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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 92495; File No. SR-GEMX-2021-07]

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

July 26, 2021.

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 July 19, 2021, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend GEMX Options 3, Section 8, "Options Opening Process."

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.

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

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

2 17 CFR 240.19b-4.

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

GEMX proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(8).

GEMX's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f) - (j), on or after 9:30 AM Eastern Time if the ABBO, if any, is not crossed and the System has received, within two minutes[3] of the opening trade or quote on the market for the underlying security,[4] a Valid Width Quote. The System will accept a Primary Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker.[5] Today, GEMX requires a Primary Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security.[6] Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one

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3 The Exchange may designated a shorter time provided it is disseminated to membership on the Exchange's web site.

4 In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designated a shorter time provided it is disseminated to membership on the Exchange's web site.

5 The Exchange proposes an amendment within Options 3, Section 8(c)(1)(B) as described below.

6 In the case of index options, a Primary Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The Primary Market Maker assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. See Options 3, Section 8(c)(3). The Exchange proposes to make a technical amendment to Options 3, Section 8(c)(3) which is described below.

minute following the dissemination of a quote or trade by the market for the underlying security.[7] In either case, the Primary Market Maker or Competitive Market Maker must enter a Valid Width Quote to open an options series. GEMX Options 3, Section 8(a)(8) defines a Valid Width Quote as follows:

> A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: differentials shall be no more than $.25 between the bid and offer for each options contract for which the bid is less than $2, no more than $.40 where the bid is at least $2 but does not exceed $5, no more than $.50 where the bid is more than $5 but does not exceed $10, no more than $.80 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is $20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

> A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: differentials shall be no more than $5, provided that, in the case of equity options, the bid/ask differential stated

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[7] In the case of index options, Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(c)(3).

above shall not apply to in-the-money series where the market for the underlying security is wider than the differential set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. ("BX").[8] The Exchange proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of GEMX to that of BX. BX refers to a difference not to exceed $5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending GEMX's Valid Width Quote, the Exchange notes that the $5 difference is akin to GEMX's intra-day requirement within GEMX Options 2, Section 4(b)(4).[9]

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[8] BX Options 3, Section 8(a)(9) provides, "A 'Valid Width Quote' is a two-sided electronic quotation, submitted by a Market Maker, quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than $5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options." See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR-BX-2020-016) (Order Approving Proposed Rule Change To Amend BX's Opening Process in Connection With a Technology Migration).

[9] GEMX Options 2, Section 4(b)(4) provides, "…To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than $5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options." Intra-day, GEMX also distinguishes in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.

Second, the proposed differential would simplify the differential for Primary Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Primary Market Makers and Competitive Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is volatile. Today, pursuant to Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current GEMX Options 3, Section 8(a)(8). Today, the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8),[10] they are:

Bid Price low end of	**Bid Price high end of**	**Maximum bid/ask differential**
$0.00	$1.99	$0.75
$2.00	$4.99	$1.20
$5.00	$9.99	$1.50
$10.00	$19.99	$2.40
$20.00	$20.00+	$3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of $5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to Members of a change.

Third, the Exchange also proposes to add rule text to state that such differences will be posted by the Exchange on its website.[11] Posting the current differentials on its website would

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10 See https://www.nasdaq.com/docs/2021/03/22/GEMXSystemSetting.pdf.

11 Id.

allow Members to easily refer to the quoting obligations for the Opening Process.

Technical Amendment

The Exchange proposes to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B). The Exchange also proposes to remove two incorrect citations to Options 3, Section 8(c)(1)(iii). The "iii" was removed in a prior rule change.[12]

2. Statutory Basis

The Exchange believes that its proposal to establish a $5 difference is consistent with Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed $5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width

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12 See Securities Exchange Act Release No. 88730 (April 22, 2020), 85 FR 23545 (April 28, 2020) (SR-GEMX-2020-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX Rules at Options 3, Section 8, Titled Options Opening Process).

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 Id.

Quote differentials which differ from those described within Options 3, Section 8(a)(8).[16] Widening the Valid Width Quote requirement would provide Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Primary Market Makers are integral to the Exchange's Opening Process as GEMX is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Primary Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.[17]

The proposal would conform the Valid Width Quote definition of GEMX to that of BX.[18] BX refers to a difference not to exceed $5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending GEMX's Valid Width Quote, the Exchange notes that the $5 difference is akin to GEMX's intra-day requirement within GEMX Options 2, Section 4(b)(4).[19] Also, today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than $5 between the bid and offer.[20]

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16 See supra note 10.

17 Today, GEMX, Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), Nasdaq Phlx LLC ("Phlx"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

18 See supra note 8.

19 See supra note 9.

20 MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule 603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than $5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.[21] Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was $10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.[22] Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.[23]

Unlike Cboe, GEMX does require its Market Makers to quote both during the Opening Process and intra-day within certain established bid/ask differentials. The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on GEMX, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally,

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than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

21 See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

22 Id.

23 Id.

similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,[24] similar to MIAX and Emerald.[25] The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed $5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,[26] it requires Primary Market Makers to quote during the Opening Process to ensure liquidity as well as an efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website[27] would allow Members to easily refer to the quoting obligations for the Opening Process.

Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to require Primary Market Makers and Competitive Market Makers to bid

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24 See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

25 See MIAX and Emerald Rules 503.

26 See supra note 17.

27 Id.

and/or offer an option series with differences of no more than $5 for options on equities and index options does not impose an undue burden on competition. All Primary Market Makers, and Competitive Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing Members to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within GEMX Options 2, Section 4(b)(4).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.[28] The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, ISE, MRX and Phlx are filing similar rule changes to this proposal.[29]

Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

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

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28 See supra note 17 citing the options markets that require bid/ask differentials.

29 See SR-ISE-2021-17, SR-MRX-2021-09 and SR-Phlx-2021-42. These rule changes are not yet noticed.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[30] and subparagraph (f)(6) of Rule 19b-4 thereunder.[31]

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-2021-07 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-2021-07. 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

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30 15 U.S.C. 78s(b)(3)(A)(iii).

31 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.

comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-GEMX-2021-07 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,
Assistant Secretary.

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32 17 CFR 200.30-3(a)(12).