

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 19

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

File No. \* SR 2023 - \* 07

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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Amend GEMX 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 * <input type="text" value="Angela"/>	Last Name * <input type="text" value="Dunn"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Jasica.desai@gmail.com"/>	
Telephone * <input type="text" value="(215) 496-5692"/>	Fax <input type="text"/>

**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 <input type="text" value="05/09/2023"/>	(Title *)
By <input type="text" value="John Zecca"/> (Name *)	<input type="text" value="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: 2023.05.09 11:05:14 -04'00'

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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-2023-07 19b4.doc

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

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

Add Remove View

SR-GEMX-2023-07 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-2023-07 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 (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend GEMX’s Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates.”<sup>3</sup>

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

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

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

<sup>3</sup> The Exchange originally filed SR-GEMX-2023-06 on May 1, 2023. On May 9, 2023, the Exchange withdrew SR-GEMX-2023-06 and replaced that filing with the instant filing.

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, “Regular Order Fees and Rebates” to decrease the Penny Symbol Priority Customer<sup>4</sup> Taker Fees.

Today, GEMX assesses 5 tiers of Penny Symbol Taker Fees. Market Makers,<sup>5</sup> and Non-Nasdaq GEMX Market Makers (FarMM)<sup>6</sup> are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.48 per contract. In comparison, GEMX assesses Firm Proprietary<sup>7</sup> / Broker Dealers<sup>8</sup> and Professional Customers<sup>9</sup> the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of

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<sup>4</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 the Pricing Schedule the term “Priority Customer” includes “Retail”. See Options 7, Section 1(c).

<sup>5</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>6</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 Options 7, Section 1(c).

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

<sup>8</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 Options 7, Section 1(c).

<sup>9</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

\$0.50 per contract; and a Tier 5 Taker Fee of \$0.49 per contract. Finally, Priority Customers are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.48 per contract; a Tier 2 Taker Fee of \$0.48 per contract; a Tier 3 Taker Fee of \$0.48 per contract; a Tier 4 Taker Fee of \$0.48 per contract; and a Tier 5 Taker Fee of \$0.43 per contract.

At this time, GEMX proposes to decrease the Penny Symbol Priority Customer Taker Fees. Specifically, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract. Additionally, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract. GEMX is not proposing to amend the Qualifying Tier Thresholds to achieve these tiers. GEMX believes that decreasing the Priority Customer Taker Fees in Penny Symbols will incentivize GEMX Members to send additional order flow to GEMX.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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 proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the

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<sup>10</sup> See 15 U.S.C. 78f(b).

<sup>11</sup> See 15 U.S.C. 78f(b)(4) and (5).

market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, 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>12</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.

GEMX’s proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority

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<sup>12</sup> See NetCoalition, 615 F.3d at 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)).

Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract is reasonable because decreasing the Priority Customer Taker Fees in Penny Symbols should incentivize GEMX Members to send additional order flow to GEMX.

GEMX's proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 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, to the benefit of all market participants.

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 believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue 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. 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.

Intramarket Competition

GEMX's proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract does not impose an undue burden on intermarket 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, to the benefit of all market participants.

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>13</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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



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.

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-2023-07)

May \_\_, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 9, 2023, 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.”<sup>3</sup>

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.

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

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

<sup>3</sup> The Exchange originally filed SR-GEMX-2023-06 on May 1, 2023. On May 9, 2023, the Exchange withdrew SR-GEMX-2023-06 and replaced that filing with the instant filing.

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 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, “Regular Order Fees and Rebates” to decrease the Penny Symbol Priority Customer<sup>4</sup> Taker Fees.

Today, GEMX assesses 5 tiers of Penny Symbol Taker Fees. Market Makers,<sup>5</sup> and Non-Nasdaq GEMX Market Makers (FarMM)<sup>6</sup> are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.48 per contract. In comparison, GEMX

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<sup>4</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 the Pricing Schedule the term “Priority Customer” includes “Retail”. See Options 7, Section 1(c).

<sup>5</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>6</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 Options 7, Section 1(c).

assesses Firm Proprietary<sup>7</sup> / Broker Dealers<sup>8</sup> and Professional Customers<sup>9</sup> the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.49 per contract. Finally, Priority Customers are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.48 per contract; a Tier 2 Taker Fee of \$0.48 per contract; a Tier 3 Taker Fee of \$0.48 per contract; a Tier 4 Taker Fee of \$0.48 per contract; and a Tier 5 Taker Fee of \$0.43 per contract.

At this time, GEMX proposes to decrease the Penny Symbol Priority Customer Taker Fees. Specifically, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract. Additionally, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract. GEMX is not proposing to amend the Qualifying Tier Thresholds to achieve these tiers. GEMX believes that decreasing the Priority Customer Taker Fees in Penny Symbols will incentivize GEMX Members to send additional order flow to GEMX.

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

<sup>8</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 Options 7, Section 1(c).

<sup>9</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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 proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, 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>12</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

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<sup>10</sup> See 15 U.S.C. 78f(b).

<sup>11</sup> See 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> See NetCoalition, 615 F.3d at 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)).

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.

GEMX's proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract is reasonable because decreasing the Priority Customer Taker Fees in Penny Symbols should incentivize GEMX Members to send additional order flow to GEMX.

GEMX's proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 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, to the benefit of all market participants.

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 believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue 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. 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.

### Intramarket Competition

GEMX's proposal to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract and Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract does not impose an undue burden on intermarket 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, to the benefit of all market participants.

#### 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>13</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.

### 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-2023-07 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-2023-07. This file number should be included on the subject line if e-mail is used. To help the Commission

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



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-2023-07 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>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq GEMX, LLC Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

\* \* \* \* \*

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

**Penny Symbols**

<b>Market Participant</b>	<b>Maker Rebate: Tier 1</b>	<b>Maker Rebate: Tier 2</b>	<b>Maker Rebate: Tier 3</b>	<b>Maker Rebate: Tier 4</b>	<b>Maker Rebate: Tier 5</b>	<b>Taker Fee: Tier 1<sup>(4)</sup></b>	<b>Taker Fee: Tier 2<sup>(4)</sup></b>	<b>Taker Fee: Tier 3<sup>(4)</sup></b>	<b>Taker Fee: Tier 4<sup>(4)</sup></b>	<b>Taker Fee: Tier 5<sup>(4)</sup></b>	<b>Fee for Crossing Orders (excluding PIM)<sup>(1)(8)(11)</sup></b>	<b>Fee for Responses to Crossing Orders (excluding PIM)<sup>(8)(12)</sup></b>
Market Maker <sup>(2)(3)(5)</sup>	(\$0.20)	(\$0.25)	(\$0.30)	(\$0.32)	(\$0.41)	\$0.50	\$0.50	\$0.50	\$0.50	\$0.48	\$0.20	\$0.50
Non-Nasdaq GEMX Market Maker (FarMM) <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.50	\$0.48	\$0.20	\$0.50
Firm Proprietary / Broker-	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.50	\$0.49	\$0.20	\$0.50

Dealer<sup>(3)</sup>

Professional

Customer <sup>(3)</sup>	(\$0.20) <sup>(7)</sup>	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.50	\$0.49	\$0.20	\$0.50
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Priority

Customer <sup>(3)(5)</sup>	(\$0.25)	(\$0.40)	(\$0.48)	(\$0.51)	(\$0.53)	\$0.4[8]1	\$0.4[8]1	\$0.4[8]1	\$0.4[8]1	\$0.4[3]1	\$0.00	\$0.50
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