

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="19"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by Nasdaq GEMX, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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

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

**Contact Information**

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

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**

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

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

(Title \*)

Date  By

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the 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 \***

Add Remove View

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

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

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

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

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 6, Section 5, titled “Transfer of Positions.”

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 25, 2019. 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 Exchange proposes to amend Options 6, Section 5, titled “Transfer of Positions.” The proposed rule change is similar to Cboe Exchange, Inc. (“Cboe”) Rule 6.7.<sup>3</sup>

Options 6, Section 5 permits market participants to move positions from one account to another without first exposure of the transaction on the Exchange, provided certain exceptions are met. Specifically, Options 6, Section 5(a)(2)<sup>4</sup> provides that transfers of positions are permissible if from one account to another account where no change in ownership is involved (i.e., accounts of the same Person),<sup>5</sup> provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to

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<sup>3</sup> See Securities and Exchange Act Release No. 89389 (July 23, 2020), 85 FR 45709 (July 29, 2020) (SR-Cboe-2020-067) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.7 Concerning Off-Floor Transfers).

<sup>4</sup> Options 6, Section 5(a) states, “*Permissible Transfers*. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events:.....(2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;...”

<sup>5</sup> For purposes of this rule, the term “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See Options 6, Section 5(a).

Options 6, Section 5(d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts position transfers effected pursuant to Options 6, Section(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Position transfers pursuant to Options 6, Section(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same Person. A market participant effecting an position transfer pursuant to Options 6, Section 5(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Options 6, Section 5(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Options 6, Section 5(b), and thus may not result in the closing of any positions. While the position transfers permitted by Options 6, Section 5 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring position transfers that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally,

given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

The proposed rule change also corrects an erroneous cross-reference in Rule Options 6, Section 5(d)(1), as the method for determining the transfer price is in paragraph (c) rather than paragraph (e) of Options 6, Section 5.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Id.

market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will 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 because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Options 6, Section 5, which was to prohibit use of the transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will

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<sup>9</sup> Id.

benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs. These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same Person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Options 6, Section 5(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation (“OCC”), and the positions may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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 furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the



purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect position transfers pursuant to Options 6, Section 5(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it relates solely to the notice required for transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Members, 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>10</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>11</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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

interest.

The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest, because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then current market conditions. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses. The Exchange believes the proposed rule change will not impose any significant burden on competition, because it is not intended to address competitive issues. The proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect position transfers pursuant to Options 6, Section 5(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange believes the proposed rule change is not novel or unique as, today, Options 6, Section 6, Off-Exchange RWA Transfers, permits market participants to effect position transfers off the Exchange that result in no change in ownership without providing the Exchange with prior written notice and without a

restriction on the frequency with which those transfers may occur.<sup>12</sup> This is similar to the proposed rule change to Options 6, Section 5, which is intended to permit market participants to effect position transfers to facilitate other business needs related to their account structures. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Options 6, Section 5, which was to prohibit use of the transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Additionally, the proposed rule change relates solely to the notice required for transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>12</sup> Market participants may effect position transfers off the Exchange pursuant to Options 6, Section 6 for the business purpose of reducing risk-weighted assets associated with those positions.

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 amend its transfer rule similar to Cboe Rule 6.7. The Exchange believes adopting this rule will benefit investors and the general public because it will provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.<sup>13</sup>

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

This proposal is substantively identical to Cboe Rule 6.7.

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.

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<sup>13</sup> See Cboe Rule 6.7.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2020-19)

August \_\_, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 6, Section 5

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 August 7, 2020, 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 Options 6, Section 5. The text of the proposed rule change is available on the Exchange’s Website at

<https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the

Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

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

<sup>2</sup> 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 6, Section 5, titled “Transfer of Positions.” The proposed rule change is similar to Cboe Exchange, Inc. (“Cboe”) Rule 6.7.<sup>3</sup>

Options 6, Section 5 permits market participants to move positions from one account to another without first exposure of the transaction on the Exchange, provided certain exceptions are met. Specifically, Options 6, Section 5(a)(2)<sup>4</sup> provides that transfers of positions are permissible if from one account to another account where no change in ownership is involved (i.e., accounts of the same Person),<sup>5</sup> provided the accounts are not in separate aggregation units or otherwise subject to information barrier

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<sup>3</sup> See Securities and Exchange Act Release No. 89389 (July 23, 2020), 85 FR 45709 (July 29, 2020) (SR-Cboe-2020-067) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.7 Concerning Off-Floor Transfers).

<sup>4</sup> Options 6, Section 5(a) states, “*Permissible Transfers*. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events:.....(2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;...”

<sup>5</sup> For purposes of this rule, the term “Person” as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust, or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See Options 6, Section 5(a).

or account segregation requirements. These transfers are subject to, among other things, the requirement to submit prior written notice of the transfers to the Exchange pursuant to Options 6, Section 5(d) and the restriction on effecting these transfers repeatedly or routinely.

The proposed rule change excepts position transfers effected pursuant to Options 6, Section(a)(2) from the prior written notice requirement in paragraph (d) and from repeated, recurring use restriction in paragraph (g). Position transfers pursuant to Options 6, Section(a)(2) do not involve a change in ownership. In other words, such transfers may only occur between the same individual or legal entity. These types of transfers are merely transfers of positions from one account to another, both of which accounts are attributable to the same individual or legal entity, and thus the transferred option positions will continue to be attributable to the same Person. A market participant effecting an position transfer pursuant to Options 6, Section 5(a)(2) is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

Because there is no change in ownership of positions transferred pursuant to Options 6, Section 5(a)(2), the Exchange believes it is appropriate to permit them to occur as routinely and repeatedly as a market participant would like. These transfers will continue to be subject to the prohibition on netting set forth in Options 6, Section 5(b), and thus may not result in the closing of any positions. While the position transfers permitted by Options 6, Section 5 were intended to accommodate non-routine and non-recurring transfers, the Exchange believes permitting routine, recurring position transfers

that do not result in a change in ownership or reduction in open interest is consistent with the purpose of not being used to circumvent the normal auction purpose. Additionally, given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of change in ownership and in open interest. The Exchange believes this will provide market participants with additional flexibility to structure their option position accounts as they believe is appropriate and move their positions between accounts as they deem necessary and appropriate for their business and trading needs, including for risk management purposes.

The proposed rule change also corrects an erroneous cross-reference in Rule Options 6, Section 5(d)(1), as the method for determining the transfer price is in paragraph (c) rather than paragraph (e) of Options 6, Section 5.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Id.



settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will 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 because it will provide market participants with a more efficient process to transfer open positions between their own accounts in accordance with their own business and trading needs, including to respond to then-current market conditions. Because these transfers would not result in a change in ownership or a reduction in open interest, the Exchange believes the proposed rule change remains consistent with the purpose of Options 6, Section 5, which was to prohibit use of the transfer procedure in circumvention of the normal auction process, as the normal auction process involves the opening or closing of positions through a transaction among multiple market participants. Market participants may maintain different accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Given that these transfers may occur on a regular basis in accordance with a market participants' business needs and procedures, the Exchange believes prior written notice would be onerous and would not serve any purpose given the lack of

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<sup>9</sup> Id.

change in ownership and in open interest. Therefore, the proposed rule change will benefit investors by permitting market participants to manage the open positions in their accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on an exchange, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit position transfers among accounts of the same individual or legal entity where there is no impact on open interest to occur off the exchange, as these benefits are inapplicable to those transfers. These transfers have a narrow scope and are intended to permit market participants to achieve their own business needs. These transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the transfer merely moves positions to different accounts for the same Person and does not open or close any positions. These transfers will result in no change in ownership. The transactions that resulted in the open positions to be transferred pursuant to Options 6, Section 5(a)(2) were already guaranteed by a clearing member of The Options Clearing Corporation (“OCC”), and the positions may not be closed pursuant to the transfer and will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

purposes of the Act because the proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect position transfers pursuant to Options 6, Section 5(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it relates solely to the notice required for transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding option positions.

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>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2020-19 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-2020-19. 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-2020-19 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>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ GEMX, LLC Rules**

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**Options Rules**

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**Options 6 Options Trade Administration**

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**Section 5. Transfer of Positions**

(a) – (c) No change.

(d) **Prior Written Notice.** A Member(s) and its Clearing Member(s) (to the extent that the Member is not self-clearing) must submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account(s) of a Member(s), except that notification is not required for transfers [to correct errors]effected pursuant to subparagraph (a)(1) or (a)(2) of this Rule.

(1) The notice must indicate (A) the Exchange-listed options positions to be transferred, (B) the nature of the transaction, (C) the enumerated provision(s) under paragraph (a) pursuant to which the positions are being transferred, (D) the name of the counterparty(ies), (E) the anticipated transfer date, (F) the method for determining the transfer price under paragraph [(e) below](c) above, and (G) any other information requested by the Exchange.

(2) No change.

(e) and (f) no change.

(g) **Routine, Recurring Transfers.** The transfer procedure set forth in this Rule is intended to facilitate non-routine, nonrecurring movements of positions[. The transfer procedure]and is not to be used repeatedly or routinely, except for transfers between accounts of the same Person pursuant to subparagraph (a)(2). The transfer procedure may not be used in circumvention of the normal auction process[in circumvention of the normal auction market process].

(h) No change

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