

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 49

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

File No. \* SR 2022 - \* 09

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 \*).

Proposal to Amend GEMX Options 7

### 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 10/03/2022


(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.

 Date: 2022.10.03 11:38:57 -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 EFFS website.

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

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SR-GEMX-2022-09 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-2022-09 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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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**

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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-2022-09 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**

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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 (“ISE” 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 the Exchange’s Pricing Schedule at Options 7.

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:

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

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

a. Purpose

The Exchange proposes to amend Options 7, Sections 1, 3 and 4 in connection

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

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

with adopting an Affiliated Entity program. The Exchange also proposes to amend Options 7, Section 3 to amend its Regular Order Fees and Rebates for Penny Symbols and Non-Penny Symbols and Qualifying Tier Thresholds and remove note 13 from the Pricing Schedule. Each change is described below.

#### Affiliated Entity Program

The Exchange proposes to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates. Today, Nasdaq MRX, LLC (“MRX”) and Nasdaq ISE, LLC (“ISE”)<sup>3</sup> also permit Affiliated Entities to aggregate volume for purposes of qualifying for certain pricing.

Specifically, the Exchange proposes to adopt the term “Affiliated Entity” within Options 7, Section 1(c).<sup>4</sup> An “Affiliated Entity” would be a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An “Appointed Market Maker” is proposed to be defined within Options 7, Section 1(c) as a Market Maker who has been appointed by an OFP for purposes of qualifying as an Affiliated Entity. An “Order Flow Provider” or “OFP” is proposed to be defined within Options 7, Section 1(c) as any Member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange.<sup>5</sup> Finally, an “Appointed OFP” would be defined within Options 7, Section 1(c) as an OFP who has been appointed by a Market Maker for purposes of qualifying as an Affiliated

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<sup>3</sup> See MRX and ISE Options 7, Section 1.

<sup>4</sup> The Exchange proposes to add a “c” before the term references within Options 7, Section 1 to further describe this section of the Pricing Schedule.

<sup>5</sup> Market Makers shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

Entity.

In order to become an Affiliated Entity, Market Makers and OFPs would be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.<sup>6</sup> For example, with this proposal, market participants should have submitted emails to the Exchange to become Affiliated Entities to qualify for discounted pricing by September 28, 2022, which is 3 business days prior to the first business day of October 3, 2022. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule within Options 7, Section 1(c).

Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members<sup>7</sup> may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing

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<sup>6</sup> The Exchange issued an Options Trader Alert which provided the email address and details required to apply to become an Affiliated Entity.

<sup>7</sup> An “Affiliated Member” is Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A. This term is currently described within Options 7, Sections 3 and 4. The Exchange proposes to remove the description of an Affiliated Member from Options 7, Sections 3 and 4 and instead describe an Affiliated Member within Options 7, Section 1(c). The Exchange also proposes to capitalize the word “affiliated” within Options 7, Section 4 to refer to the defined term.

specified in the Pricing Schedule, as described below.

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to indicate that with respect to the Qualifying Tier Thresholds, for purposes of measuring Total Affiliated Member *or Affiliated Entity* % 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. Further, the Exchange proposes to provide that all eligible volume from Affiliated Members *or an Affiliated Entity* will be aggregated in determining applicable tiers for each of the Qualifying Tier Thresholds in Table 1. Finally, the Exchange proposes to note that the Total Affiliated Member *or Affiliated Entity* % 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.

With these proposed amendments, an Affiliated Entity would be permitted to aggregate its volume to qualify for the Qualifying Tier Thresholds. By aggregating volume, the Appointed Market Maker and Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. The Exchange believes that the Affiliated Entity program will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX.

As noted above, with this proposed change, a GEMX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period. The Exchange proposes to incentivize certain Members, who are not Affiliated Members, to enter into

an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify to for certain Maker or Taker tiers.

Options 7, Section 3

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to: (1) renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, (2) add a new Maker Rebate Tier 4 and Taker Fee Tier 4; (3) amend new Priority Customer<sup>8</sup> Maker Rebate Tier 5; and (4) eliminate current note 13. Each change will be described below.

*Maker Rebates*

Today, GEMX pays the following Tier 4 Penny Symbol Maker Rebates: \$0.41 per contract to Market Makers<sup>9</sup> and \$0.52 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM),<sup>10</sup> Firm Proprietary<sup>11</sup>/Broker Dealers<sup>12</sup> and

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<sup>8</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(c), as proposed.

<sup>9</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>10</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>11</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See GEMX Options 7, Section 1.

<sup>12</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.

Professional Customers<sup>13</sup> are not eligible for Tier 4 Penny Symbol Maker Rebates.

Today, GEMX pays the following Tier 4 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 4 Non-Penny Symbol Maker Rebates.

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Maker Rebate Tiers 4 as Tier 5.

The Exchange also proposes to increase the Priority Customer Penny Symbol newly renumbered Maker Rebate Tier 5 from \$0.52 to \$0.53 per contract.

The Exchange also proposes to adopt a new Penny Symbol Maker Rebate Tier 4 as follows: \$0.32 per contract to Market Makers and \$0.51 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Penny Symbol Maker Rebates.

The Exchange also proposes to adopt a new Non-Penny Symbol Maker Rebate Tier 4 as follows: \$0.50 per contract to Market Makers and \$0.90 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Non-Penny Symbol Maker Rebates.

#### *Taker Fees*

Today, GEMX pays the following Tier 4 Penny Symbol Taker Fees: \$0.48 per contract to Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), \$0.49 per

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<sup>13</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.



contract to Firm Proprietary/Broker Dealers and Professional Customers, and \$0.43 per contract to Priority Customers. Today, GEMX pays the following Tier 4 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

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Taker Fee Tiers 4 as Tier 5.

The Exchange also proposes to adopt a new Penny Symbol Taker Fee Tier 4 as follows: \$0.50 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and \$0.48 per contract to Priority Customers. Similar to current Penny Symbol Taker Fees, non-Priority Customer<sup>14</sup> orders will be charged the Penny Symbol Taker Fee for trades executed during the Opening Process for Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Penny Symbol Maker Rebate based on the tier achieved.<sup>15</sup>

The Exchange also proposes to adopt a new Non-Penny Symbol Taker Fee Tier 4 as follows: \$0.99 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and \$0.85 per contract to Priority Customers. Similar to current Non-Penny Symbol Taker Fees, non-Priority Customer orders will be charged the Non-Penny Taker Fee for trades executed

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<sup>14</sup> Non-Priority Customer Orders includes order for the accounts of Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers.

<sup>15</sup> See note 4 in Options 7, Section 3 of the Pricing Schedule.

during the Opening Process for Non-Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Non-Penny Symbol Maker Rebate based on the tier achieved.<sup>16</sup> Additionally, Non-Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of \$0.85 per contract for trades executed against a Priority Customer.<sup>17</sup>

Today, for Penny Symbol Taker Fees 1,<sup>18</sup> 2,<sup>19</sup> 3<sup>20</sup> and 4, non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume<sup>21</sup> will be charged a Penny Symbol Taker Fee of \$0.48 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 Penny Symbol Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny Symbol Taker Fee of \$0.48 per contract for trades executed against a

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<sup>16</sup> See note 4 in Options 7, Section 3 of the Pricing Schedule.

<sup>17</sup> See note 16 in Options 7, Section 3 of the Pricing Schedule.

<sup>18</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 1 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

<sup>19</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 2 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

<sup>20</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 3 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

<sup>21</sup> 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.

Priority Customer.<sup>22</sup>

At this time, the Exchange proposes to remove note 13 from the Pricing Schedule within Options 7, Section 3. While the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Taker Fees offer market participants the ability to obtain lower Taker Fees, if they are currently in Penny Symbol Taker Fee Tiers 1-3, by submitting additional order flow to GEMX.

Finally, the Exchange proposes to amend the criteria to qualify for the tier thresholds within Options 7, Section 3. The Exchange proposes to add tier qualifications for new Tier 4 which would require a Member to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume. Also, for Tier 4, a Member would be required to execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume.

With the addition of new Tier 4 in the Qualifying Tier Thresholds, the Exchange proposes to also amend Tier 3 to accommodate the new tier. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to amend the range in Tier 3 for the qualifying

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<sup>22</sup> See note 13 in Options 7, Section 3 of the Pricing Schedule.

Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume). Finally, the Exchange proposes to renumber Tier 4 as Tier 5 within the Qualifying Tier Thresholds.

The Exchange believes that the addition of Tier 4 will incentive GEMX Members in Penny and Non-Penny Symbol Tiers 1 through 3 to submit additional order flow to GEMX to obtain lower Taker Fees and higher Maker Rebates.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>24</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 Proposal is Reasonable

The 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 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<sup>25</sup> (“NetCoalition”), the D.C.

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>25</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Circuit stated, “[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>26</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

#### Affiliated Entity Program

The Exchange’s proposal to permit an Affiliated Entity to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is reasonable because the Exchange believes this program will incentivize certain GEMX Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify for certain lower Market Maker fees. By aggregating volume, the Appointed Market Maker and

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<sup>26</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)).

Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. Additionally, this proposal will harmonize GEMX's program with MRX's and ISE's programs.<sup>27</sup> While a GEMX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates, the Exchange believes that permitting aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX if they chose to enter into this relationship.

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

#### Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and

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<sup>27</sup> See MRX and ISE Options 7, Section 1.

Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is reasonable because the addition of new Tier 4 will incentive GEMX Members to submit additional order flow to GEMX to obtain lower fees and higher rebates. Specifically, Members currently in Penny and Non-Penny Symbol Tiers 1 through 3 may be assessed lower Taker Fees or receive higher Maker Rebates if they are able to submit additional order to qualify for new Tier 4.

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is equitable and not unfairly discriminatory because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates as compared to all other non-Priority Customer market participants. 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. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other

market participants do not (such as quoting requirements).<sup>28</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract is reasonable because the Exchange believes this increased rebate will attract additional Priority Customer order flow to GEMX.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract is equitable and not unfairly discriminatory because 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.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is reasonable because while the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Penny Symbol Taker Fees offer market participants the ability to obtain lower fees, if they are currently in Penny Symbol Taker Fee Tiers 1-3, by submitting additional order flow to GEMX.

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<sup>28</sup> See GEMX Options 2, Section 5.



The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is equitable and not unfairly discriminatory because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is reasonable because the addition of new Tier 4 would allow Members to qualify for lower fees or higher rebates if they are able to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume and execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume. The criteria for new Tier 4 requires less order flow than the criteria for re-numbered Tier 5 and pays lower Taker Fees and higher Maker Rebates than Tier 3.<sup>29</sup>

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is equitable and not unfairly discriminatory because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied to all Members in determining a Member's applicable tier.

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<sup>29</sup> The Exchange proposes to amend Tier 3 to accommodate the new tier 4. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to amend the range in Tier 3 for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume).

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.

Intermarket Competition

The Exchange 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. 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 because other options exchanges offer similar affiliation programs and have maker/taker models akin to GEMX's model.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket CompetitionAffiliated Entity Program

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower Taker Fees or receiving higher Maker Rebates does not impose an undue burden on competition because all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Today, Affiliated Members may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 does not impose an undue burden on competition because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates as compared to all other non-Priority Customer market participants. 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. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).<sup>30</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract does not impose an undue burden on competition because 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.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 does not impose an undue burden on competition because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 does not impose an undue burden on competition because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied

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<sup>30</sup> See GEMX Options 2, Section 5.

to all Members in determining a Member's applicable tier.

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>31</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.

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

Not applicable.

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-XX)

October \_\_, 2022

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX Options 7

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 October 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 the Exchange’s Pricing Schedule at Options 7.

The text of the proposed rule change is available on the Exchange’s Website at

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

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

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend Options 7, Sections 1, 3 and 4 in connection with adopting an Affiliated Entity program. The Exchange also proposes to amend Options 7, Section 3 to amend its Regular Order Fees and Rebates for Penny Symbols and Non-Penny Symbols and Qualifying Tier Thresholds and remove note 13 from the Pricing Schedule. Each change is described below.

Affiliated Entity Program

The Exchange proposes to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates. Today, Nasdaq MRX, LLC (“MRX”) and Nasdaq ISE, LLC (“ISE”)<sup>3</sup> also permit Affiliated Entities to aggregate volume for purposes of qualifying for certain pricing.

Specifically, the Exchange proposes to adopt the term “Affiliated Entity” within Options 7, Section 1(c).<sup>4</sup> An “Affiliated Entity” would be a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An “Appointed Market Maker” is proposed to be defined within Options 7, Section 1(c) as a Market Maker who has been appointed by an OFP for purposes of qualifying as an Affiliated Entity. An “Order Flow Provider” or

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<sup>3</sup> See MRX and ISE Options 7, Section 1.

<sup>4</sup> The Exchange proposes to add a “c” before the term references within Options 7, Section 1 to further describe this section of the Pricing Schedule.



“OFP” is proposed to be defined within Options 7, Section 1(c) as any Member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange.<sup>5</sup>

Finally, an “Appointed OFP” would be defined within Options 7, Section 1(c) as an OFP who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

In order to become an Affiliated Entity, Market Makers and OFPs would be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.<sup>6</sup> For example, with this proposal, market participants should have submitted emails to the Exchange to become Affiliated Entities to qualify for discounted pricing by September 28, 2022, which is 3 business days prior to the first business day of October 3, 2022. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule within Options 7, Section 1(c).

Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members<sup>7</sup> may not qualify as a

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<sup>5</sup> Market Makers shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

<sup>6</sup> The Exchange issued an Options Trader Alert which provided the email address and details required to apply to become an Affiliated Entity.

<sup>7</sup> An “Affiliated Member” is Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A.

counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to indicate that with respect to the Qualifying Tier Thresholds, for purposes of measuring Total Affiliated Member *or Affiliated Entity* % 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. Further, the Exchange proposes to provide that all eligible volume from Affiliated Members *or an Affiliated Entity* will be aggregated in determining applicable tiers for each of the Qualifying Tier Thresholds in Table 1. Finally, the Exchange proposes to note that the Total Affiliated Member *or Affiliated Entity* % 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.

With these proposed amendments, an Affiliated Entity would be permitted to aggregate its volume to qualify for the Qualifying Tier Thresholds. By aggregating volume, the Appointed Market Maker and Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. The

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This term is currently described within Options 7, Sections 3 and 4. The Exchange proposes to remove the description of an Affiliated Member from Options 7, Sections 3 and 4 and instead describe an Affiliated Member within Options 7, Section 1(c). The Exchange also proposes to capitalize the word “affiliated” within Options 7, Section 4 to refer to the defined term.

Exchange believes that the Affiliated Entity program will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX.

As noted above, with this proposed change, a GEMX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period. The Exchange proposes to incentivize certain Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify to for certain Maker or Taker tiers.

### Options 7, Section 3

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to: (1) renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, (2) add a new Maker Rebate Tier 4 and Taker Fee Tier 4; (3) amend new Priority Customer<sup>8</sup> Maker Rebate Tier 5; and (4) eliminate current note 13. Each change will be described below.

### *Maker Rebates*

Today, GEMX pays the following Tier 4 Penny Symbol Maker Rebates: \$0.41 per contract to Market Makers<sup>9</sup> and \$0.52 per contract to Priority Customers. Non-

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<sup>8</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(c), as proposed.

<sup>9</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>10</sup> Firm Proprietary<sup>11</sup>/Broker Dealers<sup>12</sup> and Professional Customers<sup>13</sup> are not eligible for Tier 4 Penny Symbol Maker Rebates.

Today, GEMX pays the following Tier 4 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 4 Non-Penny Symbol Maker Rebates.

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Maker Rebate Tiers 4 as Tier 5.

The Exchange also proposes to increase the Priority Customer Penny Symbol newly renumbered Maker Rebate Tier 5 from \$0.52 to \$0.53 per contract.

The Exchange also proposes to adopt a new Penny Symbol Maker Rebate Tier 4 as follows: \$0.32 per contract to Market Makers and \$0.51 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Penny Symbol Maker Rebates.

The Exchange also proposes to adopt a new Non-Penny Symbol Maker Rebate

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<sup>10</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>11</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See GEMX Options 7, Section 1.

<sup>12</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>13</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.

Tier 4 as follows: \$0.50 per contract to Market Makers and \$0.90 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Non-Penny Symbol Maker Rebates.

*Taker Fees*

Today, GEMX pays the following Tier 4 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 \$0.43 per contract to Priority Customers. Today, GEMX pays the following Tier 4 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

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Taker Fee Tiers 4 as Tier 5.

The Exchange also proposes to adopt a new Penny Symbol Taker Fee Tier 4 as follows: \$0.50 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and \$0.48 per contract to Priority Customers. Similar to current Penny Symbol Taker Fees, non-Priority Customer<sup>14</sup> orders will be charged the Penny Symbol Taker Fee for trades executed during the Opening Process for Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Penny

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<sup>14</sup> Non-Priority Customer Orders includes order for the accounts of Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers.

Symbol Maker Rebate based on the tier achieved.<sup>15</sup>

The Exchange also proposes to adopt a new Non-Penny Symbol Taker Fee Tier 4 as follows: \$0.99 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and \$0.85 per contract to Priority Customers. Similar to current Non-Penny Symbol Taker Fees, non-Priority Customer orders will be charged the Non-Penny Taker Fee for trades executed during the Opening Process for Non-Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Non-Penny Symbol Maker Rebate based on the tier achieved.<sup>16</sup> Additionally, Non-Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of \$0.85 per contract for trades executed against a Priority Customer.<sup>17</sup>

Today, for Penny Symbol Taker Fees 1,<sup>18</sup> 2,<sup>19</sup> 3<sup>20</sup> and 4, non-Priority Customers

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<sup>15</sup> See note 4 in Options 7, Section 3 of the Pricing Schedule.

<sup>16</sup> See note 4 in Options 7, Section 3 of the Pricing Schedule.

<sup>17</sup> See note 16 in Options 7, Section 3 of the Pricing Schedule.

<sup>18</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 1 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

<sup>19</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 2 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

<sup>20</sup> Today, the Exchange assesses \$0.50 per contract for Penny Symbol Taker Fee 3 for all non-Priority Customers and \$0.48 per contract for Priority Customers.

who execute less than 4.0% of Customer Total Consolidated Volume<sup>21</sup> will be charged a Penny Symbol Taker Fee of \$0.48 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 Penny Symbol Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny Symbol Taker Fee of \$0.48 per contract for trades executed against a Priority Customer.<sup>22</sup>

At this time, the Exchange proposes to remove note 13 from the Pricing Schedule within Options 7, Section 3. While the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Taker Fees offer market participants the ability to obtain lower Taker Fees, if they are currently in Penny Symbol Taker Fee Tiers 1-3, by submitting additional order flow to GEMX.

Finally, the Exchange proposes to amend the criteria to qualify for the tier thresholds within Options 7, Section 3. The Exchange proposes to add tier qualifications for new Tier 4 which would require a Member to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume. Also, for Tier 4, a Member would be required to execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer

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<sup>21</sup> 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>22</sup> See note 13 in Options 7, Section 3 of the Pricing Schedule.

Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume.

With the addition of new Tier 4 in the Qualifying Tier Thresholds, the Exchange proposes to also amend Tier 3 to accommodate the new tier. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to amend the range in Tier 3 for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume). Finally, the Exchange proposes to renumber Tier 4 as Tier 5 within the Qualifying Tier Thresholds.

The Exchange believes that the addition of Tier 4 will incentive GEMX Members in Penny and Non-Penny Symbol Tiers 1 through 3 to submit additional order flow to GEMX to obtain lower Taker Fees and higher Maker Rebates.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>24</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4) and (5).



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 Proposal is Reasonable

The 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 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<sup>25</sup> (“NetCoalition”), the D.C. Circuit stated, “[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>26</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract

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<sup>25</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>26</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)).

additional order flow to the Exchange and increase its market share relative to its competitors.

#### Affiliated Entity Program

The Exchange's proposal to permit an Affiliated Entity to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is reasonable because the Exchange believes this program will incentivize certain GEMX Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify for certain lower Market Maker fees. By aggregating volume, the Appointed Market Maker and Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. Additionally, this proposal will harmonize GEMX's program with MRX's and ISE's programs.<sup>27</sup> While a GEMX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates, the Exchange believes that permitting aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX if they chose to enter into this relationship.

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also

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<sup>27</sup> See MRX and ISE Options 7, Section 1.

enter into an Affiliated Entity relationship. The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is reasonable because the addition of new Tier 4 will incentive GEMX Members to submit additional order flow to GEMX to obtain lower fees and higher rebates. Specifically, Members currently in Penny and Non-Penny Symbol Tiers 1 through 3 may be assessed lower Taker Fees or receive higher Maker Rebates if they are able to submit additional order to qualify for new Tier 4.

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is equitable and not unfairly discriminatory because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates

as compared to all other non-Priority Customer market participants. 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. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).<sup>28</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract is reasonable because the Exchange believes this increased rebate will attract additional Priority Customer order flow to GEMX.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract is equitable and not unfairly discriminatory because 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.

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<sup>28</sup> See GEMX Options 2, Section 5.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is reasonable because while the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Penny Symbol Taker Fees offer market participants the ability to obtain lower fees, if they are currently in Penny Symbol Taker Fee Tiers 1-3, by submitting additional order flow to GEMX.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is equitable and not unfairly discriminatory because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is reasonable because the addition of new Tier 4 would allow Members to qualify for lower fees or higher rebates if they are able to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume and execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume. The criteria for new Tier 4 requires less order flow than the criteria for re-numbered Tier 5 and pays lower Taker Fees and higher Maker Rebates than Tier 3.<sup>29</sup>

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<sup>29</sup> The Exchange proposes to amend Tier 3 to accommodate the new tier 4. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is equitable and not unfairly discriminatory because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied to all Members in determining a Member's applicable tier.

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.

Intermarket Competition

The Exchange 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. 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 because other options exchanges offer similar affiliation programs and have maker/taker models akin to GEMX's model.

Moreover, as noted above, price competition between exchanges is fierce, with

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amend the range in Tier 3 for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume).

liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

#### Intramarket Competition

#### Affiliated Entity Program

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower Taker Fees or receiving higher Maker Rebates does not impose an undue burden on competition because all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Today, Affiliated Members may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

#### Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a

new Maker Rebate Tier 4 and Taker Fee Tier 4 does not impose an undue burden on competition because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates as compared to all other non-Priority Customer market participants. 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. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).<sup>30</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from \$0.52 to \$0.53 per contract does not impose an undue burden on competition because 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.

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<sup>30</sup> See GEMX Options 2, Section 5.



The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 does not impose an undue burden on competition because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 does not impose an undue burden on competition because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied to all Members in determining a Member's applicable tier.

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>31</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.

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<sup>31</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-2022-09 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-2022-09. 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-2022-09 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>32</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq GEMX, LLC Rules**

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**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

**Section 1. General Provisions**

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(c) For purposes of assessing fees, the following references should serve as guidance. Fees and rebates are listed per contract per leg unless otherwise noted.

An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

An “Appointed Market Maker” is a Market Maker who has been appointed by an OFP for purposes of qualifying as an Affiliated Entity.

An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

An “Appointed OFF” is an OFF who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

An “Order Flow Provider” (“OFF”) is any Member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange.

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.

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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	Maker Rebate: Tier 5	Taker Fee: Tier 1 <sup>(4)(13)</sup>	Taker Fee: Tier 2 <sup>(4)(13)</sup>	Taker Fee: Tier 3 <sup>(4)(13)</sup>	Taker Fee: Tier 4 <sup>(4)</sup>	Taker Fee: Tier 5 <sup>(4)(13)</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>	(\$0.20)	(\$0.25)	(\$0.30)	<u>(\$0.32)</u>	(\$0.41)	\$0.50	\$0.50	\$0.50	<u>\$0.50</u>	\$0.48	\$0.20	\$0.50
Non-Nasdaq GEMX Market Maker (FarMM) <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	<u>n/a</u>	n/a	\$0.50	\$0.50	\$0.50	<u>\$0.50</u>	\$0.48	\$0.20	\$0.50

Firm Proprietary / Broker-Dealer <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	<u>n/a</u>	n/a	\$0.50	\$0.50	\$0.50	<u>\$0.50</u>	\$0.49	\$0.20	\$0.50
Professional Customer <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	<u>n/a</u>	n/a	\$0.50	\$0.50	\$0.50	<u>\$0.50</u>	\$0.49	\$0.20	\$0.50
Priority Customer <sup>(3)</sup> <sup>(5)</sup>	(\$0.25)	(\$0.40)	(\$0.48)	<u>(\$0.51)</u>	(\$0.5) <sup>[2]</sup> <sup>(3)</sup>	\$0.48	\$0.48	\$0.48	<u>\$0.48</u>	\$0.43	\$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	<u>Maker Rebate: Tier 4</u>	Maker Rebate: Tier <u>[4]</u> <sup>[5]</sup>	Taker Fee: Tier 1 <sup>(4)</sup> <sup>(16)</sup>	Taker Fee: Tier 2 <sup>(4)</sup> <sup>(16)</sup>	Taker Fee: Tier 3 <sup>(4)</sup> <sup>(16)</sup>	<u>Taker Fee: Tier 4</u> <sup>(4)</sup> <sup>(16)</sup> <sup>(1)</sup>	Taker Fee: Tier <u>[4]</u> <sup>[5]</sup> <sup>(4)</sup> <sup>(16)</sup> <sup>(6)</sup>	Fee for Crossing Orders (excluding PIM) <sup>(1)</sup> <sup>(8)</sup> <sup>(11)</sup>	Fee for Responses to Crossing Orders (excluding PIM) <sup>(8)</sup> <sup>(12)</sup>
Market Maker <sup>(2)</sup> <sup>(3)</sup> <sup>(5)</sup>	(\$0.40)	(\$0.42)	(\$0.45)	<u>(\$0.50)</u>	(\$0.75)	\$0.99	\$0.99	\$0.99	<u>\$0.99</u>	\$0.94	\$0.20	\$1.10
Non-Nasdaq GEMX Market Maker (FarMM) <sup>(3)</sup>	(\$0.25)	n/a	n/a	<u>n/a</u>	n/a	\$0.99	\$0.99	\$0.99	<u>\$0.99</u>	\$0.94	\$0.20	\$1.10

Firm Proprietary / Broker-Dealer <sup>(3)</sup>	(\$0.25)	n/a	n/a	<u>n/a</u>	n/a	\$0.99	\$0.99	\$0.99	<u>\$0.99</u>	\$0.94	\$0.20	\$1.10
Professional Customer <sup>(3)</sup>	(\$0.25)	n/a	n/a	<u>n/a</u>	n/a	\$0.99	\$0.99	\$0.99	<u>\$0.99</u>	\$0.94	\$0.20	\$1.10
Priority Customer <sup>(3)</sup> (5)	(\$0.75)	(\$0.80)	(\$0.85)	<u>(\$0.90)</u>	(\$1.05)	\$0.85	\$0.85	\$0.85	<u>\$0.85</u>	\$0.82	\$0.00	\$1.10

\* \* \* \* \*

13. Reserved.[Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.48 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 \$0.48 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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**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. <del>50</del> <u>25</u> % of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1. <del>20</del> <u>05</u> % of Customer Total Consolidated Volume
<b><u>Tier 4</u></b>	<u>Executes 2.25% to less than 2.50% of Customer Total Consolidated Volume</u>	<u>Executes Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume</u>
<b>Tier <del>4</del><u>5</u></b>	Executes 2.5% or greater of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume

- For purposes of measuring Total Affiliated Member or Affiliated Entity % 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 [a] Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers for each of the Qualifying Tier Thresholds above in Table 1 [, 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 or Affiliated Entity % 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.

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#### **Section 4. Other Options Fees and Rebates**

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#### **C. Crossing Fee Cap**

Fees are capped at \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from [a]Affiliated Members will be aggregated for purposes of the Crossing Fee Cap[, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A]. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

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