

Order, while ensuring that there is an adequate exposure of such order. Accordingly, the Exchange proposes to amend Rule 935NY(iii) to extend the exemption from the one-second order exposure requirement to COA Orders under Pillar, which exemption is consistent with the treatment of similar orders on other options exchanges.⁷⁷ Consistent with Rule 935NY, Commentary .01, ATP Holders would only utilize the COA where there is a genuine intention to execute a bona fide transaction.⁷⁸

* * * * *

For the reasons set forth above, the Exchange believes proposed Rule 980NYP, regarding ECO trading, including the priority and execution of such ECOs vis a vis the leg markets, is consistent with the goals of the Act to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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 Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. The Exchange believes that the transition to Pillar for trading of ECOs on its options trading platform would promote competition among options exchanges by offering a low-latency platform that offers more deterministic outcomes for trading interest, which, in turn, facilitates ECO trading on a continuous and real-time basis on the Exchange.

The proposed rule changes would support that inter-market competition by allowing the Exchange to offer additional functionality to its ATP Holders, thereby potentially attracting additional order flow to the Exchange. Otherwise, the proposed changes are not designed to address any competitive issues, but rather to amend the Exchange's rules relating to trading of ECOs to support the transition to Pillar. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality regarding the treatment of ECOs. Rather, the Exchange believes that the proposed rule changes would

promote consistent use of terminology to support options trading on the Exchange (and to promote uniformity with its affiliated exchange Arca Options), making the Exchange's rules easier to navigate. The Exchange does not believe that the proposed rule changes would raise any intra-market competition as the proposed rule changes would be applicable to all ATP Holders, and reflects the Exchange's existing treatment of ECOs, without proposing any material substantive changes. As noted herein, proposed Rule 980NYP is substantively the same as Arca Options Rule 6.91P-O except as noted herein (including to account for the Exchange's Customer priority/pro rata allocation model).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-NYSEAMER-2023-17.

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-NYSEAMER-2023-17. 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-NYSEAMER-2023-17, and should be submitted on or before April 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97131; File No. SR-MEMX-2023-02]

Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Market Data Fees

March 13, 2023.

On January 17, 2023, MEMX LLC ("MEMX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the

⁷⁷ See *supra* note 68 [sic] (regarding Arca Options Rule 6.47A-O (iii)).

⁷⁸ See *supra* note 69 [sic] (regarding Rule 935NY, Commentary .01).

⁷⁹ 17 CFR 200.30-3(a)(12).

Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² 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.³ The proposed rule change was published for comment in the **Federal Register** on February 3, 2023.⁴ 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.⁵

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”),¹ and Rule 19b–4 thereunder,² 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;³
- SR–GEMX–2022–10 which amended ATR and Repricing Rules;⁴
- SR–GEMX–2022–13 which amended PIM;⁵ and

³ 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.

⁴ 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).

⁵ 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.⁶

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,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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

⁶ 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).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 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).

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

⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.