

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89576; File No. SR-GEMX-2020-19)

August 17, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 6, Section 5 (Transfer of Positions)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2020, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Options 6, Section 5, titled “Transfer of Positions.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 Options 6, Section 5, titled “Transfer of Positions.”

The proposed rule change is similar to Cboe Exchange, Inc. (“Cboe”) Rule 6.7.⁵

Options 6, Section 5 permits market participants to move positions from one account to another without first exposure of the transaction on the Exchange, provided certain exceptions are met. Specifically, Options 6, Section 5(a)(2)⁶ provides that transfers of positions are permissible if from one account to another account where no change in ownership is involved (i.e., accounts of the same Person),⁷ provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers

⁵ See Securities and Exchange Act Release No. 89389 (July 23, 2020), 85 FR 45709 (July 29, 2020) (SR-Cboe-2020-067) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.7 Concerning Off-Floor Transfers).

⁶ Options 6, Section 5(a) states, “*Permissible Transfers*. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events:.....(2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;...”

⁷ For purposes of this rule, the term “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See Options 6, Section 5(a).

to the Exchange pursuant to Options 6, Section 5(d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts position transfers effected pursuant to Options 6, Section(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Position transfers pursuant to Options 6, Section(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same Person. A market participant effecting an position transfer pursuant to Options 6, Section 5(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Options 6, Section 5(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Options 6, Section 5(b), and thus may not result in the closing of any positions. While the position transfers permitted by Options 6, Section 5 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally, given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice

would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

The proposed rule change also corrects an erroneous cross-reference in Rule Options 6, Section 5(d)(1), as the method for determining the transfer price is in paragraph (c) rather than paragraph (e) of Options 6, Section 5.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

¹¹ Id.

discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will 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 because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Options 6, Section 5, which was to prohibit use of the transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the

exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs. These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same Person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Options 6, Section 5(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation (“OCC”), and the positions may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect position transfers pursuant to Options 6, Section 5(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it relates solely to the notice required for transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may 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 to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would benefit investors and the general public because it will provide Participants with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange. The proposed rule change does not present any unique or novel regulatory issues and is substantively identical to provisions

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

in Cboe Rule 6.7. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

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 will institute proceedings 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 e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2020-19 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-GEMX-2020-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-GEMX-2020-19 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).