

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 34

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 01

Amendment No. (req. for Amendments \*)

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"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
-----------------------------------	--	--

Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

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

Amend GEMX Pricing Schedule at Options 7, Section 3

### Contact Information

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

First Name \* Angela Last Name \* Dunn

Title \* Principal Associate General Counsel

E-mail \* angela.dunn@nasdaq.com

Telephone \* (215) 496-5692 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq GEMX, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/03/2022

(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

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

 DN:  
email=john.zecca@nasdaq.com  
Date: 2021.12.30 13:36:59  
-05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

SR-GEMX-2022-01 19b-4.doc

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

SR-GEMX-2022-01 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies \***

Add Remove View

--

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

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

Add Remove View

--

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 Sent As Paper Document

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

Add Remove View

--

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 Sent As Paper Document

**Exhibit 4 - Marked Copies**

Add Remove View

--

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

SR-GEMX-2022-01 Exhibit 5.doc

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**

Add Remove View

--

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 GEMX’s Pricing Schedule at Options 7, Section 3, titled “Regular Order Fees and Rebates.”

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on 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

---

<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

GEMX proposes to amend its Regular Order Fees and Rebates within Options 7, Section 3. Specifically, the Exchange proposes to: (1) decrease the Priority Customer<sup>3</sup> Tier 1 Taker Fee in Penny Symbols<sup>4</sup>; and (2) eliminate the Tier 5 Maker Rebates and Taker Fees in Penny Symbols and Non-Penny Symbols.<sup>5</sup> Each amendment is described below.

Priority Customer Taker Fee

Currently, Priority Customers are assessed Penny Symbol Taker Fees as follows: a Tier 1 Taker Fee of \$0.49 per contract; a Tier 2 Taker Fee of \$0.48 per contract; a Tier 3 Taker Fee of \$0.48 per contract; a Tier 4 Taker Fee of \$0.43 per contract; and a Tier 5 Taker Fee of \$0.42 per contract. Other GEMX market participants are assessed higher Penny Symbol Taker Fees as compared to Priority Customers. Market Makers<sup>6</sup> and Non-

---

<sup>3</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1.

<sup>4</sup> "Penny Symbols" are options overlying all symbols listed on Nasdaq GEMX that are in the Penny Interval Program. See Options 7, Section 1.

<sup>5</sup> "Non-Penny Symbols" are options overlying all symbols excluding Penny Symbols. See Options 7, Section 1.

<sup>6</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

Nasdaq GEMX Market Makers (FarMM)<sup>7</sup> are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of \$0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of \$0.48 per contract.<sup>8</sup> Firm Proprietary<sup>9</sup>/Broker Dealers<sup>10</sup> and Professional Customers<sup>11</sup> are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of \$0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of \$0.49 per contract.<sup>12</sup>

At this time, the Exchange proposes to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract. The Exchange believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract

---

<sup>7</sup> A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See GEMX Options 7, Section 1.

<sup>8</sup> Non-Priority Customer orders are charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process receive the applicable Maker Rebate based on the tier achieved. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume are charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume are charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders are charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13 within Options 7, Section 3, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See notes 4 and 16 of Options 7, Section 3.

<sup>9</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See GEMX Options 7, Section 1.

<sup>10</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See GEMX Options 7, Section 1.

<sup>11</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See GEMX Options 7, Section 1.

<sup>12</sup> See note 8 above.

additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

Tier 5 Maker Rebates and Taker Fees

Today, GEMX pays the following Tier 5 Penny Symbol Maker Rebates: \$0.45 per contract to Market Makers and \$0.53 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Penny Symbol Maker Rebates. Today, GEMX pays the following Tier 5 Non-Penny Symbol Maker Rebates: \$0.75 per contract to Market Makers and \$1.05 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Non-Penny Symbol Maker Rebates. Market Maker and Priority Customer orders are eligible for higher Penny and Non-Penny Symbol Maker Rebates based on achieving volume thresholds in Table 1 within Options 7, Section 3.<sup>13</sup>

Today, GEMX assesses the following Tier 5 Penny Symbol Taker Fees: \$0.48 per contract to Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), \$0.49 per contract to Firm Proprietary/Broker Dealers and Professional Customers, and \$0.42 per contract to Priority Customers.<sup>14</sup> Today, GEMX assesses the following Tier 5 Non-Penny Symbol Taker Fees: \$0.94 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers, and Professional Customers, and \$0.82 per contract to Priority Customers.<sup>15</sup>

---

<sup>13</sup> See note 5 of Options 7, Section 3.

<sup>14</sup> See note 8 above.

<sup>15</sup> See note 8 above.

At this time, the Exchange proposes to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees. The Exchange also proposes to amend the criteria for Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, so that volume that is 2.5% or greater of Customer Total Consolidated Volume and Priority Customer Maker Percentage of Customer Total Consolidated Volume of 1.20% or greater would qualify a GEMX Member for the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees.

The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is \$0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is \$0.41 per contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be \$0.41 per contract.

The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is \$0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is \$0.43 per contract. With this proposal, the lowest Penny Symbol Priority Customer Taker Fee that would be assessed would now be \$0.43 per contract.

The elimination of the Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and

Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria, a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees.

With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in both Penny and Non-Penny Symbols.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>17</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>18</sup>

---

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>18</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>19</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>20</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>21</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>22</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

#### Priority Customer Taker Fee

The Exchange’s proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract is reasonable as this decrease would result in a lower Tier 1 Priority Customer Penny Symbol Taker Fee. The Exchange

---

<sup>19</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>20</sup> See NetCoalition, at 534 - 535.

<sup>21</sup> Id. at 537.

<sup>22</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract is equitable and not unfairly discriminatory. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

#### Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is reasonable. The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is \$0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is \$0.41 per contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be \$0.41 per contract. The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is \$0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is \$0.43 per

contract. With this proposal, the lowest Priority Customer Penny Symbol Taker Fee that would be assessed would now be \$0.43 per contract. Notwithstanding, the decreased Penny Symbol Market Maker Rebate of \$0.45 per contract and the increased Priority Customer Penny Symbol Taker Fee of \$0.43 per contract, the Exchange believes that the Market and Taker Tier 4 pricing in Penny Symbols will continue to attract order flow to GEMX. The elimination of the Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in Penny and Non-Penny Symbols.

The Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

#### Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, with respect to the Total Affiliated Member % of Customer Total Consolidated Volume,<sup>23</sup> to require that a

---

<sup>23</sup> For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total

member execute 2.5% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,<sup>24</sup> to require that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. With the elimination of Tier 5 Penny and Non-Penny Symbol Maker Rebates and Taker Fees, the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees would be the highest Maker Rebate and lowest Taker Fee. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

#### 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.

##### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can

---

volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

<sup>24</sup> The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

#### Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

#### Priority Customer Taker Fee

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract does not impose an undue burden on competition. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

#### Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees does not impose an undue burden on competition. Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker

Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>25</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

---

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

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2022-01)

January \_\_, 2022

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX's Pricing Schedule at Options 7, Section 3

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 January 3, 2022, 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 GEMX's Pricing Schedule at Options 7, Section 3, titled "Regular Order Fees and Rebates."

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

---

<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

GEMX proposes to amend its Regular Order Fees and Rebates within Options 7, Section 3. Specifically, the Exchange proposes to: (1) decrease the Priority Customer<sup>3</sup> Tier 1 Taker Fee in Penny Symbols<sup>4</sup>; and (2) eliminate the Tier 5 Maker Rebates and Taker Fees in Penny Symbols and Non-Penny Symbols.<sup>5</sup> Each amendment is described below.

Priority Customer Taker Fee

Currently, Priority Customers are assessed Penny Symbol Taker Fees as follows: a Tier 1 Taker Fee of \$0.49 per contract; a Tier 2 Taker Fee of \$0.48 per contract; a Tier 3 Taker Fee of \$0.48 per contract; a Tier 4 Taker Fee of \$0.43 per contract; and a Tier 5 Taker Fee of \$0.42 per contract. Other GEMX market participants are assessed higher

---

<sup>3</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1.

<sup>4</sup> "Penny Symbols" are options overlying all symbols listed on Nasdaq GEMX that are in the Penny Interval Program. See Options 7, Section 1.

<sup>5</sup> "Non-Penny Symbols" are options overlying all symbols excluding Penny Symbols. See Options 7, Section 1.

Penny Symbol Taker Fees as compared to Priority Customers. Market Makers<sup>6</sup> and Non-Nasdaq GEMX Market Makers (FarMM)<sup>7</sup> are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of \$0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of \$0.48 per contract.<sup>8</sup> Firm Proprietary<sup>9</sup>/Broker Dealers<sup>10</sup> and Professional Customers<sup>11</sup> are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of \$0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of \$0.49 per contract.<sup>12</sup>

---

<sup>6</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>7</sup> A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See GEMX Options 7, Section 1.

<sup>8</sup> Non-Priority Customer orders are charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process receive the applicable Maker Rebate based on the tier achieved. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume are charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume are charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders are charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13 within Options 7, Section 3, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See notes 4 and 16 of Options 7, Section 3.

<sup>9</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See GEMX Options 7, Section 1.

<sup>10</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See GEMX Options 7, Section 1.

<sup>11</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See GEMX Options 7, Section 1.

<sup>12</sup> See note 8 above.

At this time, the Exchange proposes to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract. The Exchange believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

#### Tier 5 Maker Rebates and Taker Fees

Today, GEMX pays the following Tier 5 Penny Symbol Maker Rebates: \$0.45 per contract to Market Makers and \$0.53 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Penny Symbol Maker Rebates. Today, GEMX pays the following Tier 5 Non-Penny Symbol Maker Rebates: \$0.75 per contract to Market Makers and \$1.05 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Non-Penny Symbol Maker Rebates. Market Maker and Priority Customer orders are eligible for higher Penny and Non-Penny Symbol Maker Rebates based on achieving volume thresholds in Table 1 within Options 7, Section 3.<sup>13</sup>

Today, GEMX assesses the following Tier 5 Penny Symbol Taker Fees: \$0.48 per contract to Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), \$0.49 per contract to Firm Proprietary/Broker Dealers and Professional Customers, and \$0.42 per contract to Priority Customers.<sup>14</sup> Today, GEMX assesses the following Tier 5 Non-Penny Symbol Taker Fees: \$0.94 per contract to Market Makers, Non-Nasdaq GEMX

---

<sup>13</sup> See note 5 of Options 7, Section 3.

<sup>14</sup> See note 8 above.

Market Makers (FarMM), Firm Proprietary/Broker Dealers, and Professional Customers, and \$0.82 per contract to Priority Customers.<sup>15</sup>

At this time, the Exchange proposes to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees. The Exchange also proposes to amend the criteria for Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, so that volume that is 2.5% or greater of Customer Total Consolidated Volume and Priority Customer Maker Percentage of Customer Total Consolidated Volume of 1.20% or greater would qualify a GEMX Member for the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees.

The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is \$0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is \$0.41 per contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be \$0.41 per contract.

The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is \$0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is \$0.43 per contract. With this proposal, the lowest

---

<sup>15</sup> See note 8 above.

Penny Symbol Priority Customer Taker Fee that would be assessed would now be \$0.43 per contract.

The elimination of the Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria, a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees.

With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in both Penny and Non-Penny Symbols.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>17</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in

---

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>18</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>19</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>20</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>21</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>22</sup> Although the court

---

<sup>18</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>19</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>20</sup> See NetCoalition, at 534 - 535.

<sup>21</sup> Id. at 537.

<sup>22</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

#### Priority Customer Taker Fee

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract is reasonable as this decrease would result in a lower Tier 1 Priority Customer Penny Symbol Taker Fee. The Exchange believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract is equitable and not unfairly discriminatory. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

#### Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is reasonable. The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is \$0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is \$0.41 per

contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be \$0.41 per contract. The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is \$0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is \$0.43 per contract. With this proposal, the lowest Priority Customer Penny Symbol Taker Fee that would be assessed would now be \$0.43 per contract. Notwithstanding, the decreased Penny Symbol Market Maker Rebate of \$0.45 per contract and the increased Priority Customer Penny Symbol Taker Fee of \$0.43 per contract, the Exchange believes that the Market and Taker Tier 4 pricing in Penny Symbols will continue to attract order flow to GEMX. The elimination of the Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in Penny and Non-Penny Symbols.

The Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

### Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, with respect to the Total Affiliated Member % of Customer Total Consolidated Volume,<sup>23</sup> to require that a member execute 2.5% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,<sup>24</sup> to require that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. With the elimination of Tier 5 Penny and Non-Penny Symbol Maker Rebates and Taker Fees, the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees would be the highest Maker Rebate and lowest Taker Fee. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

#### 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.

---

<sup>23</sup> For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

<sup>24</sup> The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

### Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

### Priority Customer Taker Fee

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from \$0.49 to \$0.48 per contract does not impose an undue burden on competition. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these

market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees does not impose an undue burden on competition. Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>25</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

---

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

#### 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-2022-01 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-2022-01. 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-2022-01 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>26</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>26</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined; deleted text is in brackets.

**Nasdaq GEMX, LLC Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

\* \* \* \* \*

**Section 3. Regular Order Fees and Rebates**

**Penny Symbols**

<b>Market Participant</b>	<b>Maker Rebate: Tier 1</b>	<b>Maker Rebate: Tier 2</b>	<b>Maker Rebate: Tier 3</b>	<b>Maker Rebate: Tier 4</b>	<b>[Maker Rebate: Tier 5 ]</b>	<b>Taker Fee: Tier 1 (4)(13)</b>	<b>Taker Fee: Tier 2 (4)(13)</b>	<b>Taker Fee: Tier 3 (4)(13)</b>	<b>Taker Fee: Tier 4 (4)(13)</b>	<b>[Taker Fee: Tier 5 (4)(13)]</b>	<b>Fee for Crossing Orders (excluding PIM) (1)(8)(11)</b>	<b>Fee for Responses to Crossing Orders (excluding PIM) (8)(12)</b>
Market Maker <sup>(2)(3)(5)</sup>	(\$0.20)	(\$0.25)	(\$0.30)	(\$0.41)	[( \$0.45)]	\$0.50	\$0.50	\$0.50	\$0.48	[\$0.48]	\$0.20	\$0.50
Non-Nasdaq GEMX Market Maker (FarMM) <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	[n/a]	\$0.50	\$0.50	\$0.50	\$0.48	[\$0.48]	\$0.20	\$0.50
Firm Proprietary / Broker-Dealer <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	[n/a]	\$0.50	\$0.50	\$0.50	\$0.49	[\$0.49]	\$0.20	\$0.50
Professional Customer <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	[n/a]	\$0.50	\$0.50	\$0.50	\$0.49	[\$0.49]	\$0.20	\$0.50

Priority Customer <sup>(3)(5)</sup>	(\$0.25)	(\$0.40)	(\$0.48)	(\$0.53)	[\$(0.53)]	\$0.4	[9]	8	\$0.48	\$0.48	\$0.43	[\$0.42]	\$0.00	\$0.50
-------------------------------------	----------	----------	----------	----------	------------	-------	-----	---	--------	--------	--------	----------	--------	--------

**Non-Penny Symbols (Excluding Index Options)<sup>(6)</sup>**

Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	[Maker Rebate: Tier 5]	Taker Fee: Tier 1 <sup>(4)(16)</sup>	Taker Fee: Tier 2 <sup>(4)(16)</sup>	Taker Fee: Tier 3 <sup>(4)(16)</sup>	Taker Fee: Tier 4 <sup>(4)(16)</sup>	[Taker Fee: Tier 5 <sup>(4)(16)</sup> ]	Fee for Crossing Orders (excluding PIM) <sup>(1)(8)(11)</sup>	Fee for Responses to Crossing Orders (excluding PIM) <sup>(8)(12)</sup>
Market Maker <sup>(2)(3)(5)</sup>	(\$0.40)	(\$0.42)	(\$0.45)	(\$0.75)	[\$(0.75)]	\$0.99	\$0.99	\$0.99	\$0.94	[\$0.94]	\$0.20	\$1.10
Non-Nasdaq GEMX Market Maker (FarMM) <sup>(3)</sup>	(\$0.25)	n/a	n/a	n/a	[n/a]	\$0.99	\$0.99	\$0.99	\$0.94	[\$0.94]	\$0.20	\$1.10
Firm Proprietary / Broker-Dealer <sup>(3)</sup>	(\$0.25)	n/a	n/a	n/a	[n/a]	\$0.99	\$0.99	\$0.99	\$0.94	[\$0.94]	\$0.20	\$1.10
Professional Customer <sup>(3)</sup>	(\$0.25)	n/a	n/a	n/a	[n/a]	\$0.99	\$0.99	\$0.99	\$0.94	[\$0.94]	\$0.20	\$1.10
Priority Customer <sup>(3)(5)</sup>	(\$0.75)	(\$0.80)	(\$0.85)	(\$1.05)	[\$(1.05)]	\$0.85	\$0.85	\$0.85	\$0.82	[\$0.82]	\$0.00	\$1.10

**Index Options<sup>(6)(9)</sup>**

Market Participant	Fee <sup>(10)</sup>
Market Maker <sup>(2)</sup>	\$0.75
Non-Nasdaq GEMX Market Maker (FarMM)	\$0.75
Firm Proprietary / Broker-Dealer	\$0.75

Professional Customer	\$0.75
Priority Customer	\$0.00

1. Fees apply to the originating and contra order.
2. This fee applies to Nasdaq GEMX Market Maker orders sent to the Exchange by Electronic Access Members.
3. All market participants are eligible for lower Taker Fees based on achieving volume thresholds in Table 1 below. Members who do not achieve a higher Tier under Table 1 will be charged Tier 1 Taker Fees.
4. Non-Priority Customer orders will be charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved.
5. Market Maker and Priority Customer orders are eligible for higher Maker Rebates based on achieving volume thresholds in Table 1 below. Members who do not achieve a higher Tier under Table 1 will receive Tier 1 Maker Rebates.
6. The index options fees apply only to NDX. These fees are assessed to all executions in NDX.
7. An additional rebate of \$0.05 per contract will be paid for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders that qualify as MARS Eligible Contracts, pursuant to Options 7, Section 4B, and were routed through a qualifying GEMX Member's routing system. This rebate will be paid in addition to the Tier 1 Maker Rebate.
8. Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 4C.
9. For transactions in NDX, a license surcharge of \$0.25 will be assessed to Non-Priority Customers. The license surcharge applies to all NDX executions, including executions of NDX orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.
10. This fee is not subject to tier discounts.
11. This fee is \$0.05 per contract for Priority Customer orders on the contra-side of a PIM auction and all non-Priority Customer orders executed in the PIM. There is no fee for Priority Customer orders on the agency side of a PIM auction.
12. This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM.

13. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

14. Reserved.

15. Reserved.

16. Non-Priority Customer orders will be charged a Taker Fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Taker Fee of \$0.85 per contract for trades executed against a Priority Customer.

**Qualifying Tier Thresholds**

Table 1

<b>Tier</b>	<b>Total Affiliated Member % of Customer Total Consolidated Volume</b>	<b>Priority Customer Maker % of Customer Total Consolidated Volume</b>
<b>Tier 1</b>	Executes less than 0.65% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume
<b>Tier 2</b>	Executes 0.65% to less than 1.5% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume
<b>Tier 3</b>	Executes 1.5% to less than 2.50% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume
<b>Tier 4</b>	Executes 2.5% [to less than 3.5%] <u>or greater</u> of Customer	Executes Priority Customer Maker

	Total Consolidated Volume	volume of 1.20% [to less than 2.75% ] <u>or greater</u> of Customer Total Consolidated Volume
	[Executes 3.5% or greater of Customer Total Consolidated Volume]	[Executes Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume]
<b>[Tier 5]</b>		

- For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.
- The highest tier threshold attained above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.
- All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.
- The Total Affiliated Member % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.
- The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

\* \* \* \* \*