

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84745; File No. SR-GEMX-2018-40)

December 7, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Supplementary Material .02 to Rule 715

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 November 29, 2018, 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 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 Supplementary Material .02 to Rule 715 regarding Cancel and Replace Orders.

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

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

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

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 Supplementary Material .02 to Rule 715 regarding Cancel and Replace Orders to: (i) correct an inconsistency between the Exchange's rule text and the operation of the System<sup>3</sup> by removing the reference to Rule 710, (ii) update rule cross-references, and (iii) make other non-substantive, technical changes.

Today, a member has the option of either sending in a cancel order and then separately sending in a new order which serves as a replacement of the original order (two separate messages), or sending a single cancel and replace order in one message (i.e., a Cancel and Replace Order). Specifically, Supplementary Material .02 to Rule 715 defines a Cancel and Replace Order as a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order.<sup>4</sup> The replacement portion of the Cancel and Replace Order is treated as a new order and therefore goes through price or other reasonability checks as a result of being viewed as such.<sup>5</sup> If the replacement portion of a Cancel and Replace Order does not satisfy the System's price or other reasonability checks, the existing order will be

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<sup>3</sup> The term "System" means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See Rule 100(a)(64).

<sup>4</sup> If the previously placed order is already filled partially or in its entirety, the replacement order is automatically cancelled or reduced by the number of contracts that were executed. See Supplementary Material .02 to Rule 715.

<sup>5</sup> Supplementary Material .02 to Rule 715 further provides how the replacement portion may retain the priority of the original order, provided certain specified conditions are met. The manner in which the Exchange treats priority with respect to Cancel and Replace Orders is not changing under this proposal.

cancelled and not replaced.<sup>6</sup> The Exchange notes, however, that when it initially codified Cancel and Replace Orders in its Rulebook as part of SR-ISEGemini-2017-07, it inadvertently included Rule 710 within the list of price reasonability checks. In SR-ISEGemini-2017-07, the Exchange explained that the System conducts price or other reasonability checks for Cancel and Replace Orders to validate such orders against the current market conditions prior to proceeding with the request to modify the order.<sup>7</sup> Rule 710, which relates to the minimum price variations applicable to options series traded on the Exchange, does not involve the System considering the current market at the time of the Cancel and Replace Order, and an incoming Cancel and Replace Order that fails the minimum price variation checks in Rule 710 would not result in the existing order being cancelled and not replaced.<sup>8</sup> The Exchange therefore proposes to remove the reference to Rule 710 from the list of price or other reasonability checks to conform its rule text to the System.

The Exchange also proposes to update the various rule references related to the price reasonability checks within this provision to refer to the current rules.<sup>9</sup> Finally, the Exchange proposes other non-substantive, technical changes within Supplementary Material .02 to Rule

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<sup>6</sup> See Securities Exchange Act Release No. 80106 (February 24, 2017), 82 FR 12374 (March 2, 2017) (SR-ISEGemini-2017-07) (memorializing Cancel and Replace Orders in Supplementary Material .02 to Rule 715). The Exchange subsequently changed its name from ISE Gemini to Nasdaq GEMX.

<sup>7</sup> Id.

<sup>8</sup> In this instance, the System would simply reject the cancel and replace message as an invalid instruction. The Exchange notes that the previous T7 system likewise treated Cancel and Replace Orders in this manner.

<sup>9</sup> In particular, Rules 711(c) and 714(b)(2) are now Rules 714(b)(1)(B) and 714(b)(1)(A), respectively, pursuant to SR-GEMX-2018-32. See Securities Exchange Act Release No. 84238 (September 20, 2018), 83 FR 48678 (September 26, 2018).

715 to capitalize “Cancel and Replace Order” for consistency, and to capitalize “System,” which is a defined term.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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 Exchange’s proposal corrects an inadvertent error in Supplementary Material .02 to Rule 715, which currently includes Rule 710 within the list of price or other reasonability checks. As discussed above, including Rule 710 is inconsistent with the operation of the Exchange’s System because an incoming Cancel and Replace Order which fails the minimum price variation checks in Rule 710 does not result in the existing order getting cancelled and not replaced. This rule change would amend the rule text to reflect GEMX’s current practice, and should avoid potential confusion about how the System processes Cancel and Replace Orders today.<sup>12</sup> Furthermore, the Exchange’s proposal to update the rule references and make other non-substantive technical changes, as further described above, will bring greater transparency to its Rulebook thereby protecting investors and the public interest by reducing potential for investor confusion.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See note 8 above.

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. All of the proposed changes are intended to bring greater transparency to the Exchange's Rulebook, and therefore does not unduly burden competition.

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>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</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. At the Exchange's request, the Commission has waived this requirement.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2018-40 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-2018-40. This file number should be included on the subject line if e-mail 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-2018-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).