("PIM ISO") as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[7]

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4 "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See Options 5, Section 1(o).

5 The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

6 The Price Improvement Mechanism ("PIM") is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13(a).

7 The Exchange also notes that its affiliates, Nasdaq BX ("BX") and Nasdaq Phlx ("Phlx"), currently allow ISOs to be entered into BX's Price Improvement Mechanism ("PRISM") and Phlx's Price Improvement XL ("PIXL"),

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

> A Facilitation ISO order ("Facilitation ISO") is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[8] but without regard to the ABBO (similar to a regular ISO in

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respectively. See BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges like Cboe Exchange, Inc. ("Cboe") and Cboe EDGX Exchange, Inc. ("EDGX") similarly allow ISOs to be entered into their auction mechanisms. See Cboe Rule 5.37(b)(4)(A) and EDGX Rule 21.19(b)(3)(A) (allowing ISOs to be entered into Cboe's and EDGX's Automated Improvement Mechanism ("AIM ISOs")) and Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4) (allowing ISOs to be entered into Cboe's and EDGX's Solicitation Auction Mechanism ("SAM ISOs")). See also Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR-CBOE-2009-040) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan, including to adopt AIM ISOs).

[8] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange notes

Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[9] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example of the current underlying Facilitation Mechanism:

Assume the following market:
Exchange BBO: 1 x 2 (also NBBO)
CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05
No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

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that it is amending this provision in a concurrent rule filing (SR-GEMX-2022-10), but that the proposed changes in this filing do not impact SR-GEMX-2022-10 and vice versa. See Securities Exchange Act Release No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR-GEMX-2022-10).

9 Id.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[10] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[11] Further, the Exchange

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10 Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

11 Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (i.e., there is no opposite side local book check). For PIM, the order must be entered at one minimum price

processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:
ABBO: 1 x 1.20
Exchange BBO: 0.90 x 1.30

Member enters Facilitation ISO with Agency side to buy 50 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Facilitation auction price
Facilitation ISO auction period concludes with no responses arriving
Facilitation ISO executes with contra side 50 @ 1.25 because the away market Best Offer of 1.20 has been cleared by the ISOs clearing the way for the Agency side to trade with the counter-side order at 1.25.

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

> A Solicitation ISO order ("Solicitation ISO") is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because

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improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. See Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

> the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),[12] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction

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[12] Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. Similar to the Facilitation Mechanism, the Exchange is amending the entry checks for the Solicited Order Mechanism in SR-GEMX-2022-10; however, the proposed changes in this filing do not impact SR-GEMX-2022-10 and vice versa. See supra note 8.

in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[13] In addition, other options exchanges currently offer a substantially similar order type as the Exchange's Solicitation ISO.[14]

The following example illustrates how the Solicitation ISO operates:

Assume:
ABBO: 1 x 1.20
Exchange BBO: 0.90 x 1.30

Member enters Solicitation ISO with Agency side to buy 500 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Solicitation auction price
Solicitation ISO auction period concludes with no responses arriving
Solicitation ISO executes with contra side 500 @ 1.25

Note that in the case a Solicitation ISO was entered with the Agency side to buy 500 @ 1.35, it would be rejected because it was not at or better than the NBBO on both sides

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13 The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. See supra notes 11 – 12.

14 As noted above, both Cboe and EDGX currently offer a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65 and EDGX Rule 27.1) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. See Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4). See also Securities Exchange Act Release Nos. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO); and 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR-CboeEDGX-2019-047) (Order Approving a Proposed Rule Change to Adopt a SAM Auction, including to adopt the SAM ISO).

(which is inclusive of an Exchange book check). While the 1.20 away Best Offer was cleared by the simultaneously routed ISOs, the Exchange Best Offer of 1.30 would now be viewed as the National Best Offer for purposes of the Solicitation ISO.

Further note that a Facilitation ISO entered with the Agency side to buy 50 @ 1.35 can start in the same example above because it does not have a contra-side (from the Agency order perspective) Exchange book check to begin. The Facilitation ISO would go on to allocate against the 1.30 offer on the Exchange book upon the conclusion of the auction.

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that "ISOs may be entered on the order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13."

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.[15]

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15 BX's ISO rule currently has more granularity than the Exchange's ISO rule, such as requiring ISOs to have a TIF designation of IOC and prohibiting ISOs from being submitted during the opening process. The Exchange will add identical granularity to its ISO rule in a separate rule filing.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] 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.

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by other options exchanges.[18]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or

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16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(5).

18 See supra note 14.

Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[19] As discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[20]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted.[21] As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (i.e., Facilitation ISOs or Solicitation ISOs).

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19 See supra note 13.

20 See supra notes 11 and 13.

21 See supra note 15.

4. 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. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[22]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (i.e., Facilitation and Solicitation ISOs).[23] With the proposed changes, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

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22 See supra note 14.

23 See supra note 15.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[24] of the Act and Rule 19b-4(f)(6) thereunder[25] in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed rule change does not significantly affect the protection of investors or the public interest. Offering the Facilitation ISO and Solicitation ISO will provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices. Instead, the entering Member, simultaneous with the

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24 15 U.S.C. 78s(b)(3)(A)(iii).

25 17 CFR 240.19b-4(f)(6).

transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISOs, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[26] Additionally, these order types will operate in a similar manner to the PIM ISO that is currently in Supplementary Material .08 to Options 3, Section 13, as further described above.[27] Furthermore, the proposed rule change will allow the Exchange to codify existing functionality and add more granularity in the Exchange's rules. This, in turn, will promote transparency in the Exchange's rules and reduce potential confusion, thereby ensuring that Members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how options trading is conducted on the Exchange.

The proposed rule change will not impose a significant burden on competition. Use of the Facilitation ISO and Solicitation ISO is voluntary and will be available to all Members. Additionally, these order types are similar to the current PIM ISO in Supplementary Material .08 to Options 3, Section 13 and other ISO order types that are available at other options exchanges such as the AIM ISO on Cboe and EDGX.[28] As it relates to the Solicitation ISO, the Exchange notes that Cboe and EDGX have a substantially similar SAM ISO, so offering the Solicitation ISO will promote fair

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[26] See supra note 13.

[27] See supra notes 11 and 13.

[28] See supra note 7.

competition among options exchanges.[29] The Exchange also notes that the Facilitation ISO is substantially similar to Solicitation ISO and PIM ISO functionality, except the Facilitation ISO does not check the opposite side Exchange best bid or offer because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. Similar to the Solicitation ISO and PIM ISO, the Facilitation ISO must comply with the order entry requirements for the underlying auction mechanism (i.e., Facilitation) but does not consider the ABBO. Further, the Exchange processes the Facilitation ISO the same way as any other Facilitation order except the Exchange will initiate the Facilitation auction without protecting away prices. As with Solicitation ISO and PIM ISO, the entering Member bears responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange.

Furthermore, Rule 19b-4(f)(6)(iii)[30] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

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29 See supra note 14.

30 17 CFR 240.19b-4(f)(6)(iii).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The following proposed rule changes are based on the various rules or proposals of other options exchanges:

- The Facilitation ISO proposal in Supplementary Material .06 to Options 3, Section 11 will be similar to the PIM ISO that is available on the Exchange in Supplementary Material .08 to Options 3, Section 13 as well as on BX, Phlx, and Cboe.[31]
- The Solicitation ISO proposal in Supplementary Material .07 to Options 3, Section 11 will be substantially similar to Cboe's SAM ISO in Cboe Rule 5.39(b)(4) and EDGX's SAM ISO in EDGX Rule 21.21(b)(4). The Solicitation ISO proposal will also be similar to the PIM ISO that is available on the Exchange in Supplementary Material .08 to Options 3, Section 13 as well as the BX PRISM ISO, Phlx PIXL ISO, and Cboe/EDGX AIM ISO.[32]
- The ISO proposal in Options 3, Section 7(b)(5) will be substantially similar to BX's ISO in BX Option 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (i.e., Facilitation and Solicitation ISOs).[33]

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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31 See supra notes 7 and 11.

32 See supra notes 7 and 13.

33 See supra note 15.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-GEMX-2023-01)

January __, 2023

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISO Functionality

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 19, 2023, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism ("Facilitation ISO"), and Solicited Order Mechanism ("Solicitation ISO"), to codify current System functionality.[3]

The text of the proposed rule change is available on the Exchange's Website at https://listingcenter.nasdaq.com/rulebook/gemx/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

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, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism ("Facilitation ISO"), and Solicited Order Mechanism ("Solicitation ISO"), to codify current System functionality.[4]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that

[4] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

is superior to the limit price of the ISO.[5] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO[6] are functionally similar to the Exchange's Price Improvement Mechanism[7] ISO ("PIM ISO") as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[8]

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5 "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See Options 5, Section 1(o).

6 The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

7 The Price Improvement Mechanism ("PIM") is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13(a).

8 The Exchange also notes that its affiliates, Nasdaq BX ("BX") and Nasdaq Phlx ("Phlx"), currently allow ISOs to be entered into BX's Price Improvement Mechanism ("PRISM") and Phlx's Price Improvement XL ("PIXL"), respectively. See BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges like Cboe Exchange, Inc. ("Cboe") and Cboe EDGX Exchange, Inc.

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

> A Facilitation ISO order ("Facilitation ISO") is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[9] but without regard to the ABBO (similar to a regular ISO in

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("EDGX") similarly allow ISOs to be entered into their auction mechanisms. See Cboe Rule 5.37(b)(4)(A) and EDGX Rule 21.19(b)(3)(A) (allowing ISOs to be entered into Cboe's and EDGX's Automated Improvement Mechanism ("AIM ISOs")) and Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4) (allowing ISOs to be entered into Cboe's and EDGX's Solicitation Auction Mechanism ("SAM ISOs")). See also Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR-CBOE-2009-040) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan, including to adopt AIM ISOs).

[9] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange notes that it is amending this provision in a concurrent rule filing (SR-GEMX-2022-10), but that the proposed changes in this filing do not impact SR-GEMX-2022-10 and vice versa. See Securities Exchange Act Release No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR-GEMX-2022-10).

Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[10] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example of the current underlying Facilitation Mechanism:

Assume the following market:
Exchange BBO: 1 x 2 (also NBBO)
CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05
No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

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10 Id.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[11] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[12] Further, the Exchange

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11 Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

12 Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (i.e., there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. See Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:
ABBO: 1 x 1.20
Exchange BBO: 0.90 x 1.30

Member enters Facilitation ISO with Agency side to buy 50 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Facilitation auction price
Facilitation ISO auction period concludes with no responses arriving
Facilitation ISO executes with contra side 50 @ 1.25 because the away market Best Offer of 1.20 has been cleared by the ISOs clearing the way for the Agency side to trade with the counter-side order at 1.25.

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

> A Solicitation ISO order ("Solicitation ISO") is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in

Options 3, Section 11(d)(1),[13] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[14] In addition, other options exchanges currently offer a substantially similar order type as the Exchange's Solicitation ISO.[15]

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13 Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. Similar to the Facilitation Mechanism, the Exchange is amending the entry checks for the Solicited Order Mechanism in SR-GEMX-2022-10; however, the proposed changes in this filing do not impact SR-GEMX-2022-10 and vice versa. See supra note 8.

14 The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite

The following example illustrates how the Solicitation ISO operates:

Assume:
ABBO: 1 x 1.20
Exchange BBO: 0.90 x 1.30

Member enters Solicitation ISO with Agency side to buy 500 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Solicitation auction price
Solicitation ISO auction period concludes with no responses arriving
Solicitation ISO executes with contra side 500 @ 1.25

Note that in the case a Solicitation ISO was entered with the Agency side to buy 500 @ 1.35, it would be rejected because it was not at or better than the NBBO on both sides (which is inclusive of an Exchange book check). While the 1.20 away Best Offer was cleared by the simultaneously routed ISOs, the Exchange Best Offer of 1.30 would now be viewed as the National Best Offer for purposes of the Solicitation ISO.

Further note that a Facilitation ISO entered with the Agency side to buy 50 @ 1.35 can start in the same example above because it does not have a contra-side (from the Agency order perspective) Exchange book check to begin. The Facilitation ISO would go on to allocate against the 1.30 offer on the Exchange book upon the conclusion of the auction.

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and

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side NBBO check, which would include the Exchange best bid or offer. See supra notes 11 – 12.

15 As noted above, both Cboe and EDGX currently offer a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65 and EDGX Rule 27.1) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. See Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4). See also Securities Exchange Act Release Nos. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR-CBOE-2019-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO); and 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR-CboeEDGX-2019-047) (Order Approving a Proposed Rule Change to Adopt a SAM Auction, including to adopt the SAM ISO).

Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that "ISOs may be entered on the order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13."

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.[16]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

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16 BX's ISO rule currently has more granularity than the Exchange's ISO rule, such as requiring ISOs to have a TIF designation of IOC and prohibiting ISOs from being submitted during the opening process. The Exchange will add identical granularity to its ISO rule in a separate rule filing.

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(5).

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by other options exchanges.[19]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[20] As

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19 See supra note 14.

20 See supra note 13.

discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[21]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted.[22] As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (i.e., Facilitation ISOs or Solicitation ISOs).

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. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options

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21 See supra notes 11 and 13.

22 See supra note 15.

exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[23]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (i.e., Facilitation and Solicitation ISOs).[24] With the proposed changes, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

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

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23 See supra note 14.

24 See supra note 15.

to Section 19(b)(3)(A)(iii) of the Act[25] and subparagraph (f)(6) of Rule 19b-4 thereunder.[26]

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:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2023-01 on the subject line.

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25 15 U.S.C. 78s(b)(3)(A)(iii).

26 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.

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-2023-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-GEMX-2023-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier
Assistant Secretary

[27] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ GEMX, LLC Rules

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Options 3 Options Trading Rules

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Section 7. Types of Orders and Order and Quote Protocols

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(b) *Limit Orders*. A limit order is an order to buy or sell a stated number of options contracts at a specified price or better.

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(5) *Intermarket Sweep Orders*. An Intermarket Sweep Order (ISO) is a limit order that meets the requirements of Options 5, Section 1(h). ISOs may be entered on the order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13.

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Section 11. Auction Mechanisms

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Supplementary Material to Options 3, Section 11

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.06 **Facilitation ISO Order**. A Facilitation ISO order ("Facilitation ISO") is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

.07 **Solicitation ISO Order**. A Solicitation ISO order ("Solicitation ISO") is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction

price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

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