

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 * <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 type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

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

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

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)

Date         
 By      

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Options 2, Section 5, Market Maker Quotations.

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 November 5, 2020. 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 GEMX Rules at Options 2, Section 5, Market Maker Quotations. Currently, the Exchange requires Competitive Market Makers<sup>3</sup> and Primary Market Makers<sup>4</sup> to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.<sup>5</sup> Quotations must meet the legal quote width requirements specified in Options 2, Section 4(b)(4).<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> Notwithstanding the foregoing, a Competitive Market Maker shall not

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<sup>3</sup> The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12).

<sup>4</sup> The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

<sup>5</sup> Options 2, Section 5(e).

<sup>6</sup> Options 2, Section 4(b)(4) describes bid/ask differentials.

<sup>7</sup> The term "Member" means an organization that has been approved to exercise trading rights associated with Exchange Rights. See General 1, Section 1(a)(13).

<sup>8</sup> Options 2, Section 5(e)(1).

be required to make two-sided markets pursuant to Options 2, Section 5(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.<sup>9</sup> 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 are required to make two-sided markets 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.<sup>10</sup>

A Member is required to meet each market making obligation separately.<sup>11</sup> Currently, Options 2, Section 5(e) states, “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

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<sup>9</sup> Options 2, Section 5(e)(1).

<sup>10</sup> Options 2, Section 5(e)(2).

<sup>11</sup> See Options 2, Section 5(e). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the Member, regardless of whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10 will be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order.”<sup>12</sup>

Today, the Exchange calculates whether a Member that is assigned in an options series as both a Primary Market Maker and a Competitive Market Maker has met its quoting obligations as Primary Market Maker and Competitive Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed<sup>13</sup> interface from the Member, whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

The Exchange proposes to amend its calculation to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges<sup>14</sup> and options

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<sup>12</sup> Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Options 2, Section 5(e)(3). See Options 3, Section 10 at Supplementary Material .01.

<sup>13</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7 at Supplementary Material .03(c).

<sup>14</sup> A “badge” shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

series<sup>15</sup> assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options class is open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Competitive Market Maker when calculating whether a Member acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options class is open for trading, provided the Competitive Market Maker initiated quoting in an options class for which that Member's assigned options class is open for trading. With this proposed change, a Member that is a Competitive Market Maker in an options series where the Member is also assigned as the Primary Market Maker in an options series will be held to both the Primary Market Maker and Competitive Market Maker obligations, pursuant to Options 2, Section 5(e), separately, in that options series. The Exchange will consider whether a Member, acting as both Primary Market Maker and Competitive Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective badges.

By way of example,

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<sup>15</sup> GEMX currently utilizes a badge with an associated options series to designate a Primary Market Maker assigned in an options series and a badge with an associated options series to designate a Competitive Market Maker assigned in an option series.

**Current Quoting obligation methodology:**

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading. The higher of the two obligations is required today.

**Proposed Quoting obligation methodology:**

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

As proposed only quoting activity from badge 123A (and excluding badges 123 B-E) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

All other badges (123 B-E), excluding badge 123A, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

A Member may have only one Primary Market Maker badge per option series.

The below example explains how the Exchange aggregates quotes from Primary Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Competitive Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Primary Market Maker Firm ABC assigned in five symbols across 2 different badges:

Badge 123A and B is assigned in symbols QQQ and SPY, respectively



Badge 124A, B and C is assigned in symbols IBM, GM, and MSFT, respectively.

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's Primary Market Maker badges from all 5 symbols will be counted in determining compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading.

If Firm ABC Primary Market Maker badge 123A quotes symbol QQQ at 95% and badge 123B quotes symbol SPY at 90% and Firm ABC Primary Market Maker badge 124A quotes IBM at 85%, badge 124B quotes GM at 95%, and badge 124C quotes MSFT at 90% then Firm ABC will have met requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading because the percentage across the 5 symbols is 91%.

### Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has issued an Options Regulatory Alert notifying Members of this change.<sup>16</sup>

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by requiring Primary Market Makers and Competitive Market Makers to separately meet quoting requirements as both a Primary Market Maker and Competitive Market Maker, respectively, when the Member is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Competitive Market Maker and

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<sup>16</sup> See Options Regulatory Alert 2021-36.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

Primary Market Maker quoting obligations where the Member is assigned as both Primary Market Maker and Competitive Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Competitive Market Maker when calculating whether a Member acting as a Competitive Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options series are open for trading.

The proposed change for calculating the Primary Market Maker requirement separate from the Competitive Market Maker requirement, where a Member is assigned in both roles in an options series, would ensure that the Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker. This would ensure that a Member adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the Member, such as enhanced Primary Market Maker allocation<sup>19</sup> and favorable pricing,<sup>20</sup> in addition to the Member fulfilling other

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<sup>19</sup> See Options 3, Section 10(c)(1)(B).

market making obligations specified in Options 2, Section 4(a) and (b).<sup>21</sup>

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. Rather, the proposal would ensure that Members that are assigned in an options series as both the Primary Market Maker and Competitive Market Maker, respectively, are meeting the same quoting obligations as other Members who are assigned solely as either the Primary Market Maker or Competitive Market Maker in an option series. Also, this proposal would ensure that a Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as enhanced Primary Market Maker

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<sup>20</sup> See Options 7, Pricing Schedule.

<sup>21</sup> *General.* Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. *Appointment.* With respect to each options class to which a Market Maker is appointed under Options 2, Section 3, the Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market: (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed. (2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the Market Maker is appointed. (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.

allocation<sup>22</sup> and favorable pricing,<sup>23</sup> in addition to fulfilling its other market making obligations specified in Options 2, Section 4(a) and (b).<sup>24</sup>

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>25</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>26</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 this proposal does not significantly affect the protection of investors or the public interest as the proposal ensure that a Member adds the requisite amount of liquidity in that assigned options series in exchange for certain

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<sup>22</sup> See note 19 above.

<sup>23</sup> See note 20 above.

<sup>24</sup> See note 21 above.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

benefits offered by the Exchange to the Member, such as enhanced Primary Market Maker allocation<sup>27</sup> and favorable pricing,<sup>28</sup> in addition to the Member fulfilling other market making obligations specified in Options 2, Section 4(a) and (b).<sup>29</sup> The Exchange believes that this proposal does not impose any significant burden on competition as Members that are assigned in an options series as both the Primary Market Maker and Competitive Market Maker, respectively, would meet the same quoting obligations as other Members who are assigned solely as either the Primary Market Maker or Competitive Market Maker in an option series.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>30</sup> 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 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

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<sup>27</sup> See note 19 above.

<sup>28</sup> See note 20 above.

<sup>29</sup> See note 21 above.

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may amend the calculation of its quoting obligations to ensure that Members, acting as both Primary Market Maker and Competitive Market Maker, respectively, are required to add the requisite amount of liquidity in exchange for certain benefits such as enhanced Primary Market Maker allocation<sup>31</sup> and favorable pricing.<sup>32</sup> The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has provided Members notice of this proposed change.<sup>33</sup>

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

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<sup>31</sup> See note 19 above.

<sup>32</sup> See note 20 above.

<sup>33</sup> See Options Regulatory Alert 2021-36.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2021-06)

July \_\_, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Section 5, Market Maker Quotations

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 June 30, 2021, 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 2, Section 5, Market Maker Quotations.

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

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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 Exchange proposes to amend GEMX Rules at Options 2, Section 5, Market Maker Quotations. Currently, the Exchange requires Competitive Market Makers<sup>3</sup> and Primary Market Makers<sup>4</sup> to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.<sup>5</sup> Quotations must meet the legal quote width requirements specified in Options 2, Section 4(b)(4).<sup>6</sup> 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,<sup>7</sup> is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the

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<sup>3</sup> The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12).

<sup>4</sup> The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

<sup>5</sup> Options 2, Section 5(e).

<sup>6</sup> Options 2, Section 4(b)(4) describes bid/ask differentials.

<sup>7</sup> The term "Member" means an organization that has been approved to exercise trading rights associated with Exchange Rights. See General 1, Section 1(a)(13).



Exchange may announce in advance, for which that Member's assigned options class is open for trading.<sup>8</sup> Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to Options 2, Section 5(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.<sup>9</sup> 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 are required to make two-sided markets 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.<sup>10</sup>

A Member is required to meet each market making obligation separately.<sup>11</sup>

Currently, Options 2, Section 5(e) states, "A Competitive Market Maker who is also the

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<sup>8</sup> Options 2, Section 5(e)(1).

<sup>9</sup> Options 2, Section 5(e)(1).

<sup>10</sup> Options 2, Section 5(e)(2).

<sup>11</sup> See Options 2, Section 5(e). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the Member, regardless of whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

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 Options 2, Section 10 and Options 3, Section 10 will be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order.”<sup>12</sup>

Today, the Exchange calculates whether a Member that is assigned in an options series as both a Primary Market Maker and a Competitive Market Maker has met its quoting obligations as Primary Market Maker and Competitive Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed<sup>13</sup> interface from the Member, whether the quote was submitted by the Member in its capacity as Primary Market Maker or Competitive Market Maker.

The Exchange proposes to amend its calculation to only consider quotes

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<sup>12</sup> Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Options 2, Section 5(e)(3). See Options 3, Section 10 at Supplementary Material .01.

<sup>13</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7 at Supplementary Material .03(c).

submitted through the Specialized Quote Feed interface utilizing badges<sup>14</sup> and options series<sup>15</sup> assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options class is open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Competitive Market Maker when calculating whether a Member acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options class is open for trading, provided the Competitive Market Maker initiated quoting in an options class for which that Member's assigned options class is open for trading. With this proposed change, a Member that is a Competitive Market Maker in an options series where the Member is also assigned as the Primary Market Maker in an options series will be held to both the Primary Market Maker and Competitive Market Maker obligations, pursuant to Options 2, Section 5(e), separately, in that options series. The Exchange will consider whether a Member, acting as both Primary Market Maker and Competitive Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective

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<sup>14</sup> A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

<sup>15</sup> GEMX currently utilizes a badge with an associated options series to designate a Primary Market Maker assigned in an options series and a badge with an associated options series to designate a Competitive Market Maker assigned in an option series.

badges.

By way of example,

**Current Quoting obligation methodology:**

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading. The higher of the two obligations is required today.

**Proposed Quoting obligation methodology:**

Primary Market Maker firm 123 is assigned five badges: 123A, 123B, 123C, 123D and 123E.

Badge 123A is designated the Primary Market Maker badge and badge 123B-E are designated as Competitive Market Maker badges.

As proposed only quoting activity from badge 123A (and excluding badges 123 B-E) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

All other badges (123 B-E), excluding badge 123A, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds for which that Member's assigned options series are open for trading.

A Member may have only one Primary Market Maker badge per option series.

The below example explains how the Exchange aggregates quotes from Primary Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Competitive Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Primary Market Maker Firm ABC assigned in five symbols across 2 different badges:

Badge 123A and B is assigned in symbols QQQ and SPY, respectively.

Badge 124A, B and C is assigned in symbols IBM, GM, and MSFT, respectively.

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's Primary Market Maker badges from all 5 symbols will be counted in determining compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading.

If Firm ABC Primary Market Maker badge 123A quotes symbol QQQ at 95% and badge 123B quotes symbol SPY at 90% and Firm ABC Primary Market Maker badge 124A quotes IBM at 85%, badge 124B quotes GM at 95%, and badge 124C quotes MSFT at 90% then Firm ABC will have met requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading because the percentage across the 5 symbols is 91%.

### Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The

Exchange has issued an Options Regulatory Alert notifying Members of this change.<sup>16</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by requiring Primary Market Makers and Competitive Market Makers to separately meet quoting requirements as both a Primary Market Maker and Competitive Market Maker, respectively, when the Member is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Competitive Market Maker and Primary Market Maker quoting obligations where the Member is assigned as both Primary Market Maker and Competitive Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Primary Market Maker when calculating whether a Member acting as a Primary Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a

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<sup>16</sup> See Options Regulatory Alert 2021-36.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

Competitive Market Maker when calculating whether a Member acting as a Competitive Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce for which that Member's assigned options series are open for trading.

The proposed change for calculating the Primary Market Maker requirement separate from the Competitive Market Maker requirement, where a Member is assigned in both roles in an options series, would ensure that the Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker. This would ensure that a Member adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the Member, such as enhanced Primary Market Maker allocation<sup>19</sup> and favorable pricing,<sup>20</sup> in addition to the Member fulfilling other market making obligations specified in Options 2, Section 4(a) and (b).<sup>21</sup>

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<sup>19</sup> See Options 3, Section 10(c)(1)(B).

<sup>20</sup> See Options 7, Pricing Schedule.

<sup>21</sup> *General.* Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. *Appointment.* With respect to each options class to which a Market Maker is appointed under Options 2, Section 3, the Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market: (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed. (2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the

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. Rather, the proposal would ensure that Members that are assigned in an options series as both the Primary Market Maker and Competitive Market Maker, respectively, are meeting the same quoting obligations as other Members who are assigned solely as either the Primary Market Maker or Competitive Market Maker in an option series. Also, this proposal would ensure that a Member quotes the requisite number of seconds in an assigned options series, when acting as both Primary Market Maker and Competitive Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as enhanced Primary Market Maker allocation<sup>22</sup> and favorable pricing,<sup>23</sup> in addition to fulfilling its other market making obligations specified in Options 2, Section 4(a) and (b).<sup>24</sup>

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.

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Exchange's System in all series of options classes to which the Market Maker is appointed. (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.

<sup>22</sup> See note 19 above.

<sup>23</sup> See note 20 above.

<sup>24</sup> See note 21 above.



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>25</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>26</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.

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:

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</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.

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-2021-06 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-2021-06. 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-2021-06 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>27</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>27</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 2 Options Market Participants**

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**Section 5. Market Maker Quotations**

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(e) *Intra-day Quotes.* 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. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce. A Member that is a Competitive Market Maker in an options series where the Member [who] is also assigned as the Primary Market Maker in an options series will be held to both the Primary Market Maker and Competitive Market Maker obligations, pursuant to Options 2, Section 5(e), separately, in th[e]at 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 Options 2, Section 10 and Options 3, Section 10, ("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) 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 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.

(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 be called upon by an Exchange official designated by the Board to submit a single quote or maintain 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 Options 2, Section 4(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. A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph.

(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 Marker 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.

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