

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"/>
Pilot			Rule		
<input type="checkbox"/>	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="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 \*).

Proposed rule change to adopt the term Professional Customer and reorganize the Rulebook as well as other technical amendments.

**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 * Angela	Last Name * Dunn
Title * Principal Associate General Counsel	
E-mail * Angela.Dunn@nasdaq.com	
Telephone * (215) 496-5692	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 03/20/2019	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 EFFF website.

**Form 19b-4 Information \***

Add Remove View

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt the term “Professional Customer” and reorganize the Rulebook as well as other technical amendments.

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 (the “Board”) on September 26, 2018. 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:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
215-496-5692.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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: (1) adopt a definition specifically for Professional Customer; (2) reorganize Rule 716, “Auction Mechanisms;” (3) add titles to Rule 721, “Crossing Orders,” and (4) renumber parts of Rule 723, “Price Improvement Mechanism for Crossing Transactions.” These changes are to conform the Rulebook to Nasdaq ISE, LLC (“ISE”).<sup>3</sup> Each change will be discussed below.

Universal Change

In addition to the amendments described below, the Exchange proposes to capitalize references to “member” to reflect the defined term “Member.”<sup>4</sup>

Professional Customer

The Exchange proposes to add a new definition for the term “Professional Customer” at proposed new Rule 100(a)(52A) to conform to a recent definition added to the ISE Rulebook. This new term would mean a non-broker/dealer participant who enters at least 390 orders per day on average during a calendar month for its own beneficial account(s). The concept of a Professional is established on GEMX,<sup>5</sup> this new term permits a Professional Customer to be more specifically identified within the Rules. By adopting the new term “Professional Customer” the Exchange believes it can more specifically identify a market participant within its rules.

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<sup>3</sup> See Securities Exchange Act Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR-ISE-2019-05).

<sup>4</sup> The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See Rule 100(a)(31).

<sup>5</sup> See Rule 100(a)(52).

**Rule 716**

The Exchange proposes to retitle Rule 716, currently titled “Block Trades,” as “Auction Mechanisms” because the new title more accurately describes the rule text contained in this rule. The Exchange proposes to relocate the text of Rule 716(a) within current Rule 716(c) and re-letter that Rule as 716(a). The Exchange proposes to remove the “(b)” from Rule 716 so that the following text would apply to the entirety of Rule 716 and all mechanisms within the rule, including proposed relocated text, “For purposes of this Rule, a “broadcast message” means an electronic message that is sent by the Exchange to all Members, and a “Response” means an electronic message that is sent by Members in response to a broadcast message.” This rule text, as written, is being amended so that it is clear that the rule text applies to all mechanisms within this rule, including the mechanisms proposed to be relocated within the rule. In addition, the Exchange proposes to relocate and expand rule text within Supplementary Material .04 to Rule 716<sup>6</sup> to this introductory paragraph so that with the relocation it also would apply to the entire rule. The Exchange proposes to provide, “Also for purposes of this rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.” Today, this rule text applies to all mechanisms within the rule, the Block Order Mechanism, Facilitation Mechanism and Solicitation Mechanism. As amended, the rule text would apply to all the relocated mechanisms as well.

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<sup>6</sup> Supplementary Material .04 to Rule 716 provides, “The time given to Members to enter Responses under paragraphs (c)(1), (d)(1) and (e)(1) shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.”

The Exchange proposes to amend the Facilitation Mechanism to re-letter “d” as “b.” The Exchange proposes to reserve “c”. The Exchange proposes to re-letter Solicited Order Mechanism at “e” as new “d.”

The Exchange proposes to eliminate Supplementary Material .03, which is currently reserved, and .04 to Rule 716, which is being relocated as discussed above. The Exchange proposes to amend Supplementary Material .05 to Rule 716 to renumber it .03. The Exchange proposes to renumber Supplementary Material .06 to Rule 716 as .04. The Exchange proposes to eliminate references to Supplementary Material .07 and .08 to Rule 716, which are currently reserved. The Exchange proposes to renumber Supplementary Material .09 to Rule 716 as .05.

### **Rule 721**

The Exchange proposes to amend Rule 721, Crossing Orders. The Exchange proposes to add a title within Rule 721(a), “Customer Cross Orders.” The Exchange proposes to reserve “b.” The Exchange proposes to re-letter 721(b) as 721(c) and add a title “Qualified Contingent Cross Orders.”

Finally, the Exchange proposes to remove the following outdated rule text, “Qualified Contingent Cross Order functionality will not be available as of a certain date in the first quarter of 2017 to be announced in a notice. The Exchange will recommence Qualified Contingent Cross Order functionality on Nasdaq GEMX on or before March 31, 2018. The Exchange will issue an Options Trader Alert notifying Members when this

functionality will be available.” Qualified Contingent Cross functionality was recommenced on GEMX on February 26, 2018<sup>7</sup> and therefore this rule text is outdated.

### **Rule 723**

The Exchange proposes to delete Supplementary Material .07 to Rule 723. Supplementary Material .08 to Rule 723 is being renumbered as .07 and Supplementary Material .09 to Rule 723 is being renumbered as .08.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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 market system, and, in general to protect investors and the public interest for the reasons described below.

#### Professional Customer

The Exchange believes that adopting the term “Professional Customer” will enable the Exchange to easily reference this market participant in rules and rule changes when differentiating various market participants. It is consistent with the Act to have clearly defined terms to avoid confusion. Adding this reference will enable the Exchange to clearly refer to various market participants. Today, the concept of a Professional is

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<sup>7</sup> The Exchange issued the following Options Trader Alert notifying GEMX Members that Qualified Contingent Cross functionality would be re-introduced: <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2017-76>.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

contained in the Rulebook.<sup>10</sup>

#### Reorganization of the Rulebook and Other Technical Amendments

The Exchange's proposal to relocate various provisions and add titles to conform its current rules to those of ISE is consistent with the Act because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also, making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

#### 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market.

The Exchange's proposal to introduce the term "Professional Customer" will enable the Exchange to distinguish this market participant from other participants. Today, the concept of a Professional is contained in the Rulebook.<sup>11</sup>

The Exchange's proposal to relocate various rules and create new titles to conform its current rules to those of ISE will not impose an undue burden on intra-market or inter-market competition because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from

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<sup>10</sup> See note 5 above.

<sup>11</sup> Id.



Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also, making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

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)<sup>12</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>13</sup> 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 Exchange believes that the proposed rule change to adopt the term "Professional Customer" does not significantly affect the protection of investors or the public interest, rather this term will enable the Exchange to easily reference this market participant in rules and rule changes when differentiating various market participants and conform the definition to ISE. Relocating rules in the Rulebook, removing outdated rule

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

text and adding titles does not significantly affect the protection of investors or the public interest, rather will bring greater clarity to the Rulebook. The Exchange believes that the proposed rule change to adopt the term “Professional Customer” does not impose any significant burden on competition. Today, the concept of a Professional is contained in the Rulebook.<sup>14</sup> The Exchange’s proposal to relocate various rules, remove outdated rule text and add titles does not impose any significant burden on competition because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook and conform the rules to those of ISE.

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

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

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<sup>14</sup> See note 5 above.

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

This rule change conforms rule text to ISE.<sup>15</sup>

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 for publication in the Federal Register.
5. Text of the proposed rule change.

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<sup>15</sup> See note 3 above.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2019-03)

March \_\_, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Term “Professional Customer”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2019, 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 adopt the term “Professional Customer” and reorganize the Rulebook as well as other technical amendments.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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: (1) adopt a definition specifically for Professional Customer; (2) reorganize Rule 716, "Auction Mechanisms;" (3) add titles to Rule 721, "Crossing Orders," and (4) renumber parts of Rule 723, "Price Improvement Mechanism for Crossing Transactions." These changes are to conform the Rulebook to Nasdaq ISE, LLC ("ISE").<sup>3</sup> Each change will be discussed below.

Universal Change

In addition to the amendments described below, the Exchange proposes to capitalize references to "member" to reflect the defined term "Member."<sup>4</sup>

Professional Customer

The Exchange proposes to add a new definition for the term "Professional Customer" at proposed new Rule 100(a)(52A) to conform to a recent definition added to the ISE Rulebook. This new term would mean a non-broker/dealer participant who enters at least 390 orders per day on average during a calendar month for its own beneficial account(s). The concept of a Professional is established on GEMX,<sup>5</sup> this new

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<sup>3</sup> See Securities Exchange Act Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR-ISE-2019-05).

<sup>4</sup> The term "Member" means an organization that has been approved to exercise trading rights associated with Exchange Rights. See Rule 100(a)(31).

<sup>5</sup> See Rule 100(a)(52).

term permits a Professional Customer to be more specifically identified within the Rules. By adopting the new term “Professional Customer” the Exchange believes it can more specifically identify a market participant within its rules.

### **Rule 716**

The Exchange proposes to retitle Rule 716, currently titled “Block Trades,” as “Auction Mechanisms” because the new title more accurately describes the rule text contained in this rule. The Exchange proposes to relocate the text of Rule 716(a) within current Rule 716(c) and re-letter that Rule as 716(a). The Exchange proposes to remove the “(b)” from Rule 716 so that the following text would apply to the entirety of Rule 716 and all mechanisms within the rule, including proposed relocated text, “For purposes of this Rule, a “broadcast message” means an electronic message that is sent by the Exchange to all Members, and a “Response” means an electronic message that is sent by Members in response to a broadcast message.” This rule text, as written, is being amended so that it is clear that the rule text applies to all mechanisms within this rule, including the mechanisms proposed to be relocated within the rule. In addition, the Exchange proposes to relocate and expand rule text within Supplementary Material .04 to Rule 716<sup>6</sup> to this introductory paragraph so that with the relocation it also would apply to the entire rule. The Exchange proposes to provide, “Also for purposes of this rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.” Today, this rule text applies to all mechanisms within the rule, the

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<sup>6</sup> Supplementary Material .04 to Rule 716 provides, “The time given to Members to enter Responses under paragraphs (c)(1), (d)(1) and (e)(1) shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.”

Block Order Mechanism, Facilitation Mechanism and Solicitation Mechanism. As amended, the rule text would apply to all the relocated mechanisms as well.

The Exchange proposes to amend the Facilitation Mechanism to re-letter “d” as “b.” The Exchange proposes to reserve “c”. The Exchange proposes to re-letter Solicited Order Mechanism at “e” as new “d.”

The Exchange proposes to eliminate Supplementary Material .03, which is currently reserved, and .04 to Rule 716, which is being relocated as discussed above. The Exchange proposes to amend Supplementary Material .05 to Rule 716 to renumber it .03. The Exchange proposes to renumber Supplementary Material .06 to Rule 716 as .04. The Exchange proposes to eliminate references to Supplementary Material .07 and .08 to Rule 716, which are currently reserved. The Exchange proposes to renumber Supplementary Material .09 to Rule 716 as .05.

### **Rule 721**

The Exchange proposes to amend Rule 721, Crossing Orders. The Exchange proposes to add a title within Rule 721(a), “Customer Cross Orders.” The Exchange proposes to reserve “b.” The Exchange proposes to re-letter 721(b) as 721(c) and add a title “Qualified Contingent Cross Orders.”

Finally, the Exchange proposes to remove the following outdated rule text, “Qualified Contingent Cross Order functionality will not be available as of a certain date in the first quarter of 2017 to be announced in a notice. The Exchange will recommence Qualified Contingent Cross Order functionality on Nasdaq GEMX on or before March 31, 2018. The Exchange will issue an Options Trader Alert notifying Members when this

functionality will be available.” Qualified Contingent Cross functionality was recommenced on GEMX on February 26, 2018<sup>7</sup> and therefore this rule text is outdated.

### **Rule 723**

The Exchange proposes to delete Supplementary Material .07 to Rule 723. Supplementary Material .08 to Rule 723 is being renumbered as .07 and Supplementary Material .09 to Rule 723 is being renumbered as .08.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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 market system, and, in general to protect investors and the public interest for the reasons described below.

#### Professional Customer

The Exchange believes that adopting the term “Professional Customer” will enable the Exchange to easily reference this market participant in rules and rule changes when differentiating various market participants. It is consistent with the Act to have clearly defined terms to avoid confusion. Adding this reference will enable the Exchange to clearly refer to various market participants. Today, the concept of a Professional is

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<sup>7</sup> The Exchange issued the following Options Trader Alert notifying GEMX Members that Qualified Contingent Cross functionality would be re-introduced: <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2017-76>.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).



contained in the Rulebook.<sup>10</sup>

Reorganization of the Rulebook and Other Technical Amendments

The Exchange's proposal to relocate various provisions and add titles to conform its current rules to those of ISE is consistent with the Act because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also, making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market.

The Exchange's proposal to introduce the term "Professional Customer" will enable the Exchange to distinguish this market participant from other participants. Today, the concept of a Professional is contained in the Rulebook.<sup>11</sup>

The Exchange's proposal to relocate various rules and create new titles to conform its current rules to those of ISE will not impose an undue burden on intra-market or inter-market competition because the reorganization is intended to bring greater transparency and ease of reference to the Rulebook. Removing outdated rule text from

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<sup>10</sup> See note 5 above.

<sup>11</sup> Id.

Rule 721 will add greater clarity to the Qualified Contingent Cross functionality. Also, making technical non-substantive amendments to capitalize terms and amend cross-references will also bring greater clarity and transparency to the Rulebook.

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 Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2019-03 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-GEMX-2019-03. 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-2019-03 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.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined; deleted text is in brackets.

**Nasdaq GEMX Rules****1. Definitions****Rule 100. Definitions**

(a) No change.

(1) – (52) No change.

(52A) The term “Professional Customer” means a non-broker/dealer participant who enters at least 390 orders per day on average during a calendar month for its own beneficial account(s).

(53) – (68) No change.

\* \* \* \* \*

**Rule 716. [Block Trades]Auction Mechanisms**

[(a) *Block-Size Orders*. Block-size orders are orders for fifty (50) contracts or more.

(b) ]For purposes of this Rule, a “broadcast message” means an electronic message that is sent by the Exchange to all Members, and a “Response” means an electronic message that is sent by Members in response to a broadcast message. Also for purposes of this rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.

[(c)](a) *Block Order Mechanism*. The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. Block-size orders are orders for fifty (50) contracts or more.

(1) No change.

(2) At the conclusion of the time given Members to enter Responses, either an execution will occur automatically, or the order will be cancelled.

(i) Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the [m]Member’s instruction. Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price.

(ii) No change.

(3) No change.

**([d]b)** *Facilitation Mechanism.* The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism.

(1) and (2) No change.

(3) At the end of the period given for the entry of Responses, the facilitation order will be automatically executed.

(i) No change.

(ii) No change.

(iii) Upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the facilitating [m]Member shall be allocated at least forty percent (40%) of the original size of the facilitation order, but only after Priority Customer interest at such price point. Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the order, Response or quote. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(iv) No change.

(c) Reserved.

**([e]d)** *Solicited Order Mechanism.* The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

(1) – (3) No change.

***Supplementary Material to Rule 716***

.01 It will be a violation of a [m]Member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a Member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the time period given for the entry of Responses, if a Member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the Member did so to avoid execution of its customer order in whole or in part by other brokers at the better price.

.02 No change.

[.03 Reserved.]

[.04 The time given to Members to enter Responses under paragraphs (c)(1), (d)(1) and (e)(1) shall be designated by the Exchange via circular, but no less than 100 milliseconds and no more than 1 second.]

.0[5]3 Under paragraph [(e)](d) above, Members may enter contra orders that are solicited. The Solicited Order Mechanism provides a facility for Members that locate liquidity for their customer orders. Members may not use the Solicited Order Mechanism to circumvent Exchange Rule 717(d) limiting principal transactions. This may include, but is not limited to, Members entering contra orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of an Exchange market maker that is assigned to the options class.

.0[6]4 Split Prices. Orders and Responses may be entered into the Facilitation and Solicitation Mechanisms and receive executions at the mid-price between the standard minimum trading increments for the options series ("Split Prices"). This means that orders and Responses for options with a minimum increment of 5 cents may be entered into the Facilitation and Solicitation Mechanisms and receive executions in 2.5 cent increments (e.g., \$1.025, \$1.05, \$1.075, etc.), and that orders and Responses for options with a minimum increment of 10 cents may be entered into the Facilitation and Solicitation Mechanism and receive executions at 5 cent increments (e.g., \$4.05, \$4.10, \$4.15, etc.). Orders and quotes in the market that receive the benefit of the facilitation price under paragraph (d)b) may also receive executions at Split Prices.

[.07 Reserved.]

.08 Reserved.]

.0[9]5 Penny Prices. Orders and Responses may be entered into the Block Mechanism and receive executions at penny increments. Orders and quotes in the market that receive the benefit of the block execution price under paragraph ([c]a)(2)(i) may also receive executions at penny increments.

\* \* \* \* \*

### **Rule 721. Crossing Orders**

**(a) Customer Cross Orders.** Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Priority Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO.

(1) - (3) No change.

[Qualified Contingent Cross Order functionality will not be available as of a certain date in the first quarter of 2017 to be announced in a notice. The Exchange will recommence Qualified Contingent Cross Order functionality on Nasdaq GEMX on or before March 31, 2018. The Exchange will issue an Options Trader Alert notifying Members when this functionality will be available.]

**(b) Reserved.**

**([b]c) Qualified Contingent Cross Orders.** Qualified Contingent Cross Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's limit order book and (ii) is at or between the NBBO.

(1) and (2) No change.

\* \* \* \* \*

### **Rule 723. Price Improvement Mechanism for Crossing Transactions**

(a) - (d) No change.

#### ***Supplementary Material to Rule 723***

.01 - .06 No change.

[.07 Reserved.]

[.08].07 Counter-Side Orders and Improvement Orders entered into the Price Improvement Mechanism only will execute against the Agency Order, and any unexecuted interest will be automatically cancelled.



[.09].08 PIM ISO Order. A PIM ISO order (PIM ISO) is the transmission of two orders for crossing pursuant to Rule 723 without regard for better priced Protected Bids or Protected Offers (as defined in Rule 1900) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

\* \* \* \* \*