

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

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. Please include File Number SR-GEMX-2017-38 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-2017-38. 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-2017-38 and should be submitted on or before September 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81434; File No. SR-ISE-2017-78]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Quoting at the Opening

August 18, 2017.

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 August 17, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend ISE Rule 701, entitled "Opening."

The text of the proposed rule change is available on the Exchange's Web site at 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend ISE Rule 701, "Opening" to specifically amend opening obligations for Primary Market Makers or "PMMs." The Exchange notes that the proposed rule change is similar to a Nasdaq MRX, LLC ("MRX") rule.³

Today, ISE Rule 701(c)(3) states that the PMM assigned in a particular equity option must enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote not later than one minute after the announced market opening.

First, the Exchange proposes to add the words "or index" to further clarify that the requirement applies to equities and index options. The Exchange proposes this addition to further clarify

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 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, along with a brief description and text of 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.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See MRX Rule 701.

the requirement in Rule 701(c)(3) clearly applies to equity and index options.

Second, the Exchange proposes to modify the PMM's current obligation to enter Valid Width Quotes not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index for all assigned options, or in the case of a U.S. dollar-settled foreign currency option after the announced market opening. The Exchange believes that the current requirement is very burdensome and instead proposes to add "in 90% of their assigned series" to require a PMM to enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in 90% of their assigned series, or in the case of a U.S. dollar-settled foreign currency option in 90% of their assigned series not later [sic] than one minute after the announced market opening.

Further, the Exchange proposes to require PMMs to promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index, or with respect to a U.S. dollar-settled foreign currency option, following the announced market opening. The Exchange's proposal is intended to account for market conditions which may prevent a PMM from opening all assigned series, for example an extremely volatile market which may impact the PMM's ability to enter aggressive quotes. Another example would be that news pertaining to a specific security is causing the underlying price to fluctuate rapidly and significantly, thereby causing the PMM to await the underlying equity price to settle before entering a Valid Width Quote. The Exchange's surveillance staff would monitor to ensure that PMMs are complying with these requirements during the Opening Process.

Today, the Opening Process for an options series will be conducted on or after 9:30 a.m. if the system has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of

index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site), or within two minutes of market opening for the underlying currency in the case of a U.S. dollar-settled foreign currency option (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site) the PMM's Valid Width Quote, the Valid Width Quotes of two Competitive Market Makers ("CMMs") or if neither the PMM's Valid Width Quote nor the Valid Width Quote of two CMM's have been submitted within such timeframe, if one CMM has submitted a Valid Width Quote.⁴

Implementation

The Exchange proposes to implement this rule change on September 29, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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 for the reasons stated below.

The Exchange's first proposal at Rule 701(c)(3) to clarify that the requirement applies to equities and index options will make clear the applicability of the PMM's requirement to enter Valid Width Quotes. This proposed amendment is non-substantive and is intended to add clarity to the rules.

The second proposal to amend a PMM's requirement to enter Valid Width Quotes during the Opening Process is consistent with the Act because the 90% requirement to provide a Valid Width Quote in a series to which the PMM is assigned will continue to ensure that options series are opened in a timely manner, while not imposing a burdensome requirement on market participants. PMMs would be required to promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute of the dissemination of a quote or trade by the market for the underlying security or in the case of index options, following the receipt of the opening price or, with respect to

U.S. dollar-settled foreign currency options, following the announced market opening. The Exchange would monitor PMMs to ensure that they promptly provided a Valid Width Quote for the remainder of the series within a reasonable amount of time. The Exchange notes that market conditions could cause a PMM to experience circumstances where opening 100% of all of their assigned series within one minute of the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, 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 is not feasible.

The Exchange believes that the proposed 90% Valid Width Quoting obligation, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, 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, along with the "prompt" standard for the remaining 10% of their assigned series will ensure all series are opened in a timely manner. The Exchange's proposal accounts for market conditions which may prevent a PMM from opening all assigned series, for example an extremely volatile market which may impact the PMM's ability to enter aggressive quotes. Another example would be that news pertaining to a specific security is causing the underlying price to fluctuate rapidly and significantly, thereby causing the PMM to await the underlying equity price to settle before entering a Valid Width Quote. The Exchange believes that the time frame for PMMs to provide 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 or, in the case of index options, 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 will ensure liquidity on ISE during the Opening Process. The Exchange desires to encourage PMMs to continue to make markets on ISE at the Opening. The Exchange believes that requiring PMMs to provide a Valid Width Quote in 90% of their assigned options not later than one minute following the dissemination of a quote

⁴ See proposed Rule 701(c)(1)(i)-(iii).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

or trade by the market for the underlying security or, in the case of index options, 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 along with the “prompt” standard for the remaining 10% will enhance the market making functions for PMMs and serve to maintain a fair and orderly market thereby promoting the protection of investors and the public interest.

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 proposal does not change the intense competition that exists among the options markets for options business including on the opening. Nor does the Exchange believe that the proposal will impose any burden on intra-market competition; the Opening Process involves many types of participants and interest.

The Exchange’s proposal to require a PMM to enter a Valid Width Quote in 90% of their assigned series not later than one minute time following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, 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 and promptly enter a Valid Width quote for the remaining 10% their assigned series does not create an undue burden on competition. The proposal will continue to ensure that options series are opened in a timely manner, while not imposing a burdensome requirement on market participants. PMMs would be required to promptly enter a Valid Width Quote in the remainder of their assigned series which were not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, 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. The Exchange would monitor PMMs to ensure that they promptly entered a Valid Width Quote for the remainder of their assigned series within a reasonable amount of time. The Exchange notes that market conditions could cause a PMM to experience circumstances where entering a Valid

Width Quote for 100% of all of their assigned series within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or with respect to U.S. dollar-settled foreign currency options within one minute after the announced market opening is not feasible. The Exchange believes that the proposed 90% obligation to enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, 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 for the underlying security along with the “prompt” standard for the remaining series will ensure all series are opened in a timely manner.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸

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

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 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, along with a brief description and text of 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.

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. Please include File Number SR-ISE-2017-78 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-ISE-2017-78. 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 N., 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-ISE-2017-78 and should be submitted on or before September 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017-17907 Filed 8-23-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81431; File No. SR-GEMX-2017-39]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create the Market Access and Routing Subsidy Program

August 18, 2017.

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 August 9, 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 and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to create a subsidy program, the Market Access and Routing Subsidy (“MARS”), for GEMX Members that provide certain order routing functionalities³ to other GEMX

Members and/or use such functionalities themselves.

The text of the proposed rule change is available on the Exchange’s Web site at 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

GEMX proposes a new subsidy program, MARS, which would pay a subsidy to GEMX Members that provide certain order routing functionalities to other GEMX Members and/or use such functionalities themselves. Generally, under MARS, GEMX proposes to make payments to participating GEMX Members to subsidize their costs of providing routing services to route orders to GEMX. The Exchange believes that MARS will attract higher volumes of equity and ETF options volume to the Exchange from non-GEMX market participants as well as GEMX Members.

MARS System Eligibility

To qualify for MARS, a GEMX Member’s order routing functionality would be required to meet certain criteria. Specifically the Member’s routing system (hereinafter “System”) would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including GEMX; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with GEMX’s API to access current GEMX match engine functionality. The Member’s System would also need to cause GEMX to be one of the top four default destination

be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing Member or give-up on the transaction.

exchanges for (a) individually executed marketable orders if GEMX is at the national best bid or offer (“NBBO”), regardless of size or time or (b) orders that establish a new NBBO on GEMX’s Order Book, but allow any user to manually override GEMX as the default destination on an order-by-order basis.

The Exchange would require GEMX Members desiring to participate in MARS⁴ to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any GEMX Member would be permitted to apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System. The Member would be solely responsible for implementing and operating its System.

MARS Eligible Contracts

A MARS Payment would be made to GEMX Members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on GEMX. For the purpose of qualifying for the MARS Payment, Eligible Contracts would include Non-Nasdaq GEMX Market Maker (FARMM)⁵, Firm Proprietary⁶/Broker-Dealer⁷ and Professional Customer⁸ Orders that are executed. Eligible Contracts do not

⁴ If a GEMX Member desires to qualify for MARS, that Member must submit an application and certify to the System Eligibility requirements for the entire time period in which the Member will be eligible for MARS Rebates. A GEMX Member may apply anytime during the month in which the GEMX Member desires to participate in MARS and would be eligible for the entire month, provided the GEMX Member certified System Eligibility for that entire month. For example, a GEMX Member submitting an application on the 15th of the month, would have to certify System Eligibility for that entire month. A form must be submitted no later than the last business day of the month in which the GEMX Member desires to participate in MARS. The application will require the GEMX Member to identify the GEMX Member seeking the MARS Payment and must list, among other things, the connections utilized by the GEMX Member to provide Exchange access to other GEMX Members and/or itself. MARS Payments would be made one month in arrears (*i.e.*, a MARS Payment earned for activity in September would be paid to the qualifying GEMX Member in October), as is the case with all other transactional payments and assessments made by the Exchange.

⁵ A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

⁶ A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account.

⁷ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

⁸ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The order routing functionalities permit a GEMX Member to provide access and connectivity to other Members as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one GEMX Member to be eligible for payments under MARS, while another GEMX Member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a GEMX Member’s connection to the Exchange and that Member qualified for the MARS Payment.

Consider the following example: Both Members A and B are GEMX Members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B’s connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at The Options Clearing Corporation or “OCC,” where A is the valid executing clearing Member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also