

registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83445; File No. SR-GEMX-2018-20]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees

June 14, 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 June 1, 2018, 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.

<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 increase certain route-out fees set forth in Section II.A of the Schedule of Fees.

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 increase certain route-out fees set forth in Section II.A of the Schedule of Fees. Today, the Exchange charges Non-Priority Customers (*i.e.*, Market Maker,<sup>3</sup> Non-Nasdaq GEMX Market Maker,<sup>4</sup> Firm Proprietary<sup>5</sup>/ Broker-Dealer,<sup>6</sup> and Professional Customer<sup>7</sup>) route-out fees of \$0.95 per contract for orders in Non-Penny Symbols that are routed to away exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan (the "Plan"). The Exchange now proposes to increase this fee to \$1.09 per contract for all Non-Priority Customer orders in Non-Penny Symbols that are routed to away

<sup>3</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Rule 100(a)(30).

<sup>4</sup> A "Non-Nasdaq GEMX Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>5</sup> A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

<sup>6</sup> A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>7</sup> A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

exchanges in connection with the Plan. The Exchange believes that the proposed increase will help offset the costs associated with routing orders through the Plan, such as paying the transaction fees for such executions at other exchanges.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed increase in the Non-Priority Customer route-out fees from \$0.95 to \$1.09 per contract for orders in Non-Penny Symbols is reasonable because it is designed to help recoup costs associated with routing orders to away exchanges in connection with the Plan, such as paying the transaction fees for such executions at other exchanges. Furthermore, the Exchange notes that the proposed fees remain competitive with the fees of other options exchanges which, in addition to a fixed routing fee, assess the actual transaction fees.<sup>10</sup>

The Exchange believes that proposed increase in the Non-Priority Customer route-out fees is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Exchange believes it is equitable and not unfairly discriminatory to increase the route-out fees for all market participants other than Priority Customers<sup>11</sup> because the Exchange seeks to encourage Priority Customer order flow and the liquidity that such order flow brings to the marketplace, which in turn benefits all market participants.

### *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. In particular, the proposed increase to the route-out fees will apply equally to all Non-Priority Customer orders that are routed to away exchanges in connection with the Plan, and will help offset costs associated with routing orders via the Plan. Furthermore as noted above, the Exchange believes that its proposed fees remain competitive with another options exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of

investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## **IV. Solicitation of Comments**

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

### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2018-20 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-2018-20. 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-2018-20 and

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> For example, CBOE C2 Exchange, Inc. ("C2") charges \$1.63 per routed contract for non-public customer, non-C2 market-maker orders in non-penny classes. See C2 Fees Schedule, Section 1.A (Transaction Fees) and Section 2 (Linkage Routing).

<sup>11</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Rule 100(a)(37A).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

should be submitted on or before July 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83432; File No. SR–NYSE–2018–26]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Pillar Trading Platform Rule 7.31 Relating to Reserve Orders and Rule 7.36 Relating to Setter Priority

June 14, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on June 1, 2018, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change. On June 8, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange.<sup>4</sup> 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 Pillar trading platform Rule 7.31 relating to Reserve Orders and Rule 7.36 relating to Setter Priority. This Amendment No. 1 supersedes the original filing in its entirety. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 7.31 relating to Reserve Orders and Rule 7.36 relating to Setter Priority. These proposed changes would be operative for trading on the Pillar trading platform only. Because the Exchange trades only UTP Securities<sup>5</sup> on the Pillar trading platform at this time, these proposed changes would not be applicable to NYSE-listed securities.

###### Background

Rule 7.31(d)(1) defines a Reserve Order as a Limit Order with a quantity of the size displayed and with a reserve quantity of the size (“reserve interest”) that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2—Display Orders and the reserve interest is ranked Priority 3—Non-Display Orders.<sup>6</sup> Rule 7.31(d)(1)(A) provides that on entry, the display quantity of a Reserve Order must be entered in round lots and the displayed portion of a Reserve Order will be replenished following any execution. That rule further provides that the Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order. Rule 7.31(d)(1)(B) provides that each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry. Pursuant to Rule

7.31(d)(1)(C), a Reserve Order must be designated Day and may be combined with a Limit Non-Routable Order or a Primary Pegged Order.

Rule 7.36(h) provides that Setter Priority will be assigned to an order ranked Priority 2—Display Orders with a display quantity of at least a round lot if such order (i) establishes a new BBO and (ii) either establishes a new NBBO or joins an Away Market NBBO and that only one order is eligible for Setter Priority at each price.<sup>7</sup> Rule 7.36(h)(1) provides that an order will be evaluated for Setter Priority on arrival, which includes when any portion of an order that has routed returns unexecuted and when it becomes eligible to trade for the first time upon transitioning to a new trading session.

##### Proposed Rule Change to Reserve Orders

The Exchange proposes to amend Rule 7.31(d)(1) to change the manner by which the display portion of a Reserve Order would be replenished. As proposed, rather than replenishing the display quantity following any execution, the Exchange proposes to replenish the Reserve Order when the display quantity is decremented to below a round lot. This proposed functionality is consistent with how Reserve Orders are replenished on other equity exchanges.<sup>8</sup>

As is currently the case, the replenish quantity would be the minimum display size of the order or the remaining quantity of reserve interest if it is less than the minimum display quantity. To reflect this functionality, the Exchange proposes that Rule 7.31(d)(1)(A) would be amended as follows (deleted text bracketed; new text underlined):

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished *when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display quantity of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity* [following any execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order].

Under current functionality, because the replenished quantity is assigned a new working time, it is feasible for a single Reserve Order to have multiple

<sup>7</sup> The terms “BBO,” “NBBO,” “PBBO,” and “Away Market” are defined in Rule 1.1.

<sup>8</sup> See, e.g., Cboe BZX Exchange, Inc. (“BZX”) Rule 11.9(c)(1); Nasdaq Stock Market LLC (“Nasdaq”) Rule 7503(h).

<sup>14</sup> 17 CFR 200.30–3(a)(12).

<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.

<sup>4</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety. In Amendment No. 1, the Exchange modified the definition of “child order” in proposed rule 7.31.

<sup>5</sup> The term “UTP Securities” is defined in Rule 1.1 to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

<sup>6</sup> The terms “Priority 2—Display Orders” and “Priority 3—Non-Display Orders” are defined in Rule 7.36(e).