

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85026; File No. SR–NYSEArca–2018–54]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Commentary .01 to NYSE Arca Rule 8.600–E Relating to Certain Generic Listing Standards for Managed Fund Shares

February 1, 2019.

On July 18, 2018, NYSE Arca, Inc. filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend certain generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on August 7, 2018.<sup>3</sup> On September 19, 2018, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On November 1, 2018, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>8</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, 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 7, 2018. February 3, 2019, is 180 days from that date, and April 4, 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>9</sup> designates April 4, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2018–54).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85034; File No. SR–CHX–2019–01]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Date of the Second Amended and Restated Certificate of Incorporation of the Exchange and the Third Amended and Restated Certificate of Incorporation of the Exchange’s Parent CHX Holdings, Inc.

February 1, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on January 28, 2019, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30–3(a)(57).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

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

The Exchange proposes to amend the date of the Amended [sic] and Restated Certificate of Incorporation of the Exchange (“Exchange Certificate”) and the Second [sic] Amended and Restated Certificate of Incorporation of the Exchange’s parent CHX Holdings, Inc. (“Holdings” and, such certificate, the “Holdings Certificate”). The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts 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 the date of the Exchange Certificate and the Holdings Certificate.

On October 18, 2018, the Exchange filed proposed amendments to the Exchange Certificate, Holdings Certificate, other governing documents, the Exchange rules and its fee schedule, to (1) reflect a name change of the Exchange to “NYSE Chicago, Inc.” and a name change of Holdings to “NYSE Holdings, Inc.”; (2) harmonize certain provisions thereunder with similar provisions in the governing documents of the national securities exchange affiliates of the Exchange and its parent companies; and (3) make clarifying and updating changes.<sup>4</sup> The Exchange proposed that the name changes and other changes described therein would become operative upon the Exchange Certificate becoming effective pursuant

<sup>4</sup> See SR–CHX–2018–05 (October 18, 2018) (the “October Filing”), and Securities Exchange Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–CHX–2018–05).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 83759 (August 1, 2018), 83 FR 38753.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 84195, 83 FR 48474 (September 25, 2018).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 84517, 83 FR 55773 (November 7, 2018).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

to its filing with the Secretary of State of the State of Delaware.<sup>5</sup>

The proposed amendments to the Exchange Certificate and Holdings Certificate in the October Filing included updates to their respective dates.<sup>6</sup> However, the proposed changes updated the Certificates' month and time, but left 2018 as the year. Because it is now 2019, the Exchange proposes the following changes:

- In the Exchange Certificate, amend the signature line to replace "2018" with "2019"; and
- In the Holdings Certificate, amend Article XIV (Effective Time) and the signature line to replace "2018" with "2019."

The proposed rule change is a non-substantive administrative change. The Exchange proposes that the changes and described herein would become operative upon the Exchange Certificate becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>7</sup> in general, and with Section 6(b)(1)<sup>8</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act<sup>9</sup> because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that it is 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 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.

The proposed amendments are non-substantive changes that do not impact

the governance or ownership of the Exchange. The Exchange believes that the proposed amendments would reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the Exchange Certificate and Holdings Certificate accurately reflect the date they are signed and operative, ensuring that investors and market participants can more easily understand the Exchange Certificate and Holdings Certificate.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with ensuring that the Exchange Certificate and Holdings Certificate accurately reflect the date they are signed and operative.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(3)<sup>11</sup> thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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 under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change 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-CHX-2019-01 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-CHX-2019-01. 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 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 such 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-CHX-2019-01, and should be submitted on or before February 28, 2019.

<sup>5</sup> *Id.*, at 54953.

<sup>6</sup> October Filing, Exhibit 5A, at 125, and Exhibit 5C, at 152.

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(3).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85024; File No. SR-GEMX-2018-45]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Provisions for Excluding a Day From Its Volume Calculations

February 1, 2019.

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 ("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 provisions for excluding a day from its volume calculations for purposes of determining pricing tiers.

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

The purpose of the proposed rule change is to amend the Exchange's provisions for excluding a day from its volume calculations for purposes of determining pricing tiers. The Exchange is standardizing its practice for removing a day from volume calculations in its Pricing Schedule with its affiliated options market, Nasdaq PHLX LLC ("Phlx").<sup>3</sup> Each change is discussed below.

##### Background

To avoid penalizing members when aberrant low volume days result from systems or other issues at the Exchange, or where the Exchange closes early for holiday observance, the Exchange currently has language in its Pricing Schedule allowing it to exclude certain days from its average daily volume ("ADV") calculations. Currently, language in the Exchange's Pricing Schedule provides that, for purposes of determining ADV for certain incentive programs,<sup>4</sup> any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The proviso language (hereinafter, the "better of rule") ensures that members would only have the day removed when doing so is beneficial for the member. As such, the Exchange only applies the better of rule to ADV calculations, and not for other volume-based pricing where members would not benefit from having the day excluded (e.g., straight volume accumulations).

##### Proposal

In Options 7, Section 1, the Exchange proposes to adopt subsection (a) with the title "Removal of Days for Purposes of Pricing Tiers," and renumber the

<sup>3</sup> See Phlx Pricing Schedule, Options 7, Section 1(b). The Exchange's other affiliated options markets, Nasdaq ISE, Nasdaq MRX, Nasdaq BX, and The Nasdaq Options Market will also file similar rule change proposals to conform to Phlx's rule.

<sup>4</sup> The current language in the Pricing Schedule applies to the calculations of Total Affiliated Member ADV and Priority Customer Maker ADV used to determine tiered maker rebates and taker fees for members. See Options 7, Section 3, Table 1 (Qualifying Tier Thresholds).

existing first paragraph (related to fee disputes) as subsection (b). The Exchange also proposes to adopt new language in subsection (a) that is substantially similar to language currently in place on Phlx.<sup>5</sup> Specifically, as proposed:

(1)(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (3) below.

(2) The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (3) below, specifically any day that:

(A) The market is not open for the entire trading day, (B) the Exchange instructs members in writing to route their orders to other markets, (C) the Exchange is inaccessible to members during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(3) If a day is to be excluded as a result of paragraph (1)(B) or (2) above, the Exchange will exclude the day from any member's monthly options tier calculations as follows:

(A) The Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; or

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (3)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for members that would have a lower Tier Calculation with the day included.

The proposed language: (i) Applies the rule for excluding days to all volume based calculations rather than specified incentive programs,<sup>6</sup> (ii) expands upon the existing scenarios where the Exchange may remove a day to adopt two additional situations related to Exchange systems disruptions, (iii)

<sup>5</sup> See note 3 above.

<sup>6</sup> See note 4 above. Since the proposed language will now apply to all current and future programs administered by the Exchange that are based on ADV and other applicable volume calculations, the current rule in Options 7, Section 3 will be replaced by the proposed language in Section 1(a) with the modifications described above, including language providing that the rule will apply to all Tier Calculations in its Pricing Schedule.

<sup>13</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.