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

File No. * SR 2022 - * 06

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

A proposal to amend the 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 * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * sun.kim@nasdaq.com

Telephone * (646) 420-7816 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 05/02/2022

(Title *)

By John Zecca (Name *)

EVP and Chief Legal Officer

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.

 Date: 2022.05.02 12:27:44 -04'00'

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 *

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SR-GEMX-2022-06 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 *

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SR-GEMX-2022-06 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 *

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

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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

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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

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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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SR-GEMX-2022-06 Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend GEMX’s Pricing Schedule at Options 7, Section 3 (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”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
(646) 420-7816

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3 to: (1) decrease the Priority Customer³ Tier 4 Maker Rebate in Penny Symbols,⁴ and (2) decrease the Non-Priority Customer⁵ and Priority Customer Penny Symbol Taker Fees in note 13. Each amendment is described below.

Priority Customer Maker Rebate

Today, the Exchange provides Priority Customers Penny Symbol Maker Rebates as follows: \$0.25 per contract (Tier 1), \$0.40 per contract (Tier 2), \$0.48 per contract (Tier 3), and \$0.53 per contract (Tier 4). Priority Customers are eligible for the higher tiers of Maker Rebates based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The Exchange now proposes to lower the Tier 4 Priority Customer Maker Rebate from \$0.53 to \$0.52 per contract.

Note 13 Taker Fees

Today, the Exchange assesses all market participants Penny Symbol Taker Fees in Tiers 1 – 4 as follows:

³ 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).

⁴ “Penny Symbols” are options overlying all symbols listed on Nasdaq GEMX that are in the Penny Interval Program. See Options 7, Section 1.

⁵ “Non-Priority Customer” includes Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers.

Market Participant	Taker Fee: Tier 1	Taker Fee: Tier 2	Taker Fee: Tier 3	Taker Fee: Tier 4
Market Maker	\$0.50	\$0.50	\$0.50	\$0.48
Non-Nasdaq GEMX Market Maker (FarMM)	\$0.50	\$0.50	\$0.50	\$0.48
Firm Proprietary / Broker-Dealer	\$0.50	\$0.50	\$0.50	\$0.49
Professional Customer	\$0.50	\$0.50	\$0.50	\$0.49
Priority Customer	\$0.48	\$0.48	\$0.48	\$0.43

Market participants are eligible for the higher tiers of Penny Taker Fees based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The tiered Penny Taker Fees set forth above apply when the market participant trades against a Non-Priority Customer. When the market participant trades against a Priority Customer, the Exchange assesses the Penny Taker Fees set forth in note 13 of Options 7, Section 3, regardless of tier. Specifically, note 13 currently provides that Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Penny 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 Penny Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny 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.

The Exchange now proposes to lower the: (i) \$0.50 Taker Fee for Non-Priority Customers that execute less than 4.0% of Customer Total Consolidated Volume to \$0.48 per contract when trading against a Priority Customer, and (ii) the \$0.49 Taker Fee for Priority Customers that trade against another Priority Customer to \$0.48 per contract. In other words, all market participants would be charged a base Penny Taker Fee of \$0.48 per contract if they trade against a Priority Customer. Non-Priority Customers will continue to have an opportunity to lower that fee to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system,

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

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’....”⁸

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.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

Priority Customer Maker Rebate

The Exchange believes that its proposal to lower the Tier 4 Penny Maker Rebate for Priority Customers from \$0.53 to \$0.52 per contract is reasonable, equitable and not unfairly discriminatory. While the Exchange is lowering this rebate, Priority Customers will continue to receive the highest Penny Maker Rebates with the proposed changes. No market participants other than Market Makers and Priority Customers are offered enhanced Penny Maker Rebates in Tier 4, and the proposed \$0.52 Tier 4 Maker Rebate for Priority Customers continues to be significantly higher than the \$0.41 Tier 4 Maker Rebate currently provided to Market Makers.¹⁰ The Exchange therefore believes that the proposed pricing will continue to be attractive for Priority Customer order flow.

The Exchange believes that the proposed Tier 4 Priority Customer Maker Rebate changes are equitable and not unfairly discriminatory. As discussed above, the Exchange believes the proposed pricing will continue to attract Priority Customer order flow to the Exchange. 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.

Note 13 Taker Fees

The Exchange believes that its proposal in note 13 of Options 7, Section 3 to lower the Penny Taker Fees that apply when trading against a Priority Customer is reasonable. As discussed above, the Exchange is proposing to lower the base Penny

¹⁰ As set forth in Options 7, Section 3, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers are eligible to receive a \$0.20 Penny Maker Rebate in Tier 1 only.

Taker Fee for all market participants to \$0.48 per contract if they trade against a Priority Customer. Non-Priority Customers would continue to have an opportunity to lower that fee to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed Penny Taker Fees for trading against Priority Customers will generally be lower or comparable to the current tiered Penny Taker Fees for trading against Non-Priority Customers. The only exception is the Tier 4 Penny Taker Fee for Priority Customers when trading against a Non-Priority Customer. As described above, this fee is currently \$0.43 per contract. Otherwise, the proposed Taker Fees are lower or comparable for all market participants, regardless of tier.¹¹ The Exchange believes that its proposal will enhance Priority Customer experience on the Exchange by incentivizing market participants with a lower Penny Taker Fee to remove Priority Customer liquidity. At the same time, the Exchange believes the proposed pricing (including the Priority Customer Taker Fee when the counter party is another Priority Customer) appropriately balances the Exchange's intent to offset the favorable Penny Symbol pricing currently offered to Priority Customers through higher Maker Rebates and lower Taker Fees. With the proposed changes, the Exchange continues to believe that its pricing structure for Penny Symbols will continue to attract additional volume to GEMX.

¹¹ Specifically, all Non-Priority Customers are currently assessed a Penny Taker Fee of \$0.50 per contract in Tiers 1-3 when trading against Non-Priority Customers, while this fee is \$0.48 per contract for Priority Customers in Tiers 1-3. In Tier 4, Market Makers and Non-Nasdaq GEMX Market Makers are currently assessed a \$0.48 per contract Penny Taker Fee when trading against Non-Priority Customers. For Firm Proprietary / Broker-Dealers and Professional Customers, the Tier 4 fee is currently \$0.49 per contract. As previously discussed, the Tier 4 fee is currently \$0.43 per contract for Priority Customers.

The Exchange further believes that the proposed changes to lower the Penny Taker Fees in note 13 are equitable and not unfairly discriminatory. In particular, the Exchange is lowering the Penny Taker Fee to \$0.48 per contract for all market participants when the counter party is a Priority Customer.

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

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

The proposed Tier 4 Priority Customer Maker Rebate changes do not impose an undue burden on intra-market competition. As discussed above, Priority Customers will continue to receive the highest Penny Maker Rebates on the Exchange with the proposed changes, so the Exchange believes its proposal will continue to attract Priority Customer order flow to the Exchange. 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. As it relates to proposed note 13 Taker Fee changes, the Exchange will assess the same Taker Fee to all market participants when the counter party is a Priority Customer. Accordingly, the Exchange does not believe that its pricing proposal will place any market participant at a competitive disadvantage.

As it relates to 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 options 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.

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,¹² 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2022-06)

May __, 2022

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 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 (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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3 to: (1) decrease the Priority Customer³ Tier 4 Maker Rebate in Penny Symbols,⁴ and (2) decrease the Non-Priority Customer⁵ and Priority Customer Penny Symbol Taker Fees in note 13. Each amendment is described below.

Priority Customer Maker Rebate

Today, the Exchange provides Priority Customers Penny Symbol Maker Rebates as follows: \$0.25 per contract (Tier 1), \$0.40 per contract (Tier 2), \$0.48 per contract (Tier 3), and \$0.53 per contract (Tier 4). Priority Customers are eligible for the higher tiers of Maker Rebates based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The Exchange now proposes to lower the Tier 4 Priority Customer Maker Rebate from \$0.53 to \$0.52 per contract.

³ 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).

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

⁵ "Non-Priority Customer" includes Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers.

Note 13 Taker Fees

Today, the Exchange assesses all market participants Penny Symbol Taker Fees in Tiers 1 – 4 as follows:

Market Participant	Taker Fee: Tier 1	Taker Fee: Tier 2	Taker Fee: Tier 3	Taker Fee: Tier 4
Market Maker	\$0.50	\$0.50	\$0.50	\$0.48
Non-Nasdaq GEMX Market Maker (FarMM)	\$0.50	\$0.50	\$0.50	\$0.48
Firm Proprietary / Broker-Dealer	\$0.50	\$0.50	\$0.50	\$0.49
Professional Customer	\$0.50	\$0.50	\$0.50	\$0.49
Priority Customer	\$0.48	\$0.48	\$0.48	\$0.43

Market participants are eligible for the higher tiers of Penny Taker Fees based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The tiered Penny Taker Fees set forth above apply when the market participant trades against a Non-Priority Customer. When the market participant trades against a Priority Customer, the Exchange assesses the Penny Taker Fees set forth in note 13 of Options 7, Section 3, regardless of tier. Specifically, note 13 currently provides that Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Penny 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 Penny Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny 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.

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2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has

⁶ 15 U.S.C. 78f(b).

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long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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’”⁸

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Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

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The Exchange believes that its proposal to lower the Tier 4 Penny Maker Rebate for Priority Customers from \$0.53 to \$0.52 per contract is reasonable, equitable and not unfairly discriminatory. While the Exchange is lowering this rebate, Priority Customers will continue to receive the highest Penny Maker Rebates with the proposed changes. No market participants other than Market Makers and Priority Customers are offered enhanced Penny Maker Rebates in Tier 4, and the proposed \$0.52 Tier 4 Maker Rebate for Priority Customers continues to be significantly higher than the \$0.41 Tier 4 Maker Rebate currently provided to Market Makers.¹⁰ The Exchange therefore believes that the proposed pricing will continue to be attractive for Priority Customer order flow.

The Exchange believes that the proposed Tier 4 Priority Customer Maker Rebate changes are equitable and not unfairly discriminatory. As discussed above, the Exchange believes the proposed pricing will continue to attract Priority Customer order flow to the Exchange. 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.

¹⁰ As set forth in Options 7, Section 3, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers are eligible to receive a \$0.20 Penny Maker Rebate in Tier 1 only.

Note 13 Taker Fees

The Exchange believes that its proposal in note 13 of Options 7, Section 3 to lower the Penny Taker Fees that apply when trading against a Priority Customer is reasonable. As discussed above, the Exchange is proposing to lower the base Penny Taker Fee for all market participants to \$0.48 per contract if they trade against a Priority Customer. Non-Priority Customers would continue to have an opportunity to lower that fee to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed Penny Taker Fees for trading against Priority Customers will generally be lower or comparable to the current tiered Penny Taker Fees for trading against Non-Priority Customers. The only exception is the Tier 4 Penny Taker Fee for Priority Customers when trading against a Non-Priority Customer. As described above, this fee is currently \$0.43 per contract. Otherwise, the proposed Taker Fees are lower or comparable for all market participants, regardless of tier.¹¹ The Exchange believes that its proposal will enhance Priority Customer experience on the Exchange by incentivizing market participants with a lower Penny Taker Fee to remove Priority Customer liquidity. At the same time, the Exchange believes the proposed pricing (including the Priority Customer Taker Fee when the counter party is another Priority Customer) appropriately balances the Exchange's intent to offset the favorable Penny Symbol pricing currently offered to Priority Customers through higher Maker

¹¹ Specifically, all Non-Priority Customers are currently assessed a Penny Taker Fee of \$0.50 per contract in Tiers 1-3 when trading against Non-Priority Customers, while this fee is \$0.48 per contract for Priority Customers in Tiers 1-3. In Tier 4, Market Makers and Non-Nasdaq GEMX Market Makers are currently assessed a \$0.48 per contract Penny Taker Fee when trading against Non-Priority Customers. For Firm Proprietary / Broker-Dealers and Professional Customers, the Tier 4 fee is currently \$0.49 per contract. As previously discussed, the Tier 4 fee is currently \$0.43 per contract for Priority Customers.

Rebates and lower Taker Fees. With the proposed changes, the Exchange continues to believe that its pricing structure for Penny Symbols will continue to attract additional volume to GEMX.

The Exchange further believes that the proposed changes to lower the Penny Taker Fees in note 13 are equitable and not unfairly discriminatory. In particular, the Exchange is lowering the Penny Taker Fee to \$0.48 per contract for all market participants when the counter party is a Priority Customer.

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

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

The proposed Tier 4 Priority Customer Maker Rebate changes do not impose an undue burden on intra-market competition. As discussed above, Priority Customers will continue to receive the highest Penny Maker Rebates on the Exchange with the proposed changes, so the Exchange believes its proposal will continue to attract Priority Customer order flow to the Exchange. 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. As it relates to proposed note 13 Taker Fee changes, the Exchange will assess the same Taker Fee to all market participants when the counter party is a Priority Customer. Accordingly, the Exchange does not believe that its pricing proposal will place any market participant at a competitive disadvantage.

As it relates to 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 options 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.

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.¹² 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.

¹² 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. Please include File Number SR-GEMX-2022-06 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-2022-06. 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-2022-06 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 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 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

Penny Symbols

Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	Taker Fee: Tier 1	Taker Fee: Tier 2	Taker Fee: Tier 3	Taker Fee: Tier 4	Fee for Crossing Orders (excluding PIM)	Fee for Crossing Orders (excluding PIM)
Market Maker ⁽²⁾⁽³⁾⁽⁵⁾	(\$0.20)	(\$0.25)	(\$0.30)	(\$0.41)	\$0.50 (4)(13)	\$0.50 (4)(13)	\$0.50 (4)(13)	\$0.48 (4)(13)	\$0.20 (1)(8)(11)	\$0.50 (8)(12)
Non-Nasdaq GEMX Market Maker (FarMM) ⁽³⁾	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.48	\$0.20	\$0.50
Firm Proprietary / Broker-Dealer ⁽³⁾	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.49	\$0.20	\$0.50
Professional Customer ⁽³⁾	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.49	\$0.20	\$0.50
Priority Customer ⁽³⁾⁽⁵⁾	(\$0.25)	(\$0.40)	(\$0.48)	(\$0. <u>[53]</u> <u>5</u>)	\$0.48	\$0.48	\$0.48	\$0.43	\$0.00	\$0.50

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13. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.[50]48 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 \$0.4[9]8 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.

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