

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–NSCC–2020–003 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88472; File No. SR–GEMX–2020–08]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Opening

March 25, 2020.

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 March 24, 2020, Nasdaq GEMX, LLC (“GEMX” 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 GEMX Rules at Options 3, Section 8, titled “Opening.”

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 Exchange proposes to amend GEMX Rules at Options 3, Section 8, titled “Opening.” The Exchange proposes to rename this rule “Options Opening Process.” Specifically, the Exchange is proposing to amend the definition of “market for the underlying security.”

Today Options 3, Section 8(a)(2) describes “market for the underlying security” as “. . . either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange’s website.”

The Exchange proposes to amend this definition by replacing the term “primary volume market” with “an alternative market designated by the primary market.” The Exchange anticipates that an alternative market would be necessary if the primary listing market were impaired.<sup>3</sup> In the event that a primary market is impaired and utilizes its designated alternative market, the Exchange would utilize that market as the underlying.<sup>4</sup> The Exchange further proposes an additional contingency. In the event that the primary market is unable to open, and an alternative market is not designated (and/or the designated alternative market does not open), the Exchange may utilize a non-primary market to open all underlying securities from the primary market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities that trade on the primary market for the previous two calendar months, excluding the primary

<sup>3</sup> The Exchange notes that the primary listing market and the primary volume market as defined in GEMX’s Rules could be the same market and therefore an alternative market is not available under the current Rule.

<sup>4</sup> For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca, Inc. (“NYSE Arca”) as its alternative market, then GEMX would utilize NYSE Arca as the market for the underlying.

and alternate markets. The Exchange notes that in order to open an option series it would require an equity market’s underlying quote. If another equity market displays opening prices for the underlying security, the Exchange proposes to utilize those quotes. This proposed change to the current System would allow the Exchange to open in situations where the primary market is experiencing an issue and also where an alternative market designated by the primary market may not be designated by the primary market or is unable to open. The Exchange believes that this proposal would effectively provide the Exchange with additional opportunities to open the market and provide its members with a venue in which to transact options trading. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens with quotes which are representative of the volume on that primary market. The Exchange believes that this proposal will enable it to open in the event that there are issues with the primary market or the alternate market assigned by the primary.

The Exchange also proposes to make a corresponding amendment to Options 3, Section 8(c)(2) to replace the reference to “primary market” with the defined term “market for the underlying security.”

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for alternative processes to determine the market for the underlying. The Exchange’s proposal to amend the definition of “market for the underlying security” within Options 3, Section 8(a)(2) is consistent with the Act.

First, the Exchange’s proposal would remove the concept of a primary volume market and replace that concept with an alternative market designated by the primary market. The Exchange notes that it is most likely the case that the primary market is the primary volume market, so this term offers no contingency in most cases. The primary market has the ability to designate an alternate primary market when the

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

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

<sup>68</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.

primary market is experiencing difficulties. In those situations, the Exchange proposes to utilize the alternate primary market to open its market. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, then GEMX would utilize NYSE Arca as the market for the underlying security.

Second, the Exchange proposes another alternative in the event that the primary market does not open and an alternate primary market is not designated and/or is also unable to open. In this situation, the Exchange proposes to utilize a non-primary market to open its market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities from the primary market for the previous two calendar months, excluding the primary and alternate markets. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, and the alternate primary was unable to open or NYSE was unable to designate an alternate market because of system difficulties, then GEMX would determine which non-primary market had the most liquidity in the aggregate for all underlying securities for the previous two calendar months, excluding the primary and alternate markets. The Exchange would utilize that market to open all underlying securities from the primary market. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens based on the next best alternative to the primary market given the circumstances. This contingency will provide the Exchange with the ability to open in situations where the primary market is experiencing an issue and also where an alternative primary market may also be impacted.

The Exchange believes that this proposal would protect investors and the general public by providing additional venues for GEMX to utilize as part of its Opening Process and thereby allow investors to transact on its market. The Exchange desires to open its market despite any issues that may arise with the underlying market. The Exchange is proposing alternate methods to open its market to account for situations which

may arise if the primary market is unable to open, and if the proposed alternate designated market is unable to open. The Exchange notes that once the market opens with an underlying price, the options market may continue to trade for the remainder of the trading day. The Exchange believes it benefits investors and the general public to have the options market available to enter new positions, or close open positions.

#### *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. Amending the definition of "market for the underlying security" within Options 3, Section 8(a)(2) does not burden competition. The Exchange's proposal offers alternative paths to open the Exchange in the event that the primary market or even a designated alternate primary market experiences an issue. The Exchange's proposal is intended to create additional certainty that in the event of an issue with the primary market, the Exchange would have other equity markets to look to with respect to underlying prices on which to open the Exchange. This proposal also does not impact the ability of other options markets to open.

#### *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) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

Act<sup>9</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to 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 Exchange may amend its rules to permit the Exchange to utilize additional venues to open its market if the primary market and any designated alternate market for the underlying security are experiencing an issue and unable to open, thereby allowing investors to transact on its market in such a situation. The Exchange believes that having its options market available to enter new positions or close open positions would benefit investors and the general public. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<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 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-2020-08 on the subject line.

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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-2020-08. 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 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-2020-08 and should be submitted on or before April 21, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88467; File No. SR-DTC-2020-006]

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the DTC Operational Arrangements With Respect to Notices Submitted to DTC for Posting to LENS**

March 25, 2020.

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 March 18, 2020, The Depository Trust Company (“DTC”) 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 clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change<sup>5</sup> consists of modifications to the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”)<sup>6</sup> in order to make clarifying changes to DTC's Procedures<sup>7</sup> relating to notices posted to the Legal Notice System (“LENS”),<sup>8</sup> as described below.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> Capitalized terms not otherwise defined in this rule filing are defined as set forth in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, the Deposits Service Guide (“Deposits Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Deposits.pdf> and the Custody Service Guide (“Custody Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Custody.pdf>.

<sup>6</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

<sup>7</sup> Pursuant to the Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 5.

<sup>8</sup> As the registered holder of Securities Deposited at DTC and/or as appropriate qualified registered securities depository, *infra* note 5, DTC receives notices to holders of the Securities. Participants may view these notices to holders via LENS, a

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change consists of modifications to the OA in order to make clarifying changes to DTC's Procedures relating to notices posted to LENS, as described below.

Background

DTC receives notices to holders of Securities from various sources that may not be Participants, or may be Participants acting in another capacity, including those that may be issuers, transfer agents, and/or other third parties, relating to Securities on Deposit at DTC. These parties may have a legal or regulatory obligation or other interest to distribute notices containing certain information to holders relating to Securities. These parties deliver such notices to DTC because DTC is the registered holder of the applicable Securities and/or the appropriate qualified registered securities depository<sup>9</sup> with respect to an issue. DTC posts the notices it receives in this regard to LENS, where they are available for viewing by a Participant, who may

secure interface offered by DTC. The Commission issued an order approving LENS on June 12, 1991. See Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 (June 19, 1991) (File No. SR-DTC-91-08). (“LENS Approval Order”). LENS was originally accessible through the DTC Participant Terminal System (“PTS”). *Id.* DTC subsequently implemented a web-based LENS interface. See Securities Exchange Act Release No. 43964 (February 14, 2001), 66 FR 11190 (February 22, 2001) (SR-DTC-00-18). The LENS PTS function was retired effective August 27, 2010, and Participants may access LENS via the web-based functionality mentioned above. See Securities Exchange Act Release No. 62686 (August 10, 2010), 75 FR 50032 (August 16, 2010) (SR-DTC-2010-10).

<sup>9</sup> 17 CFR 240.17Ad-16. Pursuant to Rule 17Ad-16, an “appropriate qualified registered securities depository” shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. 17 CFR 240.17Ad-16(f).

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