

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * <input type="text" value="24"/> | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="13"/> | Amendment No. (req. for Amendments *) <input type="text"/> |
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Filing by
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | <input type="checkbox"/> 19b-4(f)(5) |
| | | | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(6) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| Section 3C(b)(2) * <input type="checkbox"/> | |

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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend the GEMX Schedule of Fees to offer the historical GEMX Open Close Trade Profile product.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date

By

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for each GEMX-listed option on both an intraday and end-of-day basis, as described further below.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

Daniel A. Cantu
Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend its Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis. The data provided with this product is similar to the historical data provided with the ISE Open/Close Trade Profile products.⁴ The Exchange is prepared to offer this product upon filing.

The historical GEMX Open/Close Trade Profile, available to both members and non-members, will provide subscribers with the ability to analyze trade and volume data for options and create and test trading models and analytical strategies. The service will provide over 80 fields of data for GEMX-listed options, which will include an "Origin Code"⁵ identifying the type of trader participating in a transaction; data on opening buys

⁴ Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday); see also Securities Exchange Act Release 56254 (August 15, 2007) 72 FR 47104 (August 22, 2007) (SR-ISE-2007-70).

⁵ The "Origin Code" identifies the type of trader involved in a transaction: Customer, Professional Customer, Firm or Market Maker. "Customer" includes both retail and institutional customers. A "Professional Customer" is a high-activity customer that enters into more than 390 orders per day over the course of a one-month period. A "Firm" is a broker-dealer trading in its own proprietary account or on behalf of another broker-dealer. A "Market Maker" is a broker-dealer that assumes the risk of holding a position in a series to facilitate trading.

and sells and closing buys and sells;⁶ trading volume and number of trades information summarized by day and series; a code indicating the degree to which a series is “in” or “out” of the “money”;⁷ the number of days to expiration; an indication of the degree to which there is “Open Interest”⁸ for each series; and a comparison of the volume of trading at GEMX relative to the industry as a whole. The data will help subscribers understand the market, identifying, for example, the types of market participants—Customers, Professional Customers, Firms or Market Makers—trading in certain options or engaging in particular trading strategies.

Requests for end-of-day data will be charged \$400 per request per month, and requests for intraday data (available in 10 minute increments) will be charged \$750 per request per month. Historical data is available starting in August 2013.

⁶ An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

⁷ The degree to which a series is “in” or “out” of the “money” will be identified according to the following five levels of “moneyness”: (i) “Deep in the Money” means that the strike price of this option is more than 12% lower than the price of the underlying security if it is a call or more than 12% higher if it is a put; (ii) “In the Money” means that the strike price of this option is within the range of 5%-12% lower than the price of the underlying security if it is a call or within the range of 5%-12% higher if it is a put; (iii) “At the Money” means that the strike price of this option is within the range of 5% higher or lower than the price of the underlying security; (iv) “Out of the Money” means that the strike price of this option is within the range of 5%-12% higher than the price of the underlying security if it is a call or 5%-12% lower if it is a put; and (v) “Deep out of the Money” means that the strike price of this option is more than 12% higher than the price of the underlying security if it is a call or more than 12% lower if it is a put.

⁸ “Open Interest” is the total number of outstanding contracts for each series across all options exchanges for the trade date of the file.

The proposed rule change is fair and reasonable and will increase transparency in the market by making previously unavailable data on GEMX-listed options available to both members and non-members. This newly-available data will allow firms to create and test trading models and analytical strategies that may be used to improve market performance.

The proposed fees are entirely optional in that they apply only to firms that elect to purchase these products. The proposed changes do not impact the cost of any other GEMX product.

b. 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 Section 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 any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

broader forms that are most important to investors and listed companies.”¹¹

Likewise, in NetCoalition v. Securities and Exchange Commission¹² (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹³ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁴

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁵ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹³ See NetCoalition, at 534 - 535.

¹⁴ Id. at 537.

¹⁵ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange believes that the creation of the historical GEMX Open/Close Trade Profile product is reasonable and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. The proposed changes will increase transparency by allowing firms currently unable to access the information contained in the GEMX Open/Close Trade Profile the ability to analyze option trade and volume data and create and test trading models and analytical strategies. The proposed fees, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other options exchanges.¹⁶ The proposed fees are not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated subscribers.

4. 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 proposed changes will amend the Exchange's Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis. End-of-day data will be available for \$400 per request per month, and intraday data will be available for \$750 per request per month.

GEMX market data fees are constrained by competition among exchanges and other entities seeking to attract order flow, and the existence of substitutes that are offered, or may be offered, by other entities. Order flow is the "life blood" of the

¹⁶ The Exchange notes that the fees for the proposed product are less than the fees for similar products sold by the Nasdaq ISE exchange. See Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday).

exchanges. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade, as demonstrated by the proliferation of new options exchanges such as EDGX Exchange and MIAX Options within the last four years. Each options exchange is permitted to produce proprietary data products.

The markets for order flow and proprietary data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with GEMX and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the prospective customer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products.

The price of options data is also constrained by the existence of multiple substitutes offered by a number of entities, and non-proprietary data disseminated by the Options Price Reporting Authority, LLC (“OPRA”). OPRA is a securities information processor that disseminates last sale reports and quotations, as well as the number of options contracts traded, open interest and end-of-day summaries. Many customers that obtain information from OPRA do not also purchase proprietary data, but in cases in which customers buy both products, they may shift purchasing decisions based on price changes. OPRA constrains the price of proprietary data products on options exchanges because no customer would pay an excessive price for these products when they already

have data from OPRA. Similarly, no customer would pay an excessive price for Exchange data when they have the ability to obtain similar proprietary data from other exchanges. It is not necessary that products be identical in order to be reasonable substitutes for each other.

For these reasons, the competition for order flow and the existence of multiple substitutes will constrain prices for the GEMX Trade Profile product. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder¹⁸ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

interest.

The proposed change does not significantly affect the protection of investors or the public interest because the data is purely historical, only of use to create and test trading models and analytical strategies, similar data is already being provided by the ISE Open/Close Trade Profile products,¹⁹ and the purchase of such data is purely optional. There is no risk of harm to investors or the public interest under such circumstances.

As explained in greater detail in Section 4 above, the proposed change does not impose any significant burden on competition because it is an optional product and, if the cost of the product exceeds its expected value, the prospective customer will choose not to buy it.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become

¹⁹ Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday).

operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may provide historical data to customers that have expressed a specific interest in purchasing such data. The data is purely historical, only of use to create and test trading models and analytical strategies, similar data is already being provided by the ISE, and the purchase of such data is purely optional. Under such circumstances, there is no basis to require customers interested in purchasing that data to wait for 30 days. The Exchange is prepared to offer this product upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2017-13)

April __, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees to Offer the Historical GEMX Open/Close Trade Profile

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 May 5, 2017, 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 amend the Exchange's Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for each GEMX-listed option on both an intraday and end-of-day basis, as described further below.

The text of the proposed rule change is available on the Exchange's Website at www.ise.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend its Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis. The data provided with this product is similar to the historical data provided with the ISE Open/Close Trade Profile products.³ The Exchange is prepared to offer this product upon filing.

The historical GEMX Open/Close Trade Profile, available to both members and non-members, will provide subscribers with the ability to analyze trade and volume data for options and create and test trading models and analytical strategies. The service will provide over 80 fields of data for GEMX-listed options, which will include an "Origin

³ Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday); see also Securities Exchange Act Release 56254 (August 15, 2007) 72 FR 47104 (August 22, 2007) (SR-ISE-2007-70).

Code”⁴ identifying the type of trader participating in a transaction; data on opening buys and sells and closing buys and sells;⁵ trading volume and number of trades information summarized by day and series; a code indicating the degree to which a series is “in” or “out” of the “money”;⁶ the number of days to expiration; an indication of the degree to which there is “Open Interest”⁷ for each series; and a comparison of the volume of trading at GEMX relative to the industry as a whole. The data will help subscribers understand the market, identifying, for example, the types of market participants—

⁴ The “Origin Code” identifies the type of trader involved in a transaction: Customer, Professional Customer, Firm or Market Maker. “Customer” includes both retail and institutional customers. A “Professional Customer” is a high-activity customer that enters into more than 390 orders per day over the course of a one-month period. A “Firm” is a broker-dealer trading in its own proprietary account or on behalf of another broker-dealer. A “Market Maker” is a broker-dealer that assumes the risk of holding a position in a series to facilitate trading.

⁵ An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

⁶ The degree to which a series is “in” or “out” of the “money” will be identified according to the following five levels of “moneyness”: (i) “Deep in the Money” means that the strike price of this option is more than 12% lower than the price of the underlying security if it is a call or more than 12% higher if it is a put; (ii) “In the Money” means that the strike price of this option is within the range of 5%-12% lower than the price of the underlying security if it is a call or within the range of 5%-12% higher if it is a put; (iii) “At the Money” means that the strike price of this option is within the range of 5% higher or lower than the price of the underlying security; (iv) “Out of the Money” means that the strike price of this option is within the range of 5%-12% higher than the price of the underlying security if it is a call or 5%-12% lower if it is a put; and (v) “Deep out of the Money” means that the strike price of this option is more than 12% higher than the price of the underlying security if it is a call or more than 12% lower if it is a put.

⁷ “Open Interest” is the total number of outstanding contracts for each series across all options exchanges for the trade date of the file.

Customers, Professional Customers, Firms or Market Makers—trading in certain options or engaging in particular trading strategies.

Requests for end-of-day data will be charged \$400 per request per month, and requests for intraday data (available in 10 minute increments) will be charged \$750 per request per month. Historical data is available starting in August 2013.

The proposed rule change is fair and reasonable and will increase transparency in the market by making previously unavailable data on GEMX-listed options available to both members and non-members. This newly-available data will allow firms to create and test trading models and analytical strategies that may be used to improve market performance.

The proposed fees are entirely optional in that they apply only to firms that elect to purchase these products. The proposed changes do not impact the cost of any other GEMX product.

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 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 any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁰

Likewise, in NetCoalition v. Securities and Exchange Commission¹¹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹² As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹³

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹¹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹² See NetCoalition, at 534 - 535.

¹³ Id. at 537.

otherwise, in the execution of order flow from broker dealers'"¹⁴ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the creation of the historical GEMX Open/Close Trade Profile product is reasonable and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. The proposed changes will increase transparency by allowing firms currently unable to access the information contained in the GEMX Open/Close Trade Profile the ability to analyze option trade and volume data and create and test trading models and analytical strategies. The proposed fees, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other options exchanges.¹⁵ The proposed fees are not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated subscribers.

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 proposed changes will amend the Exchange's Schedule of Fees to offer the historical GEMX Open/Close Trade Profile, which will offer historical opening and closing trade data for GEMX-listed options on both an intraday and end-of-day basis.

¹⁴ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁵ The Exchange notes that the fees for the proposed product are less than the fees for similar products sold by the Nasdaq ISE exchange. See Nasdaq ISE, Schedule of Fees, Chapter VIII (Market Data), A (Nasdaq ISE Open/Close Trade Profile End of Day) and B (Nasdaq ISE Open/Close Trade Profile Intraday).

End-of-day data will be available for \$400 per request per month, and intraday data will be available for \$750 per request per month.

GEMX market data fees are constrained by competition among exchanges and other entities seeking to attract order flow, and the existence of substitutes that are offered, or may be offered, by other entities. Order flow is the “life blood” of the exchanges. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade, as demonstrated by the proliferation of new options exchanges such as EDGX Exchange and MIAX Options within the last four years. Each options exchange is permitted to produce proprietary data products.

The markets for order flow and proprietary data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with GEMX and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the prospective customer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products.

The price of options data is also constrained by the existence of multiple substitutes offered by a number of entities, and non-proprietary data disseminated by the Options Price Reporting Authority, LLC (“OPRA”). OPRA is a securities information processor that disseminates last sale reports and quotations, as well as the number of

options contracts traded, open interest and end-of-day summaries. Many customers that obtain information from OPRA do not also purchase proprietary data, but in cases in which customers buy both products, they may shift purchasing decisions based on price changes. OPRA constrains the price of proprietary data products on options exchanges because no customer would pay an excessive price for these products when they already have data from OPRA. Similarly, no customer would pay an excessive price for Exchange data when they have the ability to obtain similar proprietary data from other exchanges. It is not necessary that products be identical in order to be reasonable substitutes for each other.

For these reasons, the competition for order flow and the existence of multiple substitutes will constrain prices for the GEMX Trade Profile product. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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 Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷

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 e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2017-13 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 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.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2017-13. 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 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 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-2017-13 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.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

**Nasdaq GEMX, LLC
RULES**

* * * * *

**Nasdaq GEMX
Schedule of Fees**

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V. Market Data

A. – C. No change.

D. Nasdaq GEMX Open/Close End of Day Trade Profile

Ad-hoc requests (historical data) - \$400 per request per month. An ad-hoc request can be made for any number of months, beginning in August 2013, for which data is available.

E. Nasdaq GEMX Open/Close Intraday Trade Profile

Ad-hoc requests (historical data) - \$750 per request per month. An ad-hoc request can be made for any number of months, beginning in August 2013, for which data is available.

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