

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91409; File No. SR–NYSE–2021–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Extend the Waiver of Equipment and Related Service Charges and Trading License Fees for NYSE Trading Floor-Based Member Organizations

March 25, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 17, 2021, New York Stock Exchange LLC (“NYSE” or the “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.

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

The Exchange proposes to amend its Price List to extend the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021. The Exchange proposes to implement the fee changes effective April 1, 2021. The proposed rule change is available on the Exchange’s website at 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to extend the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021.

As proposed, the Exchange would continue to waive 50% of the Telephone System charges and Service Charges (except for the internet Equipment Monthly Hosting Fee) and trading license fees for member organizations that meet the waiver criteria set forth in footnotes 11 and 15 of the Price List, respectively, commencing January 1, 2021 through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021.

The Exchange proposes to implement the fee changes effective April 1, 2021.

Background

Current Market and Competitive Environment

Beginning in March 2020 and continuing into 2021, in order to slow the spread of the novel coronavirus (“COVID–19”) through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.⁴ Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.⁵

On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would

⁴ See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

⁵ See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR–NYSE–2020–27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR–NYSE–2020–29). See footnote 11 of the Price List.

resume on a limited basis to a subset of Floor brokers, subject to health and safety measures designed to prevent the spread of COVID–19.⁶ On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMs, also subject to health and safety measures designed to prevent the spread of COVID–19.⁷ Following this partial reopening of the Trading Floor, the Exchange extended the equipment fee waiver for the months of June 2020 through March 2021.⁸ The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.⁹

Proposed Rule Change

In response to the unprecedented events surrounding the spread of COVID–19 in 2020, the Exchange waived certain equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations through March 2021. Specifically, the Exchange extended the waiver of 50% of the Annual Telephone Line Charge of \$400 per phone number; the \$129 fee for a single line phone, jack, and data jack; the related service charges (\$161.25 to install single jack (voice or data); \$107.50 to relocate a jack; \$53.75 to remove a jack; \$107.50 to install voice or data line; \$53.75 to disconnect data line; \$53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at \$106 per hour in 15 minute increments); and the monthly portion of all applicable annual fees through March 2021 for member organizations that

⁶ See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

⁷ See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

⁸ See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR–NYSE–2020–49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR–NYSE–2020–59); Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR–NYSE–2020–71); Securities Exchange Act Release No. 89798 (September 9, 2020), 85 FR 57263 (September 15, 2020) (SR–NYSE2020–72); Securities Exchange Act Release No. 90161 (October 13, 2020), 85 FR 66370 (October 19, 2020) (SR–NYSE–2020–81); Securities Exchange Act Release No. 90391 (November 10, 2020), 85 FR 73326 (November 17, 2020) (SR–NYSE2020–92); Securities Exchange Act Release No. 90744 (December 21, 2020), 85 FR 85712 (December 29, 2020) (SR–NYSE–2020–102); Securities Exchange Act Release No. 91082 (February 9, 2021), 86 FR 9546 (February 16, 2021) (SR–NYSE–2021–10).

⁹ See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

- meet the current requirements of having at least one trading license, a physical trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020 or, if not a member organization during March 1 to March 20, 2020, based on the member organization's combined adding, taking, and auction volumes during its first month as a member organization on or after May 26, 2020, and

- are unable to operate at more than 50% of their March 2020 on-Floor staffing levels or, for member organizations that began Floor operations after March 2020, are unable to operate at more than 50% of their Exchange-approved on-Floor staffing levels, both excluding part-time Floor brokers known as "flex brokers" (hereinafter, "Qualifying Firms").

Because the Trading Floor continues to operate with reduced capacity, and in order to further reduce costs for member organizations with a Trading Floor presence, the Exchange proposes to extend the fee waiver for Qualifying Firms through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021. The proposed fee change is designed to reduce monthly costs for all Qualifying Firms whose operations continue to be disrupted even though the Trading Floor has partially reopened. The Exchange does not propose any substantive changes to the current waiver requirements set forth in footnotes 11 and 15 of the Price List. The Exchange believes that all Qualifying Firms would benefit from the proposed fee change.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹²

While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."¹³ Indeed, equity trading is currently dispersed across 16 exchanges,¹⁴ 31 alternative trading systems,¹⁵ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 16% market share.¹⁶ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 10%.

The Proposed Change is Reasonable

The proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Qualified Firms through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021 is reasonable in light of the continued partial closure of the NYSE Trading

Floor as a result of spread of COVID-19. The proposed change is reasonable because it would extend reduction of monthly costs for all Qualifying Firms whose operations have been disrupted despite the fact that the Trading Floor has partially reopened because of the social distancing requirements and/or other health concerns related to resuming operation on the Trading Floor. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that are unable to operate at more than 50% of their March 2020 or Exchange-approved on-Floor staffing levels to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses resulting from the partial reopening of the Trading Floor.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Qualified Members for the proposed time period is an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the specified period that the Trading Floor remains partially open. The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it continues the previous fee waiver for Qualifying Firms, which affects fees charged only to Floor participants and does not apply to participants that conduct business off-Floor. The Exchange believes it is an equitable allocation of fees and credits to extend the fee waiver for Qualifying Firms because such firms have no more than half of their Floor staff (as measured by either the March 2020 or Exchange-approved) levels, and this reduction in staffing levels on the Trading Floor impacts the speed, volume and efficiency with which these firms can operate, to their financial detriment.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Trading Floor-related fees indefinitely, but rather during the specified period during which the Trading Floor is not fully open. As noted, the proposed fee

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

¹³ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

¹⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹⁵ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

¹⁶ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) & (5).

change is designed to ease the financial burden on Trading Floor-based member organizations that cannot fully conduct Floor operations.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁸

Intramarket Competition. The proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Qualified Firms is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted by the COVID-19 pandemic despite the fact that the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. Absent this change, all Qualifying Firms may experience an unintended increase in the cost of doing business on the Exchange, given that the Trading Floor has only reopened in a limited capacity. The Exchange believes that the proposed waiver of fees for Qualifying Firms would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees. In addition, Floor-based firms that are not subject to the extent of staffing shortfalls as are Qualifying Firms, *i.e.*, firms that have more than 50% of their March 2020, or Exchange-approved

staffing levels on the Trading Floor, do not face the same operational level of disruption and potential financial impact during the partial reopening of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. As noted above, the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange believes that the proposed rule change reflects this competitive environment because it permits impacted member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is not fully open, which could make the Exchange a less competitive venue on which to trade as compared to other equities markets. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully staffed on-Floor operations to off-Floor. Absent this change, Qualifying Firms may experience an unintended increase in the cost of doing business on the Exchange, which would make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and subparagraph (f)(2) of Rule 19b-4²⁰ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²¹ 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. Please include File Number SR-NYSE-2021-19 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-NYSE-2021-19. 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.

¹⁷ 15 U.S.C. 78f(b)(8).

¹⁸ Regulation NMS, 70 FR at 37498-99.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2021–19 and should be submitted on or before April 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91408; File No. SR–GEMX–2021–01]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Rules in Options 3

March 25, 2021.

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 March 12, 2021, 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 various rules in Options 3.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, 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 various rules in Options 3. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today. Furthermore, the proposed changes are intended to harmonize the Exchange’s rules where appropriate with the rules of the Exchange’s affiliated options markets, including by using consistent language to describe identical functionality.³ As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) The Block Order Mechanism (“Block”),⁴ (2) the Facilitation Mechanism (“Facilitation”),⁵ (3) the Solicited Order Mechanism (“Solicitation”),⁶ (4) the Price Improvement Mechanism (“PIM”),⁷ and (5) Anti-Internalization.⁸

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among other changes, to replace references to Professional interest with non-Priority Customer interest.⁹ The Exchange now proposes to make similar changes to replace all

instances of “Professional” interest with “non-Priority Customer” interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR–GEMX–2019–10.¹⁰ While the term “Professional Orders” is defined within Options 1, Section 1(a)(38) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term “non-Priority Customer” is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules¹¹ to clearly delineate between orders and Responses¹² of the same capacity. For example, where the existing rule text currently states “Priority Customer bids (offers),” the Exchange proposes instead to state “Priority Customer Orders and Priority Customer Responses to buy (sell).” The Exchange notes that this is merely a non-substantive change as auction orders and Responses of the same capacity do not get treated differently for allocation purposes today. With the proposed changes, the Exchange is merely seeking to bring greater transparency around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options (“BX”) in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add “up to the size of the block order” at the end of subsection (a)(2)(i). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed

³ The Exchange’s affiliate, Nasdaq ISE, LLC (“ISE”) recently filed a substantially similar rule change as part of this exercise. See Securities Exchange Act Release No. 91223 (February 26, 2021) (SR–ISE–2021–01).

⁴ See Options 3, Section 11(a).

⁵ See Options 3, Section 11(b).

⁶ See Options 3, Section 11(d).

⁷ See Options 3, Section 13.

⁸ See Options 3, Section 15(a)(3)(A).

⁹ See Securities Exchange Act Release No. 86946 (September 12, 2019), 84 FR 49158 (September 18, 2019) (SR–GEMX–2019–10).

¹⁰ Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(ii), (b)(3)(i)–(iii) (renumbered to (b)(4)(i)–(iii) under this proposal), and (d)(2)(iii) (renumbered to (d)(3)(iii) under this proposal). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)–(3).

¹¹ Specifically in Options 3, Section 11, subsections (b)(3)(i)–(iii) (renumbered to (b)(4)(i)–(iii)), and (d)(2)(i) and (iii) (renumbered to (d)(3)(i) and (iii)) will be updated.

¹² A “Response” is an electronic message that is sent by Members in response to a broadcast message. See Options 3, Section 11.

²² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.