

On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,<sup>10</sup> the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings. Such action preserved the Exchange's right to file a petition to review the Division's action by delegated authority and, pursuant to Rule 431(e) of the Commission's Rules of Practice, triggered an automatic stay of the action by delegated authority, which reinstated the Exchange's authority to charge the connectivity fees at issue.<sup>11</sup> On September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.<sup>12</sup> On November 16, 2018, the Commission granted the Exchange's Petition and discontinued the automatic stay of the delegated action,<sup>13</sup> thereby suspending the Exchange's ability to charge the connectivity fees at issue while the Commission conducts proceedings to consider the proposed fees' consistency with the Exchange Act. In its order granting the Petition, the Commission also ordered that any party or other person could file a statement by November 27, 2018, in support or in opposition to the action made by delegated authority.<sup>14</sup> The Commission received two such statements from the Exchange.<sup>15</sup> Section 19(b)(2) of the Act<sup>16</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change,

Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated October 15, 2018.

<sup>10</sup> 17 CFR 201.430.

<sup>11</sup> 17 CFR 201.431(e).

<sup>12</sup> See letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated September 19, 2018; Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018 ("Petition"). Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

<sup>13</sup> See Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

<sup>14</sup> See *id.*

<sup>15</sup> See letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, to Brent J. Fields, Secretary, Commission, dated December 7, 2018; and letter from Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, to Brent J. Fields, Secretary, Commission, dated December 10, 2018 (submitted on behalf of the Exchange).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this case, the proposed rule change was published for notice and comment in the **Federal Register** on August 2, 2018.<sup>17</sup> January 29, 2019, is 180 days from that date, and March 30, 2019, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> designates March 29, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-BOX-2018-24).<sup>19</sup>

By the Commission.

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84955; File No. SR-GEMX-2018-44]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 26, 2018.

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 December 21, 2018, 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.

<sup>17</sup> See *supra* note 3.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> The Commission notes that March 30, 2019, is a Saturday and is, therefore, designating March 29, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change.

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

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

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

The Exchange proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments ("Penny Pilot Program" or "Penny Pilot").

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. QQQQ, SPY and IWM are quoted in \$0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on December 31, 2018.<sup>3</sup> The Exchange proposes to extend the Penny Pilot Program through June 30, 2019, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2019. The replacement issues will be selected based on trading activity for the most recent six month

<sup>3</sup> See Exchange Act Release No. 83533 (June 28, 2018), 83 FR 31233 (July 3, 2018) (SR-GEMX-2018-23).

period excluding the month immediately preceding the replacement (*i.e.*, beginning June 1, 2018, and ending November 30, 2018). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

Lastly, the Exchange proposes a non-substantive change in Supplementary Material .01 to Rule 710 to update "Market Information Circulars" to "Options Trader Alerts" to reflect current practice.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants. Furthermore, the Exchange's proposal to update "Market Information Circulars" to "Options Trader Alerts" in Supplementary Material .01 to Rule 710 will bring greater transparency to the Exchange's Rulebook to the benefit of all market participants.

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

In accordance with Section 6(b)(8) of the Act,<sup>7</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. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder. 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 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 has become effective pursuant to 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.<sup>14</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

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

### 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-2018-44 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-2018-44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

<sup>14</sup> See Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

<sup>15</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> Today, the Exchange specifies which options trade in the Penny Pilot Program, and in what increments, in Options Trader Alerts distributed to Members.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(8).

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 20549-1090 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-2018-44 and should be submitted on or before February 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84967; File No. SR-Phlx-2018-83]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3

December 26, 2018.

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 December 20, 2018, Nasdaq PHLX LLC ("Phlx" 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 Exchange's port fee schedule at Equity 7, Section 3, as described further below.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend its fee schedule, at Equity 7, Section 3, to clarify its existing practice for assessing port fees.

Presently, the Exchange assigns ports to customers that request them using the customers' Market Participant Identifiers or "MPIDs." The Exchange assesses ports fees in two ways.

First, for certain port types—*i.e.*, Multicast TotalView-ITCH, TCP ITCH data feed, DROP, and their corresponding disaster recovery ports—the Exchange assigns a port only to the MPID of the customer that requested it. Even if, as a practical matter, others also utilize the port, the Exchange will only bill the MPID of the customer that requested the port. The requesting customer may then, at its discretion, subsequently bill any other users for their shared usage of the port.

Second, for other port types—*i.e.*, OUCH, FIX Trading Ports (FIX and FIX Lite), RASH, and their corresponding disaster recovery ports—the Exchange assigns the port to the MPID of the customer that requested it as well as to any other MPIDs that the requester had specified. In these instances, the Exchange does not only bill the port-requesting MPID. Instead, the Exchange

assesses a separate monthly fee to each of the MPIDs it assigned to the port.

The existing port fee schedule, at Section 3, does not explain these nuances of Exchange's port billing practices. Instead, Section 3 states simply, for all port types, that the Exchange will assess fees of certain stated amounts on a per port, per month basis. Although this existing language is accurate, the Exchange believes that it should be more descriptive so as to avoid confusion as to the circumstances in which a customer will incur port fees. The Exchange now proposes to amend Section 3 to provide a more fulsome explanation of its billing practices.

To accomplish this, the Exchange proposes to reorganize its chart of ports and associated fees in the second paragraph of Section 3. Specifically, the Exchange proposes to split this chart into two parts.

The first part of the proposed amended chart will comprise port types for which the Exchange will charge a separate monthly fee to each MPID that it has assigned to a port, *i.e.*, OUCH, FIX Trading Port (FIX and FIX Lite (FLITE), RASH, and disaster recovery ports for OUCH, FIX Trading Port, and RASH. The first part of the chart will include the following preface to explain the Exchange's pertinent billing practice:

For the port types listed immediately below, where a customer has requested that the Exchange assign more than one MPID to a particular port, then the Exchange will assess a separate monthly fee to each MPID assigned to the port.

The Exchange also proposes to revise its description of the price formula for each port type therein from "\$X/port/month" to "\$X/each MPID assigned to port/month."

The second part of the proposed amended chart will comprise port types for which the Exchange will charge a monthly fee only to the MPID that requested the port, *i.e.*, Multicast TotalView-ITCH (software based), TCP ITCH data feed, DROP, Trading Ports used in Test Mode, and the disaster recover port for DROP.<sup>3</sup> This part will include the following preface describing the applicable billing practice:

For the port types listed immediately below, the Exchange will assess the monthly fee to the single MPID that requested that particular port.

<sup>3</sup> It also includes ports for which the exchange charges no fee—Data Retransmission Ports and other disaster recover ports. The Exchange proposes to add a parenthetical with the word "Glimpse" next to Data Retransmission Ports to clarify that that such Ports include access to the "Glimpse" product, which allows a subscriber to replay market data from the current trading day.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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