

Required fields are shown with yellow backgrounds and asterisks.

Filing by Nasdaq GEMX, LLC
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

A proposal to amend its rules related to Market Maker (i.e., Primary Market Maker and Competitive Market Maker) quoting obligations.

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 * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.Kim@nasdaq.com

Telephone * (212) 231-5106 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 10/30/2018 Global Chief Legal and Policy Officer

By Edward S. Knight

(Name *)

edward.knight@nasdaq.com

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 EFFS 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 *

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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 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

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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

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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 its rules related to Market Maker (i.e., Primary Market Maker and Competitive Market Maker) quoting obligations.

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 September 19, 2017. 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:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend Rule 804(e) to provide greater detail regarding the quoting obligations of Market Makers and the manner in which they are calculated, and to restructure the current rules to conform to rule text used on its affiliated options market, Nasdaq Phlx ("Phlx").³ The Exchange seeks to make conforming changes to Rule 804(e) to promote structural consistency of the Exchange's rules with those of its affiliated options markets, and to allow its members to quickly compare quoting obligations across the Nasdaq, Inc. affiliated options markets.⁴ The Exchange notes that it is generally including additional detail in its rules on the existing obligations and process using the same format as Phlx Rule 1081(c). Other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards as further described below, no changes to the current practice or to the current quoting obligations are being contemplated by this rule change. Accordingly, to the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule 1081(c) or codifying current practice explicitly within the proposed rule, as further discussed below.

³ See Phlx Rule 1081(c). See also Securities Exchange Act Release No. 83209 (May 10, 2018), 83 FR 22717 (May 16, 2018) (SR-Phlx-2018-22) (order granting approval of proposed rule change to amend Phlx's quoting requirements, among other changes).

⁴ Nasdaq ISE, LLC ("ISE") and Nasdaq MRX, LLC will file similar proposals.

Rule 804(e)

The Exchange first proposes to remove the word “continuous” from the title of Rule 804(e) and retitle the Rule as “Intra-day Quotes.” The Exchange is replacing the word “continuous” with “intra-day” because the Exchange notes that Market Makers quote a percentage of the day and therefore the word “continuous” may not accurately reflect the manner in which Market Makers quote on GEMX. The Exchange also proposes related changes to replace the word “continuous” with “intra-day” within the Rulebook, specifically in Rules 701(c)(3) and (4), and Rule 702(d)(4).⁵

The Exchange also proposes to amend Rule 804(e) by deleting the introductory sentence: “A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following.” The Exchange proposes to specifically detail a Market Maker’s quoting obligations in new rule text within paragraph (e) and therefore believes that the deleted language is not necessary given that the following sentences will replace this language, as described below.

The Exchange proposes to add new rule text to Rule 804(e). The first new sentence will provide, similar to Phlx Rule 1081(c): “A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day⁶ on the Exchange.” The Exchange believes this sentence is clearer than the

⁵ The Exchange notes that as part of a parallel ISE filing that also proposes to amend the quoting obligations, ISE proposes to replace the word “continuous” with “intra-day” within ISE Rule 1614(b)(10). ISE Chapter 16, including ISE Rule 1614, is incorporated by reference into the Exchange’s Rulebook. As such, the proposed amendment to ISE Rule 1614 will also apply to GEMX Rule 1614. See SR-ISE-2018-90.

⁶ An intra-day listing or add of a series means, for purposes of this Rule 804(e), as an option series that is added manually on the same day the series begins trading.

current Rule 804(e) because it excepts intra-day quotes. The Exchange notes that this is the case today, where a Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition on the day it was added. The Exchange does not count intra-day adds of a series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day adds would have on the calculation of its quoting obligations.

The Exchange also proposes to note within the new rule text the specific quoting obligations for each type of Market Maker by adding: “On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.” The Exchange proposes to note within the new rule text the specific quoting obligations for each type of Market Maker. The Exchange is also adding rule text to explain the interplay between the quoting obligations for Competitive Market Makers, Primary Market Makers, and Competitive Market Makers that are Preferred Market Makers.⁷ Specifically, the Exchange proposes to add, similar to Phlx Rules:⁸ “A Member will be

The Exchange notes that an intra-day add of a series would be counted the following trading day (next business day after the intra-day add of a series was listed) when the options series would be available for a full trading day.

⁷ Supplementary Material .03 to Rule 713 allows an Electronic Access Member to designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

⁸ See Phlx Rule 1081(c).

required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any assigned options class in which it receives the Preferred Order.” This is the case today, even though the current rule text does not explicitly state that each obligation is separate. As such, the Exchange is proposing to make clear that a member who is a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be separately met depending on the role.

Rule 804(e)(1)

To align its rule structure with Phlx Rule 1081(c), the Exchange proposes to relocate the quoting obligations of Competitive Market Makers currently in subparagraph (2) of Rule 804(e) to subparagraph (1), and set forth the rule text currently in subparagraphs (2)(i) and (2)(ii) therein, with a non-substantive modification from the current “intraday” to “intra-day” for consistency throughout the Rule. As such, proposed Rule 804(e)(1) will read: “On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day.”⁹

⁹ The quoting obligations of Primary Market Makers currently in subparagraph (1) of Rule 804(e) and Supplementary Material to Rule 804 will be set forth in new subparagraph (2) under the Exchange’s proposal, as further discussed below.

The Exchange also proposes to remove the following sentence in Rule 804(e)(2)(iii): “Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary Material .03 to Rule 713 regarding Preferred Orders).” The Exchange proposes to replace this language with language in Rule 804(e)(1) that more technically defines a Competitive Market Maker’s quoting obligation.¹⁰ The Exchange proposes the following rule text: “If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.” The 60% quoting requirement and the manner in which it is calculated as a percentage of time is not being amended.¹¹ The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 60% quoting requirement, which would bring the Exchange’s rule in line with Phlx Rule

¹⁰ The proviso setting forth the 90% quoting obligation for Competitive Market Makers with Preferred Orders currently in subparagraph (2)(iii) will be replaced with more detailed language in proposed Rule 804(e)(3), as further described below.

¹¹ As further discussed below, the Exchange will go from minutes to seconds as a way to express how it will calculate this percentage of time. See note 16 below, with accompanying text.

1081(c)(ii)(A). The Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹² Otherwise, the proposed amendments described above are either stylistic in nature or clarifying changes that are intended to more specifically state the current quoting obligations as 60% of the cumulative number of seconds rather than 60% of the time the class is open for trading on the Exchange.¹³ While the current rule more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent. Furthermore, the Exchange adopted the Market Maker quoting requirements as part of its application to be registered as a national securities exchange under its previous name of Topaz Exchange, LLC.¹⁴ In approving the Market Maker quoting requirements, the Commission noted that the Exchange's Market Maker requirements were identical to ISE's rules.¹⁵ ISE in its adopting rule filing for the 60% standard stated that it would "calculate the percentage of time a market maker quotes by dividing the number of minutes a Market Maker quotes in series of an options class (numerator) by the total minutes all series of the options class

¹² Any such higher percentage would involve appropriate advance announcement, which would then be available on the Exchange's website.

¹³ Phlx Rule 1081(c)(ii)(A) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

¹⁴ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209). The Exchange subsequently changed its name to ISE Gemini and then later to Nasdaq GEMX.

¹⁵ Id. at 46635.

were open for trading on the Exchange (denominator).”¹⁶ As such, the proposed changes for GEMX will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(A) and also makes clear that the obligation is at the firm level and that all associated Competitive Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to add in Rule 804(e)(1): “Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted option series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.” These exceptions exist today for GEMX and are being carried over into proposed Rule 804(e)(1) from current Supplementary Material .02 to Rule 804 with some modifications to conform to Phlx Rule 1081(c)(ii)(A). The majority of the changes from the current rule text are stylistic in nature to conform to Phlx’s language and to define ETFs within the rule text itself. The Exchange also proposes to add Quarterly Options Series, which is defined in Rule 100(a)(55), to the list of exceptions to the quoting obligations for Competitive Market Makers. Quarterly Options Series are excluded from a Competitive Market Maker’s quoting obligations today, and the Exchange therefore seeks to codify its current practice within the proposed rule text. The

¹⁶ See Securities Exchange Act Release No. 69175 (March 19, 2013), 78 FR 17988 (March 25, 2013) (SR-ISE-2013-17) (“2013 ISE Proposal”) at 17989. See also SR-ISE-2018-90.

Exchange notes that Quarterly Options Series are similarly excluded from the market maker quoting obligations on Phlx.¹⁷

The Exchange also proposes to add to Rule 804(e)(1): “Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1).” This language is being relocated from current Supplementary Material .02 to Rule 804, with a modification to update the cross-reference.

Further, the definition of adjusted options series currently within Supplementary Material .02 to Rule 804 will be relocated to subparagraph (1)(ii) of Rule 804(e), and will be defined as “Adjusted Options Series” throughout Rule 804(e). The Exchange also proposes to use the defined term “Exchange-Traded Fund Shares,” which is defined in Rule 502(h), instead of “exchange-traded fund shares” in the proposed definition of Adjusted Options Series for consistency with the rest of the Exchange’s Rulebook.

Finally, the Exchange proposes to relocate current subparagraph (2)(iv) in Rule 804(e) to proposed subparagraph (1)(ii). The Exchange is not proposing any amendments to the rule text itself other than to replace the word “continuous” with “intra-day” for the reasons discussed above.

Rule 804(e)(2)

As noted above, the Exchange proposes to set forth the quoting obligations of Primary Market Makers in Rule 804(e)(2). Currently as set forth in Rule 804(e)(1), Primary Market Makers must enter continuous quotations in all of the series of the

¹⁷ See Phlx Rule 1081(c)(ii)(A).

options classes to which they are appointed.¹⁸ Pursuant to Supplementary Material .01 to Rule 804, Primary Market Makers are deemed to have provided continuous quotes if they provide two-sided quotes for 90% of the time that an options class is open for trading on the Exchange. Similar to the quoting obligations for Competitive Market Makers, the Exchange proposes to replace this language with language in Rule 804(e)(2) that more technically defines a Primary Market Maker's quoting obligations. Proposed Rule 804(e)(2) will provide that Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.¹⁹ Similar to the proposed changes to the 60% quoting requirement for Competitive Market Makers discussed above, the 90% quoting requirement for Primary Market Makers and the manner in which it is calculated as a percentage of time is not being amended. The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(B). As discussed above for the Competitive Market Maker quoting obligations, the Exchange believes it may be appropriate to apply

¹⁸ This means that the Primary Market Maker quoting requirement includes all series of an appointed options class, including the options series that are currently excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs (i.e., Quarterly Options Series, Adjusted Options Series, and long-term options). As discussed below, the Exchange will explicitly state that a Primary Market Maker's quoting obligations will include these specified options series.

¹⁹ Phlx Rule 1081(c)(ii)(B) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

a higher standard if doing so would be in the interest of a fair and orderly market.²⁰

Otherwise, the Exchange does not propose to amend the current 90% quoting requirement; rather, the Exchange proposes to more specifically state the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange. While the current rule in Supplementary Material .01 to Rule 804 more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent.²¹ Accordingly, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” to the first sentence conforms to Phlx Rule 1081(c)(ii)(B) and also makes clear that the obligation is at the firm level and that all associated Primary Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to more specifically state within Rule 804(e)(2) that Primary Market Makers shall be required to make two-sided markets pursuant to Rule 804(e)(2) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. The proposed changes

²⁰ See note 12 above.

²¹ See 2013 ISE Proposal, footnote 13 (providing that to calculate whether a Primary Market Maker has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a Primary Market Maker maintained quotations in options series of a class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator)). As discussed above, GEMX’s quoting requirements are identical to ISE’s requirements.

do not amend the current quoting obligations of Primary Market Makers with respect to these options series. As discussed above, Supplementary Material .02 to Rule 804 currently excludes adjusted options series and long-term options series from the quoting obligations of Competitive Market Makers and Preferred CMMs. As noted above, while the current rule in paragraph (e)(1) implicitly provides that these exceptions do not apply to Primary Market Makers and that their quoting obligations include such series, the Exchange proposes to explicitly state that Primary Market Makers are required to make two-sided markets in the specified options series. Furthermore, Primary Market Makers are required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the Rule 804(e)(2) to codify its current practice. The Exchange notes that Phlx Specialists are similarly required to make two-sided markets in Quarterly Options Series.²²

Rule 804(e)(3)

Currently as set forth in Rule 804(e)(2)(iii), a Competitive Market Maker is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives the Preferred Order pursuant to Supplementary Material .03 to Rule 713. The Exchange now proposes to replace this language with language that more technically defines the quoting obligations of the Competitive Market Maker that receives the Preferred Order (i.e., Preferred CMM) in new Rule 804(e)(3). The Exchange proposes to add in Rule 804(e)(3) that Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher

²² See Phlx Rule 1081(c)(ii)(B).

percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

The Exchange notes that similar to the proposed language for the Competitive Market Maker and Primary Market Maker quoting obligations discussed above, the only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(C). As discussed above for the Competitive Market Maker and Primary Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²³ Otherwise, the 90% quoting requirement for Preferred CMMs and the manner in which it is calculated as a percentage of time is not being amended; rather, the Exchange proposes to more specifically express the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open

²³ See note 12 above.

for trading on the Exchange.²⁴ As noted above for Competitive Market Makers and Primary Market Makers, the two standards are equivalent even though the current rule more generally expresses that the Exchange reviews quoting as a percentage of time. As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself.

Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(C) and also makes clear that the obligation is at the firm level and that all associated Preferred CMMs will be counted in arriving at the calculation for quoting obligations. Furthermore, the proposed language is being added to clarify when a Preferred CMM is considered to be preferenced in an assigned options class, and does not amend the Exchange’s current practice. The Exchange, similar to today, will exclude any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options from the quoting obligations of Preferred CMMs.²⁵ As discussed above, Supplementary Material .02 to Rule 804 currently provides an exception from the quoting obligations in adjusted options series and any long-term options series for Preferred CMMs. As such, proposed Rule 804(e)(3) makes clear that such Members are not required to make two-sided markets in these options series. In addition, Preferred CMMs are not required to make two-sided markets in Quarterly

²⁴ Phlx Rule 1081(c)(ii)(C) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²⁵ This exception is currently set forth in Supplementary Material .02 to Rule 804.

Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the list of exceptions in proposed Rule 804(e)(3) to codify its current practice.²⁶

The Exchange will add in proposed Rule 804(e)(3) similar language for Preferred CMMs as proposed for Competitive Market Makers in Rule 804(e)(1) that Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). This language is currently in Supplementary Material .02 to Rule 804, and applies to the quoting obligations for both Competitive Market Makers and Preferred CMMs. Finally, the Exchange proposes to relocate language from Supplementary Material .02 to Rule 804 into new paragraph (e)(3), with some modifications to update a cross-reference and remove redundant language, as follows: “A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq GEMX Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).”

Rule 804(e)(4)

The Exchange proposes to add new rule text at Rule 804(e)(4) to provide the method by which the Exchange will calculate the Market Maker quoting obligations contained in proposed subparagraphs (1) – (3) of Rule 804(e). The Exchange proposes to state that the Exchange will (i) take the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and

²⁶ Directed SQTs and Directed RSQTs on Phlx are similarly excluded from making two-sided markets in Quarterly Options Series. See Phlx Rule 1081(c)(ii)(C).

Preferred CMMs, Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) divide that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculates the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated; rather the Exchange is simply adding to the current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange also proposes to add the following in Rule 804(e)(4): “Quoting is not required in every assigned options series.” This sentence is not currently in the rule. The added language is not amending the Exchange’s current practice; rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation (i.e., the Market Maker is not required to quote every single assigned options series in order to meet its quoting obligations). Also, the Exchange proposes to state: “Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member.” This language is similar to language presently in Supplementary Material .01 to Rule 804²⁷ and clarifies that the quoting obligations apply to all of the Market Maker’s assigned options series

²⁷ The current language provides: “Compliance with this Primary Market Maker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis.”

collectively, which is how the Exchange applies the quoting obligation today. As such, the proposed language simply conforms the text to Phlx Rule 1081(c)(ii)(D).

Rule 804(e)(5)

The Exchange proposes to adopt a new Rule 804(e)(5) to provide that GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. This language is similar to language presently in Supplementary Material .01 to Rule 804,²⁸ but specifies that GEMX Regulation (i.e., the Exchange's regulatory department) may consider exceptions to the quoting obligation, which is the case today, and aligns the rule text to Phlx Rule 1081(c)(iii). The Exchange further proposes to add the following rule text to new Rule 804(e)(5): "For purposes of the Exchange's surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day." The proposed rule text is similar to language currently in Supplementary Material .01 to Rule 804,²⁹ and is merely rephrased

²⁸ The current language provides: "The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances."

²⁹ The current language provides: "Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804."

to conform to Phlx Rule 1081(c)(iii). As such, the Exchange is not amending the manner in which the surveillance functions today, and the proposed amendments to Rule 804(e)(5) are not substantive in nature.

Rule 804(e)(6)

The Exchange proposes to adopt a new Rule 804(e)(6) that provides: “If a technical failure or limitation of a System of the Exchange prevents a Member from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes.” This language is being relocated from Supplementary Material .01 to Rule 804, and modified to specifically refer to the calculations in proposed subparagraph (e), capitalize “System,” which is a defined term, and rephrased to conform to Phlx Rule 1081(c)(iv).

Clean-up Changes

The Exchange proposes to delete Supplementary Materials .01 and .02 to Rule 804, and all related cross-references throughout the Rulebook. As explained above, this rule text is being relocated within the proposed rule text with some modifications. Finally, the Exchange proposes to update all cross-references to Rule 804(e) in its Rules to reflect the proposed renumbering and expansion of rules described above.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular,

³⁰ 15 U.S.C. 78f(b).

in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that its proposed rule change provides further detail as to the quoting obligations of Market Makers. As discussed above, other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange is not amending current practice or its current quoting obligations. The Exchange believes that it is consistent with the Act to have the ability to announce a higher percentage in the interest of maintaining a fair and orderly market. As noted above, the Exchange would provide appropriate advance announcement for any such higher percentage, which would then be available on the Exchange's website. Otherwise, the Exchange notes that to the extent that there are rule text changes from the current language, these differences are all to harmonize its rules with Phlx Rule 1081(c) to promote consistency among similar rules of the Exchange and its affiliates, or to codify its current practice within the proposed rule text to bring transparency to the Exchange's rulebook.

Specifically, the Exchange believes that replacing "continuous" with "intra-day" throughout the rulebook is consistent with the Act because it more accurately reflects the manner in which Market Makers quote on GEMX. Also in the introductory sentence to Rule 804(e), the Exchange is codifying its current practice of excluding intra-day additions of assigned options series from a Market Maker's quoting obligations to make clear that Market Makers would not be responsible for such series on the day it was

³¹ 15 U.S.C. 78f(b)(5).

added. As noted above, for purposes of calculating the quoting obligations, the Exchange counts an intra-day add of a series the following trading day when the options series would be available for a full trading day. The Exchange believes that codifying this current exception within the rule text is consistent with the Act as it will bring transparency to the Exchange's rulebook. The Exchange does not count intra-day adds of options series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day additions would have on the calculation of its quoting obligations. The Exchange also believes that codifying its current practice of excluding Quarterly Options Series from the quoting requirements of Competitive Market Makers and Preferred CMMs will bring clarity to the Exchange's rulebook that quotes in such series will not be considered in determining whether a Competitive Market Maker or Preferred CMM complied with their respective quoting obligations. Similar to the Adjusted Options Series and long-term options series that are currently explicitly listed as exceptions in the rule text, it is the Exchange's understanding that quoting obligations on these often less frequently traded options series impact the risk parameters acceptable to the Market Makers, and therefore the quoting obligation exceptions (including Quarterly Options Series) are to incentivize Market Makers to continue to seek assignments in these options series and thereby promote liquidity in options classes listed on the Exchange to the benefit of investors and the public interest.

The Exchange is also proposing to explicitly state that a member will be required to meet each market making obligation separately in order to make clear that a

Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be met separately, depending on the role. In addition, the Exchange is expressing each of the current quoting obligations as a percentage of the cumulative number of seconds rather than as a percentage of the time the class is open for trading on the Exchange in order to add more transparency as to the standards by which a Market Maker's quoting obligations are measured. In the same vein, the proposed rule text in Rule 804(e)(4) to describe the exact manner in which the Exchange calculates the quoting obligations by specifying the numerator and denominator calculations, as well as clarifying that quoting is not required in every assigned options series, adds transparency to the Exchange's rulebook, and allows members to better monitor whether they are in compliance with their quoting requirements.

Adding "associated with the same Member" throughout the proposed rule text conforms to Phlx Rule 1081(c)(ii) and adds clarity that the quoting obligations are at the firm level, and that all associated Market Makers will be counted in arriving at the applicable calculation for quoting obligations. Specifically stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series codifies what was implicit in the current rule text which required Primary Market Makers to enter continuous quotations in all of the series listed on the Exchange in their assigned options classes, as further described above. Finally, adding that the Member is considered preferred for that day in all series for that assigned options class in which it received the Preferred Order is similarly codifying the Exchange's current practice and will bring more transparency to the Rulebook.

Overall, the Exchange believes that its proposal is consistent with the Act because the proposed rule text protects investors and the public interest by providing clear language that will be utilized on all Nasdaq, Inc.-affiliated options markets for easy comparison by common members that are engaged in market making activities on both the Exchange and its affiliates. As discussed above, the proposed changes will restructure GEMX's current rules on Market Maker quoting obligations to conform to rule text used on its affiliate, Phlx. The Exchange further believes that the proposed rule changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook, thereby avoiding potential confusion.

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 that is not necessary or appropriate in further of the purposes of the Act. The proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all Market Makers. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange's proposal does not modify the current practice or the current quoting obligations on GEMX, as further discussed above.

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)³² of the Act and Rule 19b-4(f)(6) thereunder³³ 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 interest.

The proposal does not significantly affect the protection of investors or the public interest because it is intended to bring greater transparency to the quoting obligations by adding clear language which explains the manner in which GEMX will calculate the quoting obligations. The Exchange's proposal does not impose any significant burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all Market Makers. The Exchange's proposal does not modify the current quoting obligations on GEMX.

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 requests that the Commission waive the five business day pre-filing requirement, as set forth in Rule 19b-4(f)(6).

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6).

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 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 operative delay to permit the Exchange to immediately amend its quoting obligations to add more detail to the current quoting requirements. It is consistent with the protection of investors and the public interest to bring greater transparency to its rules.

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

The proposal is similar to Phlx Rule 1081(c) because the Exchange is trying to mirror the same level of information contained in the Phlx rule within the Exchange's rule. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, which conforms to Phlx's rule, the Exchange's proposal does not modify the current practice or the current quoting obligations on GEMX. To the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule 1081(c) or codifying current practice explicitly within the proposed rule. These differences are as follows: (i) replacing "continuous" with "intra-day"; (ii) codifying that intra-day

additions of assigned options series are excluded from a Market Maker's quoting obligations; (iii) codifying that Quarterly Options Series are excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs; (iv) stating that a member will be required to meet each market making obligation separately; (v) expressing the current quoting requirements as a percentage of the cumulative number of seconds rather than as a percentage of time; (vi) specifying the numerator and denominator calculations and clarifying that quoting is not required in every assigned options series to meet the quoting requirements; (vii) adding "associated with the same Member" throughout the proposed rule text; (viii) explicitly stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series; and (ix) codifying when the Member is considered preferenced (i.e., for that day in all series for that assigned options class in which it received the Preferenced Order).

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-2018-37)

October __, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend its rules related to Market Maker Quoting Obligations

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 October 30, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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 its rules related to Market Maker (i.e., Primary Market Maker and Competitive Market Maker) quoting obligations.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend Rule 804(e) to provide greater detail regarding the quoting obligations of Market Makers and the manner in which they are calculated, and to restructure the current rules to conform to rule text used on its affiliated options market, Nasdaq Phlx ("Phlx").³ The Exchange seeks to make conforming changes to Rule 804(e) to promote structural consistency of the Exchange's rules with those of its affiliated options markets, and to allow its members to quickly compare quoting obligations across the Nasdaq, Inc. affiliated options markets.⁴ The Exchange notes that it is generally including additional detail in its rules on the existing obligations and process using the same format as Phlx Rule 1081(c). Other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards as further described below, no changes to the current practice or to the current quoting obligations are being contemplated by this rule change. Accordingly, to the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule

³ See Phlx Rule 1081(c). See also Securities Exchange Act Release No. 83209 (May 10, 2018), 83 FR 22717 (May 16, 2018) (SR-Phlx-2018-22) (order granting approval of proposed rule change to amend Phlx's quoting requirements, among other changes).

⁴ Nasdaq ISE, LLC ("ISE") and Nasdaq MRX, LLC will file similar proposals.

1081(c) or codifying current practice explicitly within the proposed rule, as further discussed below.

Rule 804(e)

The Exchange first proposes to remove the word “continuous” from the title of Rule 804(e) and retitle the Rule as “Intra-day Quotes.” The Exchange is replacing the word “continuous” with “intra-day” because the Exchange notes that Market Makers quote a percentage of the day and therefore the word “continuous” may not accurately reflect the manner in which Market Makers quote on GEMX. The Exchange also proposes related changes to replace the word “continuous” with “intra-day” within the Rulebook, specifically in Rules 701(c)(3) and (4), and Rule 702(d)(4).⁵

The Exchange also proposes to amend Rule 804(e) by deleting the introductory sentence: “A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following.” The Exchange proposes to specifically detail a Market Maker’s quoting obligations in new rule text within paragraph (e) and therefore believes that the deleted language is not necessary given that the following sentences will replace this language, as described below.

The Exchange proposes to add new rule text to Rule 804(e). The first new sentence will provide, similar to Phlx Rule 1081(c): “A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed

⁵ The Exchange notes that as part of a parallel ISE filing that also proposes to amend the quoting obligations, ISE proposes to replace the word “continuous” with “intra-day” within ISE Rule 1614(b)(10). ISE Chapter 16, including ISE Rule 1614, is incorporated by reference into the Exchange’s Rulebook. As such, the proposed amendment to ISE Rule 1614 will also apply to GEMX Rule 1614. See SR-ISE-2018-90.

intra-day⁶ on the Exchange.” The Exchange believes this sentence is clearer than the current Rule 804(e) because it excepts intra-day quotes. The Exchange notes that this is the case today, where a Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition on the day it was added. The Exchange does not count intra-day adds of a series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day adds would have on the calculation of its quoting obligations.

The Exchange also proposes to note within the new rule text the specific quoting obligations for each type of Market Maker by adding: “On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.” The Exchange proposes to note within the new rule text the specific quoting obligations for each type of Market Maker. The Exchange is also adding rule text to explain the interplay between the quoting obligations for Competitive Market Makers, Primary Market Makers, and Competitive Market Makers that are Preferred Market Makers.⁷

⁶ An intra-day listing or add of a series means, for purposes of this Rule 804(e), as an option series that is added manually on the same day the series begins trading. The Exchange notes that an intra-day add of a series would be counted the following trading day (next business day after the intra-day add of a series was listed) when the options series would be available for a full trading day.

⁷ Supplementary Material .03 to Rule 713 allows an Electronic Access Member to designate a “Preferred Market Maker” on orders it enters into the System (“Preferenced Orders”). A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

Specifically, the Exchange proposes to add, similar to Phlx Rules:⁸ “A Member will be required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any assigned options class in which it receives the Preferred Order.” This is the case today, even though the current rule text does not explicitly state that each obligation is separate. As such, the Exchange is proposing to make clear that a member who is a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be separately met depending on the role.

Rule 804(e)(1)

To align its rule structure with Phlx Rule 1081(c), the Exchange proposes to relocate the quoting obligations of Competitive Market Makers currently in subparagraph (2) of Rule 804(e) to subparagraph (1), and set forth the rule text currently in subparagraphs (2)(i) and (2)(ii) therein, with a non-substantive modification from the current “intraday” to “intra-day” for consistency throughout the Rule. As such, proposed Rule 804(e)(1) will read: “On any given day, a Competitive Market Maker is not required

⁸ See Phlx Rule 1081(c).

to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day.”⁹

The Exchange also proposes to remove the following sentence in Rule 804(e)(2)(iii): “Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary Material .03 to Rule 713 regarding Preferred Orders).” The Exchange proposes to replace this language with language in Rule 804(e)(1) that more technically defines a Competitive Market Maker’s quoting obligation.¹⁰ The Exchange proposes the following rule text: “If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.” The 60% quoting requirement and the manner in which it is calculated as a

⁹ The quoting obligations of Primary Market Makers currently in subparagraph (1) of Rule 804(e) and Supplementary Material to Rule 804 will be set forth in new subparagraph (2) under the Exchange’s proposal, as further discussed below.

¹⁰ The proviso setting forth the 90% quoting obligation for Competitive Market Makers with Preferred Orders currently in subparagraph (2)(iii) will be replaced with more detailed language in proposed Rule 804(e)(3), as further described below.

percentage of time is not being amended.¹¹ The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 60% quoting requirement, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(A). The Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹² Otherwise, the proposed amendments described above are either stylistic in nature or clarifying changes that are intended to more specifically state the current quoting obligations as 60% of the cumulative number of seconds rather than 60% of the time the class is open for trading on the Exchange.¹³ While the current rule more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent. Furthermore, the Exchange adopted the Market Maker quoting requirements as part of its application to be registered as a national securities exchange under its previous name of Topaz Exchange, LLC.¹⁴ In approving the Market Maker quoting requirements, the Commission noted that the Exchange's Market Maker requirements were identical to ISE's rules.¹⁵ ISE in its

¹¹ As further discussed below, the Exchange will go from minutes to seconds as a way to express how it will calculate this percentage of time. See note 16 below, with accompanying text.

¹² Any such higher percentage would involve appropriate advance announcement, which would then be available on the Exchange's website.

¹³ Phlx Rule 1081(c)(ii)(A) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

¹⁴ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209). The Exchange subsequently changed its name to ISE Gemini and then later to Nasdaq GEMX.

¹⁵ Id. at 46635.

adopting rule filing for the 60% standard stated that it would “calculate the percentage of time a market maker quotes by dividing the number of minutes a Market Maker quotes in series of an options class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator).”¹⁶ As such, the proposed changes for GEMX will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(A) and also makes clear that the obligation is at the firm level and that all associated Competitive Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to add in Rule 804(e)(1): “Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted option series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.” These exceptions exist today for GEMX and are being carried over into proposed Rule 804(e)(1) from current Supplementary Material .02 to Rule 804 with some modifications to conform to Phlx Rule 1081(c)(ii)(A). The majority of the changes from the current rule text are stylistic in nature to conform to Phlx’s language and to define ETFs within the rule text itself. The Exchange also proposes to add Quarterly Options Series, which is defined in Rule 100(a)(55), to the list of exceptions to the quoting obligations for Competitive Market Makers. Quarterly Options Series are

¹⁶ See Securities Exchange Act Release No. 69175 (March 19, 2013), 78 FR 17988 (March 25, 2013) (SR-ISE-2013-17) (“2013 ISE Proposal”) at 17989. See also SR-ISE-2018-90.

excluded from a Competitive Market Maker's quoting obligations today, and the Exchange therefore seeks to codify its current practice within the proposed rule text. The Exchange notes that Quarterly Options Series are similarly excluded from the market maker quoting obligations on Phlx.¹⁷

The Exchange also proposes to add to Rule 804(e)(1): "Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1)." This language is being relocated from current Supplementary Material .02 to Rule 804, with a modification to update the cross-reference.

Further, the definition of adjusted options series currently within Supplementary Material .02 to Rule 804 will be relocated to subparagraph (1)(ii) of Rule 804(e), and will be defined as "Adjusted Options Series" throughout Rule 804(e). The Exchange also proposes to use the defined term "Exchange-Traded Fund Shares," which is defined in Rule 502(h), instead of "exchange-traded fund shares" in the proposed definition of Adjusted Options Series for consistency with the rest of the Exchange's Rulebook.

Finally, the Exchange proposes to relocate current subparagraph (2)(iv) in Rule 804(e) to proposed subparagraph (1)(ii). The Exchange is not proposing any amendments to the rule text itself other than to replace the word "continuous" with "intra-day" for the reasons discussed above.

Rule 804(e)(2)

¹⁷ See Phlx Rule 1081(c)(ii)(A).

As noted above, the Exchange proposes to set forth the quoting obligations of Primary Market Makers in Rule 804(e)(2). Currently as set forth in Rule 804(e)(1), Primary Market Makers must enter continuous quotations in all of the series of the options classes to which they are appointed.¹⁸ Pursuant to Supplementary Material .01 to Rule 804, Primary Market Makers are deemed to have provided continuous quotes if they provide two-sided quotes for 90% of the time that an options class is open for trading on the Exchange. Similar to the quoting obligations for Competitive Market Makers, the Exchange proposes to replace this language with language in Rule 804(e)(2) that more technically defines a Primary Market Maker's quoting obligations. Proposed Rule 804(e)(2) will provide that Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.¹⁹ Similar to the proposed changes to the 60% quoting requirement for Competitive Market Makers discussed above, the 90% quoting requirement for Primary Market Makers and the manner in which it is calculated as a percentage of time is not being amended. The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's

¹⁸ This means that the Primary Market Maker quoting requirement includes all series of an appointed options class, including the options series that are currently excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs (i.e., Quarterly Options Series, Adjusted Options Series, and long-term options). As discussed below, the Exchange will explicitly state that a Primary Market Maker's quoting obligations will include these specified options series.

¹⁹ Phlx Rule 1081(c)(ii)(B) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

rule in line with Phlx Rule 1081(c)(ii)(B). As discussed above for the Competitive Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²⁰ Otherwise, the Exchange does not propose to amend the current 90% quoting requirement; rather, the Exchange proposes to more specifically state the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange. While the current rule in Supplementary Material .01 to Rule 804 more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent.²¹ Accordingly, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” to the first sentence conforms to Phlx Rule 1081(c)(ii)(B) and also makes clear that the obligation is at the firm level and that all associated Primary Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to more specifically state within Rule 804(e)(2) that Primary Market Makers shall be required to make two-sided markets pursuant to Rule 804(e)(2) in any Quarterly Options Series, any Adjusted Options Series, and any options

²⁰ See note 12 above.

²¹ See 2013 ISE Proposal, footnote 13 (providing that to calculate whether a Primary Market Maker has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a Primary Market Maker maintained quotations in options series of a class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator)). As discussed above, GEMX’s quoting requirements are identical to ISE’s requirements.

series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. The proposed changes do not amend the current quoting obligations of Primary Market Makers with respect to these options series. As discussed above, Supplementary Material .02 to Rule 804 currently excludes adjusted options series and long-term options series from the quoting obligations of Competitive Market Makers and Preferred CMMs. As noted above, while the current rule in paragraph (e)(1) implicitly provides that these exceptions do not apply to Primary Market Makers and that their quoting obligations include such series, the Exchange proposes to explicitly state that Primary Market Makers are required to make two-sided markets in the specified options series. Furthermore, Primary Market Makers are required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the Rule 804(e)(2) to codify its current practice. The Exchange notes that Phlx Specialists are similarly required to make two-sided markets in Quarterly Options Series.²²

Rule 804(e)(3)

Currently as set forth in Rule 804(e)(2)(iii), a Competitive Market Maker is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives the Preferred Order pursuant to Supplementary Material .03 to Rule 713. The Exchange now proposes to replace this language with language that more technically defines the quoting obligations of the Competitive Market Maker that receives the Preferred Order (i.e., Preferred CMM) in new Rule 804(e)(3). The Exchange proposes to add in Rule 804(e)(3) that

²² See Phlx Rule 1081(c)(ii)(B).

Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferenced in an assigned options class once the Member receives a Preferenced Order in any option class in which they are assigned and shall be considered a preferenced for that day in all series for that option class in which it received the Preferenced Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

The Exchange notes that similar to the proposed language for the Competitive Market Maker and Primary Market Maker quoting obligations discussed above, the only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(C). As discussed above for the Competitive Market Maker and Primary Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²³ Otherwise, the 90% quoting requirement for Preferred CMMs and the manner in which it is calculated as a percentage of time is not being amended; rather, the Exchange proposes to more specifically express the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open

²³ See note 12 above.

for trading on the Exchange.²⁴ As noted above for Competitive Market Makers and Primary Market Makers, the two standards are equivalent even though the current rule more generally expresses that the Exchange reviews quoting as a percentage of time. As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself.

Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(C) and also makes clear that the obligation is at the firm level and that all associated Preferred CMMs will be counted in arriving at the calculation for quoting obligations. Furthermore, the proposed language is being added to clarify when a Preferred CMM is considered to be preferenced in an assigned options class, and does not amend the Exchange’s current practice. The Exchange, similar to today, will exclude any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options from the quoting obligations of Preferred CMMs.²⁵ As discussed above, Supplementary Material .02 to Rule 804 currently provides an exception from the quoting obligations in adjusted options series and any long-term options series for Preferred CMMs. As such, proposed Rule 804(e)(3) makes clear that such Members are not required to make two-sided markets in these options series. In addition, Preferred CMMs are not required to make two-sided markets in Quarterly

²⁴ Phlx Rule 1081(c)(ii)(C) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²⁵ This exception is currently set forth in Supplementary Material .02 to Rule 804.

Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the list of exceptions in proposed Rule 804(e)(3) to codify its current practice.²⁶

The Exchange will add in proposed Rule 804(e)(3) similar language for Preferred CMMs as proposed for Competitive Market Makers in Rule 804(e)(1) that Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). This language is currently in Supplementary Material .02 to Rule 804, and applies to the quoting obligations for both Competitive Market Makers and Preferred CMMs. Finally, the Exchange proposes to relocate language from Supplementary Material .02 to Rule 804 into new paragraph (e)(3), with some modifications to update a cross-reference and remove redundant language, as follows: “A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq GEMX Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).”

Rule 804(e)(4)

The Exchange proposes to add new rule text at Rule 804(e)(4) to provide the method by which the Exchange will calculate the Market Maker quoting obligations contained in proposed subparagraphs (1) – (3) of Rule 804(e). The Exchange proposes to state that the Exchange will (i) take the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and Preferred CMMs, Quarterly Option Series, any Adjusted Option Series, and any option

²⁶ Directed SQTs and Directed RSQTs on Phlx are similarly excluded from making two-sided markets in Quarterly Options Series. See Phlx Rule 1081(c)(ii)(C).

series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) divide that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculates the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated; rather the Exchange is simply adding to the current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange also proposes to add the following in Rule 804(e)(4): “Quoting is not required in every assigned options series.” This sentence is not currently in the rule. The added language is not amending the Exchange’s current practice; rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation (i.e., the Market Maker is not required to quote every single assigned options series in order to meet its quoting obligations). Also, the Exchange proposes to state: “Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member.” This language is similar to language presently in Supplementary Material .01 to Rule 804²⁷ and clarifies that the quoting obligations apply to all of the Market Maker’s assigned options series collectively, which is how the Exchange applies the quoting obligation today. As such, the proposed language simply conforms the text to Phlx Rule 1081(c)(ii)(D).

Rule 804(e)(5)

²⁷ The current language provides: “Compliance with this Primary Market Maker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis.”

The Exchange proposes to adopt a new Rule 804(e)(5) to provide that GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. This language is similar to language presently in Supplementary Material .01 to Rule 804,²⁸ but specifies that GEMX Regulation (i.e., the Exchange’s regulatory department) may consider exceptions to the quoting obligation, which is the case today, and aligns the rule text to Phlx Rule 1081(c)(iii). The Exchange further proposes to add the following rule text to new Rule 804(e)(5): “For purposes of the Exchange’s surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange’s monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day.” The proposed rule text is similar to language currently in Supplementary Material .01 to Rule 804,²⁹ and is merely rephrased to conform to Phlx Rule 1081(c)(iii). As such, the Exchange is not amending the manner in which the surveillance functions today, and the proposed amendments to Rule 804(e)(5) are not substantive in nature.

²⁸ The current language provides: “The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.”

²⁹ The current language provides: “Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804.”

Rule 804(e)(6)

The Exchange proposes to adopt a new Rule 804(e)(6) that provides: “If a technical failure or limitation of a System of the Exchange prevents a Member from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes.” This language is being relocated from Supplementary Material .01 to Rule 804, and modified to specifically refer to the calculations in proposed subparagraph (e), capitalize “System,” which is a defined term, and rephrased to conform to Phlx Rule 1081(c)(iv).

Clean-up Changes

The Exchange proposes to delete Supplementary Materials .01 and .02 to Rule 804, and all related cross-references throughout the Rulebook. As explained above, this rule text is being relocated within the proposed rule text with some modifications. Finally, the Exchange proposes to update all cross-references to Rule 804(e) in its Rules to reflect the proposed renumbering and expansion of rules described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest. The Exchange believes that its proposed rule change provides further detail as to the quoting obligations of Market Makers. As discussed above, other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange is not amending current practice or its current quoting obligations. The Exchange believes that it is consistent with the Act to have the ability to announce a higher percentage in the interest of maintaining a fair and orderly market. As noted above, the Exchange would provide appropriate advance announcement for any such higher percentage, which would then be available on the Exchange's website. Otherwise, the Exchange notes that to the extent that there are rule text changes from the current language, these differences are all to harmonize its rules with Phlx Rule 1081(c) to promote consistency among similar rules of the Exchange and its affiliates, or to codify its current practice within the proposed rule text to bring transparency to the Exchange's rulebook.

Specifically, the Exchange believes that replacing "continuous" with "intra-day" throughout the rulebook is consistent with the Act because it more accurately reflects the manner in which Market Makers quote on GEMX. Also in the introductory sentence to Rule 804(e), the Exchange is codifying its current practice of excluding intra-day additions of assigned options series from a Market Maker's quoting obligations to make clear that Market Makers would not be responsible for such series on the day it was added. As noted above, for purposes of calculating the quoting obligations, the Exchange counts an intra-day add of a series the following trading day when the options series would be available for a full trading day. The Exchange believes that codifying this

current exception within the rule text is consistent with the Act as it will bring transparency to the Exchange's rulebook. The Exchange does not count intra-day adds of options series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day additions would have on the calculation of its quoting obligations. The Exchange also believes that codifying its current practice of excluding Quarterly Options Series from the quoting requirements of Competitive Market Makers and Preferred CMMs will bring clarity to the Exchange's rulebook that quotes in such series will not be considered in determining whether a Competitive Market Maker or Preferred CMM complied with their respective quoting obligations. Similar to the Adjusted Options Series and long-term options series that are currently explicitly listed as exceptions in the rule text, it is the Exchange's understanding that quoting obligations on these often less frequently traded options series impact the risk parameters acceptable to the Market Makers, and therefore the quoting obligation exceptions (including Quarterly Options Series) are to incentivize Market Makers to continue to seek assignments in these options series and thereby promote liquidity in options classes listed on the Exchange to the benefit of investors and the public interest.

The Exchange is also proposing to explicitly state that a member will be required to meet each market making obligation separately in order to make clear that a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be met separately, depending on the role. In addition, the Exchange is expressing each of the current quoting obligations as a percentage of the

cumulative number of seconds rather than as a percentage of the time the class is open for trading on the Exchange in order to add more transparency as to the standards by which a Market Maker's quoting obligations are measured. In the same vein, the proposed rule text in Rule 804(e)(4) to describe the exact manner in which the Exchange calculates the quoting obligations by specifying the numerator and denominator calculations, as well as clarifying that quoting is not required in every assigned options series, adds transparency to the Exchange's rulebook, and allows members to better monitor whether they are in compliance with their quoting requirements.

Adding "associated with the same Member" throughout the proposed rule text conforms to Phlx Rule 1081(c)(ii) and adds clarity that the quoting obligations are at the firm level, and that all associated Market Makers will be counted in arriving at the applicable calculation for quoting obligations. Specifically stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series codifies what was implicit in the current rule text which required Primary Market Makers to enter continuous quotations in all of the series listed on the Exchange in their assigned options classes, as further described above. Finally, adding that the Member is considered preferenced for that day in all series for that assigned options class in which it received the Preferenced Order is similarly codifying the Exchange's current practice and will bring more transparency to the Rulebook.

Overall, the Exchange believes that its proposal is consistent with the Act because the proposed rule text protects investors and the public interest by providing clear language that will be utilized on all Nasdaq, Inc.-affiliated options markets for easy

comparison by common members that are engaged in market making activities on both the Exchange and its affiliates. As discussed above, the proposed changes will restructure GEMX's current rules on Market Maker quoting obligations to conform to rule text used on its affiliate, Phlx. The Exchange further believes that the proposed rule changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook, thereby avoiding potential confusion.

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 further of the purposes of the Act. The proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all Market Makers. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange's proposal does not modify the current practice or the current quoting obligations on GEMX, as further discussed above.

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 Act³² and subparagraph (f)(6) of Rule 19b-4 thereunder.³³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2018-37 on the subject line.

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2018-37. 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-2018-37 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.³⁴

Eduardo A. Aleman
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX Rulebook

* * * * *

Rule 701. Opening

(a) – (b) No change.

(c) No change.

(1) – (2) No change.

(3) The PMM assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. Provided an options series has not opened pursuant to Rule 701(c)(1)(ii) or (iii), PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. Once an options series has opened pursuant to Rule 701(c)(1)(i) - (iii), a PMM must submit [continuous]intra-day, two-sided quotes in such options series pursuant to [Supplementary Material .01 to] Rule 804(e)(2).

(4) A CMM that submits a quote pursuant to this Rule 701 in any option series when the PMM's quote has not been submitted shall be required, once an options series has opened, to submit [continuous]intra-day, two-sided quotes in such option series pursuant to Rule 804(e)(1)[(2)(iii)].

(5) No change.

(d) – (l) No change.

Rule 702. Trading Halts

(a) – (c) No change.

(d) No change.

(1) – (3) No change.

(4) When the security underlying an option class is in a Limit State or Straddle State, the maximum quotation spread requirements for market maker quotes contained in Rule 803(b)(4) and the [continuous]intra-day quotation requirements contained in Rule 804(e) shall be suspended. The time periods associated with Limit States and Straddle States will not be considered by the Exchange when evaluating whether a market maker complied with the [continuous]intra-day quotation requirements contained in Rule 804(e).

* * * * *

Rule 713. Priority of Quotes and Orders

(a) – (e) No change.

Supplementary Material to Rule 713

.01 – .02 No change.

.03 No change.

(a) – (c) No change.

(d) Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Rule 804(e)(3)(2)(iii).

.04 No change.

* * * * *

Rule 804. Market Maker Quotations

(a) – (d) No change.

(e) [*Continuous*]Intra-day Quotes. [A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following:]A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day on the Exchange. On a daily basis, a market maker must make markets consistent with the applicable quoting requirements specified below. A Member will be required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order.

(1) [Primary Market Makers. Primary Market Makers must enter continuous quotations and enter into any resulting transactions in all of the series listed on the Exchange of the options classes to which it is appointed on a daily basis.

(2) Competitive Market Makers. (i) On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted options series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options. Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1).

(i) An adjusted options series is an options series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series").

(ii) A Competitive Market Maker may initiate quoting in options classes to which it is appointed intraday.

(iii) Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary Material .03 to Rule 713 regarding Preferred Orders).]

(iv)](ii) A Competitive Market Maker may be called upon by an Exchange official designated by the Board to submit a single quote or maintain [continuous] intra-day quotes in one or more of the series of an options class to which the Competitive Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.

(2) Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Primary Market Makers shall be required to make two-sided markets pursuant to this rule in any Quarterly Options Series, any Adjusted Options Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

(3) Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferenced in an assigned options class once the Member receives a Preferenced Order in any option class in which they are assigned and shall be considered preferenced for that day in all series for that option class in which it received the Preferenced Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq GEMX Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).

(4) Specifically, the Exchange will calculate subparagraphs (1) – (3) above by (i) taking the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and Preferred CMMs, Quarterly Options Series, any Adjusted Options Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) dividing that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Quoting is not required in every assigned options series. Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member.

(5) GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided

quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day.

(6) If a technical failure or limitation of a System of the Exchange prevents a market maker from maintaining, or prevents a Member from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes.

(f) – (h) No change.

[Supplementary Material to Rule 804

.01 A Primary Market Maker shall be deemed to have provided continuous quotes pursuant to paragraph (e)(1) of Rule 804 if it provides two-sided quotes for 90% of the time that an options class is open for trading on the Exchange. Compliance with this Primary Market Maker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis. Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804. If a technical failure or limitation of a system of the Exchange prevents a market maker from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the market maker shall promptly notify the Exchange and the duration of such failure shall not be considered in determining whether the market maker has satisfied the quoting requirements. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

.02 The obligation contained in paragraph (e)(2)(iii) of Rule 804 does not include adjusted option series, nor series with a time to expiration of nine (9) months or greater for options on equities and exchange-traded funds or with a time to expiration of twelve (12) months or greater for index options. Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in paragraph (e)(2)(iii). A CMM that chooses to quote adjusted series and/or long-term options must meet all of the quoting obligations applicable to CMMs generally, and may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq ISE Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in Rule 804(e)(2)(iii). For purposes of Rule 804, an adjusted options series is an options series wherein, as a result of a corporate

action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or exchange-traded fund shares.]

Rule 805. Market Maker Orders

(a) *Options Classes to Which Appointed.* Market makers may enter all order types defined in Rule 715 in the options classes to which they are appointed under Rule 802, except Stopped Orders, Reserve Orders and Customer Cross Orders. Competitive Market Makers shall comply with the provisions of Rule 804(e)(1)(2)(iii) upon the entry of such orders if they were not previously quoting in the series.

(b) No change.

(1) No change.

(2) *Competitive Market Makers.* The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Rule 804(e)(1)(2).

(3) No change.

* * * * *