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 Web site 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; 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–Phlx–2017–66, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–17067 Filed 8–11–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81344; File No. SR–NASDAQ–2017–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the NASDAQ Options Market LLC Rules Regarding the Options Regulatory Fee

August 8, 2017.

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 July 26, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' 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 revise The NASDAQ Options Market LLC (''NOM'') Rules at Chapter XV, Section 5 to: (i) Make adjustments to the amount of its Options Regulatory Fee (''ORF''); and (ii) more closely reflect the manner in which NOM assesses and collects its ORF.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments [sic] become operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NOM initially filed to establish its ORF in 2011.[3] The Exchange has amended its ORF several times since the inception of this fee.[4] At this time, the Exchange proposes to: (i) Amend the amount of its ORF; and (ii) revise NOM's Rules at Chapter XV, Section 5 to more closely reflect the manner in which NOM assesses and collects its ORF.

The Exchange supports a common approach for the assessment and collection of ORF among the various options exchanges that assess such a fee. Furthermore, the Exchange supports guidance from the Commission regarding regulatory cost structures to ensure equal knowledge and treatment among options markets assessing ORF.

Proposal 1—Amend the Amount of the ORF

The Exchange assesses an ORF of $0.0021 per contract side. The Exchange proposes to increase the ORF from $0.0021 per contract side to $0.0027 per contract side as of August 1, 2017 to account for a reduction in market volume. The Exchange's proposed change to the ORF should balance the Exchange's regulatory cost [sic] against the anticipated revenue. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified its Participants of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.[5]

Proposal 2—Reflect the Manner in Which NOM Assesses and Collects Its ORF

Currently, NOM assesses its ORF for each Customer option transaction that is either: (1) Executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (''OCC'') in the Customer range,[6] even if the transaction was executed by a non-member of NOM, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a NOM Participant, ORF is assessed and collected on all cleared Customer contracts (after adjustment for CMTA [8]); and (2) if the OCC clearing member is not a NOM Participant, ORF is collected only on the cleared Customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a NOM Participant, routes a Customer

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR–NASDAQ–2011–163) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee).

[4] *See* Securities Exchange Act Release Nos. 76950 (January 21, 2016), 81 FR 4687 January 27, 2016)(SR–NASDAQ–2016–003); and 78360 (July 19, 2016), 81 FR 48475 (July 25, 2016) (SR–NASDAQ–2016–096).

[5] *See* Options Trader Alert #2017–54.

[6] Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by NOM from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the Participant's OCC clearing account in the Customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on NOM nor was it cleared by a NOM Participant.

In the case where a Participant both executes a transaction and clears the transaction, the ORF is assessed to and collected from the Participant only once. In the case where a Participant executes a transaction and a different Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF is assessed to and collected from the Participant who clears the transaction. In the case where a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF is assessed to the Participant that executed the transaction and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. For example, a cost related to Nasdaq's equity platform, would not be considered an expense that is compared to ORF revenue. An options surveillance employee's cost, however would be an expense that is compared to ORF revenue. The Exchange notes that fines collected by the Exchange in connection with a disciplinary manner offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its Participants, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Finally, the Exchange notes that it is amending its rule text at Chapter XV, Section 5 to remove certain rule text and include new text to make clear the manner in which ORF is assessed and collected on NOM.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [10] 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 its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed clarifications in the Fee Schedule to the ORF further the objectives of Section 6(b)(4) of the Act and are equitable and reasonable since they expressly describe the Exchange's existing practices regarding the manner in which the Exchange assesses and collects its ORF.

Proposal 1—Amend the Amount of the ORF

The Exchange believes that increasing the ORF from $0.0021 per contract side to $0.0027 per contract side as of August 1, 2017 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory cost collected [sic] by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory cost against the anticipated regulatory revenue. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange believes that increasing the ORF from $0.0021 per contract side to $0.0027 per contract side as of August 1, 2017 is equitable and not unfairly discriminatory because this modest increase will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs. The ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Participants that are directly based on the amount of Customer options business they conduct. Regulating Customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component (*e.g.* Participant proprietary transactions) of its regulatory program.

The ORF is designed to recover a material portion of the costs of supervising and regulating Participants' Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

that the proposed amount of the fee is reasonable.

Proposal 2—Reflect the Manner in Which NOM Assesses and Collects Its ORF

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Participants and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange, because it lacks access to information on the identity of the entering firm for executions that occur on away markets, believes it is appropriate to assess the ORF on its Participant's clearing activity, based on information the Exchange receives from OCC, including for away market activity. Among other reasons, doing so better and more accurately captures activity that occurs away from the Exchange over which the Exchange has a degree of regulatory responsibility. In so doing, the Exchange believes that assessing ORF on Participant clearing firms in certain instances equitably distributes the collection of ORF in a fair and reasonable manner. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') [11] system in order to surveil a Participant's activities across markets.[12]

The Exchange believes that assessing the ORF to each Exchange member for options transactions cleared by OCC in the Customer range where the execution occurs on another exchange and is cleared by a NOM member is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The ORF is collected by OCC on behalf of NOM from Exchange clearing members for all Customer transactions they clear or from non-members for all Customer transactions they clear that were executed on NOM. The Exchange believes that this collection practice is reasonable and appropriate because higher fees are assessed to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be typically higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange has in place a regulatory structure to surveil, conduct examinations and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

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 ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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.[13]

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.* Please include File No. SR–NASDAQ–2017–068 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 No. SR–NASDAQ–2017–068. 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

[11] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[12] In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG''), the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading. *See* Section 6(h)(3)(I) of the Act. ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

only one method. The Commission will post all comments on the Commission's Internet Web site (*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 Web site 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 No. SR–NASDAQ–2017–068, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–17049 Filed 8–11–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81354; File No. SR–GEMX–2017–36]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 720, Nullification and Adjustment of Options Transactions Including Obvious Errors

August 8, 2017.

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 3, 2017, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 720, Nullification and Adjustment of Options Transactions including Obvious Errors.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on a date that is within ninety (90) days after the Commission approved a similar proposal filed by Bats BZX on July 6, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 Exchange and other options exchanges recently adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[3] The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion. Specifically, as described in the Initial Filing, the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. Because this initiative required additional exchange and industry discussion as well as additional time for development and implementation, the Exchange and the other options exchanges determined to proceed with the Initial Filing and to undergo a secondary initiative to complete any additional improvements to the applicable rule. In this filing, the Exchange proposes to adopt procedures that will lead to a more objective and uniform way to determine Theoretical Price in the event a reliable NBBO is not available. In addition to this change, the Exchange has proposed two additional minor changes to its rules. The Exchange's proposal mirrors that of Bats BZX, which the Exchange [sic] approved on July 6, 2017,[4] and those that the other options exchanges intend to file, except that it omits the section of the proposal that pertains to trading halts due to the fact that the Supplementary Material to Exchange Rule 702 already includes the applicable language.

Calculation of Theoretical Price Using a Third Party Provider

Under the harmonized rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to Rule 720, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange uses this NBB or NBO as the Theoretical Price.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74897 (May 7, 2015); 80 FR 27415 (May 13, 2015) (SR–ISE–Gemini–2015–11) (the ''Initial Filing'').

[4] *See* Securities Exchange Act Release No. 34–81084 (July 6, 2017) (granting approval of Bats BZX proposal), 82 FR 32216 (July 12, 2017); 82 FR 23684 (May 23, 2017) (SR–BatsBZX–2017–035) (notice of filing of Bats BZX proposal).