

Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend its Fee Schedule to adopt fees for its market data products. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 3, 2023.<sup>4</sup> On February 28, 2023, MEMX withdrew the proposed rule change (SR–MEMX–2023–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97126; File No. SR–GEMX–2023–04]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality

March 13, 2023.

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 February 28, 2023, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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 delay the implementation of certain trading functionality rule changes.

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

In connection with a technology migration to an enhanced Nasdaq, Inc. (“Nasdaq”) functionality, the Exchange filed various rule changes to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. At this time, the Exchange proposes to delay the implementation of the various rule changes. Each impacted rule change and the new implementation date is described below.

###### Impacted Rule Filings

The Exchange filed the following rule changes in connection with its technology migration:

- SR–ISE–2022–11 which impacts GEMX routing;<sup>3</sup>
- SR–GEMX–2022–10 which amended ATR and Repricing Rules;<sup>4</sup>
- SR–GEMX–2022–13 which amended PIM;<sup>5</sup> and

<sup>3</sup> See Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration). GEMX Options 5 Rules incorporate ISE Options 5 by reference.

<sup>4</sup> See Securities Exchange Act Release No. 96363 (November 18, 2022), 87 FR 72556 (November 25, 2022) (SR–GEMX–2022–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ATR and Re-Pricing Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality).

<sup>5</sup> See Securities Exchange Act Release No. 96519 (December 16, 2022), 87 FR 78717 (December 22, 2022) (SR–GEMX–2022–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Functionality in Connection With a Technology Migration).

- SR–GEMX–2023–02 a rule change amending multiple functionalities.<sup>6</sup>

Each of the aforementioned rule changes (collectively “Impacted Rule Changes”) indicated that the technology migration for GEMX would commence prior to September 1, 2023 or Q3.

###### New Implementation

At this time, the Exchange proposes to delay the implementation of the Impacted Rule Changes, which all relate to GEMX’s upcoming technology migration, to a date prior to December 29, 2023. The Exchange will announce the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.

The Exchange proposes to delay the migration to allow the Exchange and its Members additional time to test the new functionality.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below. The Exchange proposes to delay the implementation of the Impacted Rule Changes, which all relate to GEMX’s upcoming technology migration, a few months to allow the Exchange and its Members additional time to test the new functionality. The Exchange believes that the delay is consistent with the Act because the additional time will allow the Exchange to ensure a successful migration while protecting investors and the public interest by allowing the Exchange and Members more time to test.

The Exchange notes that the substance of the impacted rules is not changing, only the implementation timeline is changing with this proposal.

##### 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. The Exchange’s proposal to delay the implementation of the Impacted Rule

<sup>6</sup> See Securities Exchange Act Release No. 96817 (February 6, 2023), 88 FR 8922 (February 10, 2023) (SR–GEMX–2023–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules in Connection with the Technology Migration to Enhanced Nasdaq Functionality).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<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). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 96775 (January 30, 2023), 88 FR 7487.

<sup>5</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.

Changes for a few months does not impose an undue burden on competition. The proposed delay will allow the Exchange and its Members additional time to test the new functionality.

*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)(iii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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-2023-04 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-2023-04. 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-GEMX-2023-04 and should be submitted on or before April 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[SEC File No. 270-315, OMB Control No. 3235-0357]**

**Submission for OMB Review; Comment Request; Extension: Regulation S**

*Upon Written Request Copies Available From: Securities and Exchange*

Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 17, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 13, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 200.30-3(a)(12).