

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80808; File No. SR-GEMX-2017-20]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2017, 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 the Schedule of Fees to assess fees for SQF and SQF Purge Ports that members will use to connect to the Exchange.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes amending the Schedule of Fees to increase fees for

Specialized Quote Feed (“SQF”)<sup>3</sup> and SQF Purge<sup>4</sup> Ports that Market Makers utilize to connect to the Exchange.<sup>5</sup> Currently, the Exchange does not charge Market Makers, *i.e.*, Primary Market Makers (“PMMs”) and Competitive Market Makers (“CMM”), a fee for SQF and SQF Purge Ports. The Exchange proposes to begin assessing SQF and SQF Purge Port Fees of \$1,250 per port, per month in order to recoup the costs of supporting its architecture. The Exchange also proposes to cap these fees for Market Makers utilizing these ports at \$12,500 per month. The Exchange believes that its pricing remains competitive.

A reference to “Exchange” is being removed from the Schedule of Fees as the reference is extraneous.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable to increase the SQF and SQF Purge Port fees at this time because the GEMX INET migration is complete and the Exchange desires to recoup costs associated with supporting its architecture. The Exchange initially offered these ports free of cost to aid in the migration of the Exchange’s trading system to the INET technology. Today, the Bats BZX Exchange, Inc. (“BATS BZX”) assesses \$1,500 to its market makers for Ports with Bulk Quoting Capabilities.<sup>8</sup> Additionally, the Exchange proposes to cap the fees for Market Makers utilizing these ports at

<sup>3</sup> SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into GEMX. Data includes the following: (1) Options Auction Notifications (*e.g.*, opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.*, start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.*, halts, resumes); (5) Execution Messages; and (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).

<sup>4</sup> SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker.

<sup>5</sup> The Exchange filed the proposed fee increase on May 17, 2017 (SR-GEMX-2017-19). On May 22, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See Bats BZX Options Exchange Fee Schedule. BZX assesses \$1,500 for the first 5 ports, per month and \$2,000 for 6 or more ports, per month.

\$12,500 per month, which will limit the amount of SQF and SQF Purge Ports Fees that Market Makers will pay per month. The Exchange believes that it is reasonable to cap these ports for Market Makers so that the increased costs for SQF and SQF Purge Ports will not exceed \$12,500 a month. The Exchange believes that the amount of the proposed cap is reasonable because it will allow Market Makers to cap their costs beyond 10 ports. The Exchange proposes 10 ports because it desires to cap infrastructure costs for Market Makers who incur more significant fees because of the greater amount of ports that these Market Makers access because of their larger market making footprint on the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to increase the SQF and SQF Purge Port fees to \$1,250 per port, per month because all Market Makers would be uniformly assessed the same SQF and SQF Purge Port Fees. The Exchange will also uniformly apply the proposed \$12,500 per month cap to Market Makers utilizing SQF and SQF Purge Ports. No Market Maker who utilizes more than 10 SQF or SQF Purge Ports will be assessed a fee beyond the 10 ports.

Finally, removing the extraneous reference to “Exchange” will bring clarity to the rule text.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed SQF and SQF Purge Port fees will be uniformly assessed to all Market Makers. The fees remain competitive with fees at other markets.<sup>10</sup> The Exchange will also uniformly apply the proposed \$12,500 per month cap to Market Makers utilizing SQF and SQF Purge Ports.

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

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> See note 8 above.

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

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

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-20 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-GEMX-2017-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 Web site 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-2017-20, and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80816/May 31, 2017]

### Order Making Fiscal Year 2017 Annual Adjustments to Transaction Fee Rates

#### I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.<sup>1</sup> Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities ("covered sales") transacted on the exchange.<sup>2</sup> Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange.<sup>3</sup>

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.<sup>4</sup> Specifically, the Commission must adjust the fee rates to

a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.<sup>5</sup>

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal year is enacted.<sup>6</sup> On May 5, 2017, the President signed into law the "Consolidated Appropriations Act, 2017," which includes a regular appropriation of \$1,605,000,000 to the SEC for fiscal year 2017.

#### II. Fiscal Year 2017 Annual Adjustment to the Fee Rate

The new fee rate is determined by (1) subtracting the sum of fees estimated to be collected prior to the effective date of the new fee rate<sup>7</sup> and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2017<sup>8</sup> from an amount equal to the regular appropriation to the Commission for fiscal year 2017, and (2) dividing by the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.<sup>9</sup>

The regular appropriation to the Commission for fiscal year 2017 is \$1,605,000,000. The Commission estimates that it will collect \$1,189,634,934 in fees for the period prior to the effective date of the new fee rate and \$65,181 in assessments on

<sup>5</sup> 15 U.S.C. 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.").

<sup>6</sup> 15 U.S.C. 78ee(g).

<sup>7</sup> The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through March 2017. To calculate the dollar amount of covered sales from April 2017 to the effective date of the new fee rate, the Commission is using the methodology described in the Appendix A of this order.

<sup>8</sup> The Commission is using the same methodology it has used previously to estimate assessments on security futures transactions to be collected in fiscal year 2017. An explanation of the methodology appears in Appendix A.

<sup>9</sup> To estimate the aggregate dollar amount of covered sales for the remainder of fiscal year 2017 following the effective date of the new fee rate, the Commission is using the methodology described in Appendix A of this order.

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

<sup>1</sup> 15 U.S.C. 78ee.

<sup>2</sup> 15 U.S.C. 78ee(b).

<sup>3</sup> 15 U.S.C. 78ee(c).

<sup>4</sup> In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).