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

File No. * SR 2023 - * 08

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"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)	Submit with link to Prefiling or Request for Waiver option
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend Options 3, Section 15 to adopt an active quote protection.

Contact Information

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

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * sun.kim@nasdaq.com

Telephone * (646) 420-7816 Fax


Signature

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

Date 07/05/2023 (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: 2023.07.05 13:26:51 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-GEMX-2023-08 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-2023-08 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-2023-08 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 3, Section 15 (Risk Protections) to adopt an active quote protection.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to adopt an active risk counter functionality called active quote protection (“Active Quote Protection”) in Options 3, Section 15. The Exchange intends to introduce the foregoing changes with its upcoming technology migration to enhanced Nasdaq, Inc. (“Nasdaq”) functionality, and intends to begin implementation prior to December 29, 2023.³ The Exchange has announced the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.⁴

The Exchange proposes to offer an optional active risk counter functionality called Active Quote Protection, which will be available to Market Makers as an alternative to existing passive risk counter functionality described in Options 3, Section 15(a)(3)(B) (i.e., “Automated Quotation Adjustments”).⁵ The proposed Active Quote Protection functionality will be similar to existing active risk counter functionality on another options exchange, which currently allows exchange users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is

³ See Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR-GEMX-2023-04) (delaying the implementation of all GEMX technology migration rule filings).

⁴ See Options Trader Alert #2023-4 at <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2023-4>.

⁵ As described below, the Exchange will specifically define this passive risk counter functionality as “Rapid Fire” within this Rule.

reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.⁶

Today, the Exchange requires Market Makers to configure risk exposure thresholds based on various metrics for each options class, including percentage of executed quotes (“Percentage Threshold”), total number of executed contracts (“Volume Threshold”), absolute value of the difference between long and short positions (“Delta Threshold”), and absolute value of the difference between contracts bought and contracts sold (“Vega Threshold”) (collectively, “Thresholds”).⁷ As set forth in Options 3, Section 15(a)(3)(B)(i), the System tracks each Threshold with a corresponding risk counter over a Market Maker-specified rolling time period not to exceed 30 seconds. Furthermore, Section 15(a)(3)(B)(i) and (ii) describes that when a risk counter exceeds the corresponding Threshold during the specified time period, the System would automatically remove the Market Maker’s quotes in all series of the applicable options class (each, a “Purge Event”). As a result of a Purge Event, the corresponding risk counter and Threshold would reset upon such removal. The Exchange also notes that pursuant to Section 15(a)(3)(B)(iii) today, the Thresholds and risk counters can be completely reset if the Market Maker specifically requests the System to remove quotes

⁶ See MEMX LLC (“MEMX”) Rule 21.16(b) (Active Risk Counter). See also Securities Exchange Act Release No. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR-MEMX-2022-10). Similar to the proposed Active Quote Protection, the active risk counter on MEMX is voluntary and offers a way for users to proactively manage their risk. The MEMX risk protection, however, allows the user to actively manage all the risk limits specified in MEMX’s rule (e.g., executed contracts, notional value, etc.) whereas the Exchange’s proposal would allow Market Makers to actively manage executed contracts only, as discussed later in this filing. In addition, the Exchange’s proposal will only apply to quotes whereas MEMX’s functionality applies to both orders and quotes.

⁷ The Thresholds are described in detail in Options 3, Section 15(a)(3)(B)(i)(a) – (d). If a Market Maker does not provide a parameter for each Threshold, the Exchange will apply default parameters announced to Members.

in all series of an options class. This risk protection is passive in that the risk counters wait to reset until the expiry of a specified time period, a Purge Event, or when the Market Maker otherwise sends a specific instruction to the Exchange to remove quotes to completely reset the counters.

The Exchange now proposes to introduce a new risk protection called Active Quote Protection that would enable Market Makers to actively manage their executed contract limit (“Contract Limit”) by sending an electronic instruction to the Exchange to decrement their executed contract limit counter (“Limit Counter”) by a specified amount at any time, rather than waiting until the expiry of a defined time period, when the risk limit is exceeded (like a Purge Event), or when the Market Maker otherwise sends a specific instruction to purge quotes to completely reset the risk counter. The Contract Limit, as set by the Market Maker, would apply for the duration of the trading day. Once the Market Maker’s Limit Counter exceeds the Contract Limit set by the Market Maker, the System would automatically remove quotes in all series of the applicable options class submitted through the Exchange’s Specialized Quote Feed protocol,⁸ identical to how the quote removal mechanism works for a Purge Event today.⁹ Today, Purge Events are triggered under the existing Automated Quotation Adjustments on the first execution that exceeds the applicable Threshold. Once an execution occurs, the System checks all Thresholds to see if they have been exceeded. If exceeded, the Market Maker’s quote would be purged pursuant to Options 3, Section 15(a)(3)(B)(iii). In order to remain

⁸ Specialized Quote Feed or “SQF” is an interface that only Market Makers may use to submit quotes to the Exchange. See Supplementary Material .03(c) to Options 3, Section 7.

⁹ See Options 3, Section 15(a)(3)(B)(ii) (renumbered as Section 15(a)(3)(B)(iii) under this proposal, as noted below).

consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹⁰ prior to the time the applicable Threshold is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed their pre-set Percentage Threshold, Volume Threshold, Delta Threshold, or Vega Threshold.¹¹

Under Active Quote Protection, the System would similarly handle the Market Maker's quote in that the quote could be filled one execution over the Contract Limit before the Market Maker's remaining quotes are cancelled by the System in order to be consistent with the firm quote obligations under Rule 602 of Regulation NMS.

Specifically, the Exchange notes that any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹² prior to the time the Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed the Contract Limit.¹³

Additionally, under Active Quote Protection, Market Makers will be able to submit a request (i) to decrement their Limit Counter by a specified number of contracts,

¹⁰ The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

¹¹ See current Options 3, Section 15(a)(3)(B)(ii)(b). The Exchange will renumber this as Section 15(a)(3)(B)(iii)(b) and clarify this provision in the manner described later in this filing.

¹² See supra note 10.

¹³ For both the current Automated Quotation Adjustments and proposed Active Quote Protection, the System will execute marketable interest up to the size of the Market Maker's quote, but cannot guarantee interest will be fully executed, as is the case with any execution in the Exchange's order book. There is always the possibility that the Market Maker's quote size (and/or Market Maker's quote plus other interest on the order book) may not be sufficient volume to fill the incoming interest.

or (ii) to fully decrement their Limit Counter to zero.¹⁴ Market Makers that elect to use the proposed Active Quote Protection on a badge¹⁵ will not be able to use the existing Threshold risk protections described above on the same badge (i.e., the active and passive risk counter functionality would be mutually exclusive per badge) given that it would be unnecessarily complex to implement from a technology standpoint. Market Makers may be associated with multiple badges today, so if they want to use both risk protections for their activity on the Exchange, they will be able to set either the active or passive risk counter functionality on each one.

To effectuate the foregoing changes, the Exchange proposes to set forth the new risk protection in subparagraph (B)(ii) of Options 3, Section 15(a)(3), as follows:¹⁶

In lieu of Rapid Fire, a Market Maker may provide an executed contract limit (“Contract Limit”) that, if exceeded, the System will automatically remove the Market Maker’s quotes in all series of an options class submitted through SQF. The System will apply the Contract Limit for the duration of the trading day. For each class of options, the System will maintain an active limit counter that will track the current number of contracts executed through the Market Maker’s quotes (“Limit Counter”). If the Limit Counter exceeds the Contract Limit established by the Market Maker, the System will automatically remove the Market Maker’s quotes as described in Section 15(a)(3)(B)(iii). Market Makers may submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero, including to re-enter the System as described in Section 15(a)(3)(B)(v). For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker’s badge.

¹⁴ As discussed later in this filing, in order to re-enter the System after their quotes are purged pursuant to the Active Quote Protection, Market Makers will need to submit the same request to fully decrement their Limit Counter to zero.

¹⁵ A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

¹⁶ As a result, the Exchange will also renumber existing subparagraphs (B)(ii) – (vi) as proposed subparagraphs (B)(iii) – (vii).

As described above, once the Limit Counter exceeds the Contract Limit set by the Market Maker under the proposed Active Quote Protection, the System would automatically remove quotes in the same manner as currently specified for a Purge Event in proposed subparagraph (B)(iii) of Options 3, Section 15(a)(3). Accordingly, the Exchange proposes to add Active Quote Protection's Contract Limit throughout this Rule. Specifically, proposed subparagraph (B)(iii) will provide that the System will automatically remove quotes in all series of an options class when the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected series when the above thresholds have been exceeded. Proposed subparagraph (B)(iii)(a) will provide that the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, and Contract Limit are considered independently of each other.

Further, as discussed above, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹⁷ prior to the time the applicable Threshold or Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, even if such execution would cause the Market Maker to exceed any of their pre-set risk limits with respect to any of the foregoing risk parameters. The Exchange notes that the current related Rule in sub-paragraph (B)(ii)(b)(3) only mentions that quotes will execute up to the Market Maker's size, and is silent on marketable orders. In addition, the current Rule does not specify the time of receipt of such marketable interest that is executable against the size of the Market

¹⁷ See supra note 10.

Maker's quote. As such, the Exchange proposes to add this specificity in proposed subparagraph (B)(iii)(b)(3) to better describe how the System operates today for Automated Quotation Adjustments and how the System will operate for proposed Active Quote Protection. In particular, sub-paragraph (B)(iii)(b)(3) will provide:

The System will execute any marketable orders or quotes that are executable against a Market Maker's quote and received prior to the time the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit is triggered up to the size of the Market Maker's quote, even if such execution results in executions in excess of the Market Maker's applicable Threshold or Contract Limit with respect to any parameter.

In addition, when the System removes quotes as a result of exceeding the Contract Limit under Active Quote Protection, the Exchange proposes to require the Market Maker to submit a request to re-enter the System. This request will be the same type of message as the request described in proposed subparagraph (B)(ii) where the Market Maker must request to fully decrement their Limit Counter back to zero in order to re-enter the System. This requirement will be added in proposed subparagraph (B)(v) of Options 3, Section 15(a)(3), and will be similar to how the existing quote purge mechanism works for the Thresholds today, except the Market Maker needs to send a separate message (i.e., a re-entry indicator) to re-enter the System when their quotes are purged as a result of exceeding any of the existing Thresholds.

Similar to how default parameters are currently applied for each of the existing Thresholds described above, the Exchange proposes to apply a default parameter for the Active Quote Protection Contract Limit (which would be announced to Members) if the Market Maker opting to use Active Quote Protection does not provide a Contract Limit at

the outset.¹⁸ Accordingly, proposed subparagraph (B)(vi) will provide that if a Market Maker does not provide a parameter for each of the automated quotation removal protections described in (B)(i)(a) – (d) and (B)(ii) above, the Exchange will apply default parameters, which are announced to Members.

The Exchange also proposes that the new Active Quote Protection would leverage the existing market-wide speed bump (“MWSB”) functionality currently set forth in Options 3, Section 15(a)(3)(B)(vi) (renumbered as Section 15(a)(3)(B)(vii) under this proposal). Today, MWSB is a risk protection offered alongside the current Automated Quotation Adjustments and triggers when, during a time period established by the Market Maker, the total number of Purge Events exceeds a market-wide parameter provided to the Exchange by the Market Maker.¹⁹ When MWSB is triggered, the Exchange automatically purges the Market Maker’s quotes in all classes, and the Market Maker must request re-entry to the System by contacting the Exchange’s Operations Department. Today, MWSB is meant to provide Market Makers with protection from the risk of multiple executions across multiple series of an option or across multiple options. This risk protection recognizes that risk to Market Makers is not limited to a single series in an option or even to all series in an option; Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market

¹⁸ The Exchange will initially set the default Contract Limit at 100 contracts.

¹⁹ Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE.

Makers to unnecessary risk. MWSB is therefore intended to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange believes that tracking the number of Active Quote Protection Purge Events for a Market Maker against its MWSB market-wide parameter would be similarly useful for managing market risk.

To that end, the Exchange proposes to update MWSB to add purge events under Active Quote Protection to the MWSB counter such that Active Quote Protection purge events and Purge Events under the current Automated Quotation Adjustments will be aggregated together as counting toward the specified market-wide parameter.

Accordingly, the Exchange proposes to add references to the Active Quote Protection rule (i.e., proposed subparagraph (B)(ii) of Options 3, Section 15(a)(3)) throughout the MWSB rule in proposed subparagraph (B)(vii), specifically:

In addition to the automated quotation removal protections described in (B)(i)(a) - (d) and (B)(ii) above, a Market Maker must provide a market wide parameter by which the Exchange will automatically remove a Market Maker's quotes in all classes when, during a time period established by the Market Maker, the total number of quote removal events specified in (B)(i)(a) - (d) and (B)(ii) exceeds the market wide parameter provided to the Exchange by the Market Maker. Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE. Market Makers must request the Exchange enable re-entry by contacting the Exchange's Operations Department.

The following example illustrates the proposed behavior of the Active Quote Protection risk protection:

Market Maker AAPL

Contract Limit: 100

- Market Maker trades a transaction for 10 contracts in AAPL; Limit Counter goes from 0 to 10.

- Market Maker sends a request to decrement its Limit Counter in AAPL for 10 contracts; Limit Counter goes from 10 to 0.
- Market Maker trades a transaction for 20 contracts in AAPL; Limit Counter goes from 0 to 20.
- Market Maker trades a transaction for 50 contracts in AAPL; Limit Counter goes from 20 to 70.
- Market Maker sends a request to decrement its Limit Counter in AAPL for 20 contracts; Limit Counter goes from 70 to 50.
- Market Maker trades a transaction for 60 contracts in AAPL; Limit Counter goes from 50 to 110 and all Market Maker quotes in AAPL are automatically purged after the execution because the Limit Counter exceeded the Market Maker's Contract Limit of 100 executed contracts.
- At this point, the Market Maker must send a request to fully decrement its Limit Counter in AAPL back to zero in order to begin quoting again.

The following example illustrates how MWSB will work with the proposed

Active Quote Protection functionality:

- Assume Market Maker in AAPL and SPY has Automated Quotation Adjustments set for AAPL and Active QP set for SPY.
- Market Maker sets its MWSB market-wide parameter so that it is triggered at 25 purge events within a 20 second time period.
- On a given trading day, if an Active Quote Protection Purge Event is triggered 15 times in SPY and an Automated Quotation Adjustment Purge Event is

triggered 10 times in AAPL, all within 20 seconds, then the Exchange will automatically remove all of the Market Maker's quotes AAPL and SPY.

Technical Amendments

The Exchange proposes a few technical, non-substantive amendments in Options 3, Section 15(a)(3)(B). With the addition of the new Active Quote Protection rule in proposed subparagraph (B)(ii), the Exchange proposes to renumber existing subparagraphs (B)(ii) – (vi) as proposed subparagraphs (B)(iii) – (vii) and make related changes to update existing cross-cites within Section 15(a)(3)(B). The Exchange also proposes to title subparagraph (B)(i) as “Rapid Fire” and subparagraph (B)(vii) as “Market-Wide Speed Bump” to more clearly identify which rules apply to which risk protections.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed Active Quote Protection risk protection is consistent with the Act because it will enhance the risk protection tools available to Market Makers by introducing a new method of establishing and monitoring for risk parameters that will be offered as an alternative to existing Rapid Fire risk parameters,

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

thereby supporting a Market Maker's ability to manage their risk on the Exchange, and also providing them with flexibility to use additional tools to manage risk. As noted above, while the passive (Rapid Fire) and active (Active QP) risk counter functionality will be mutually exclusive on each badge, Market Makers will still be able to use both to cover their activity on the Exchange by getting multiple badges and setting each risk counter by badge. The Exchange believes that offering more risk management tools to Market Makers would mitigate their exposure to excessive risk. The Exchange further believes that having the new Active Quote Protection functionality leverage the existing MWSB functionality will similarly support a Market Maker's ability to manage their risk on the Exchange by including Active Quote Protection purge events to the MWSB counter. As noted above, the risk to Market Makers is not limited to a single series in an option or even multiple series in an option as Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. Today, MWSB is designed to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange therefore believes that tracking the number of Active Quote Protection purge events for a Market Maker against its MWSB market-wide parameter would be similarly useful for managing market risk so that they can provide deep and liquid markets to the benefit of all investors. Ultimately, the Exchange believes that providing Market Makers with additional tools in the manner

described above to manage their risk parameters serves to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because Market Makers will be better able to manage risks with these tools.

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

The Exchange further represents that its proposal will continue to operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable interest that is executable against a Market Maker's quotes that are received²² by the Exchange prior to the time this functionality is triggered will be automatically executed at the price up to the Market Maker's size, regardless of whether such execution results in executions in excess of the Market Maker's pre-set Contract Limit.²³ As discussed above, this is also in line with how current Rapid Fire operates today. The Exchange believes that the proposed changes in proposed sub-paragraph (B)(iii)(b) to specify that this Rule will apply to marketable orders and quotes (currently silent on marketable orders), and to specify the time of receipt of such marketable interest that is executable against the size of the Market

²² See supra note 10.

²³ See proposed subparagraph (B)(iii)(b) of Options 3, Section 15(a)(3).

Maker's quote, will promote clarity in how the System currently operates for Rapid Fire and will operate for Active Quote Protection.

As noted above, the proposed Active Quote Protection functionality is similar to existing active risk counter functionality on another options exchange, which currently allows users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.²⁴

Technical Amendments

The Exchange believes that the technical amendments in Options 3, Section 15(a)(3)(B) described above are consistent with the Act because they will promote clarity in the rules and make the Rulebook easier to navigate for market participants by updating rule numbering and existing cross-cites as described above. Furthermore, the Exchange also believes that adding the defined terms for Rapid Fire and MWSB in the rule text will promote clarity so that Members can more easily locate the relevant functionalities in the Rulebook.

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

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

The Exchange does not believe that the proposed Active Quote Protection functionality will impose any undue burden on intra-market competition as it is aimed at mitigating exposure to excessive risk when trading on the Exchange. While the

²⁴ See supra note 6.

Exchange will offer the proposed functionality to Market Makers only, the proposed risk protection is intended to provide Market Makers with an additional tool to manage their risk parameters in a manner they deem appropriate. As such, the Exchange believes that the proposed functionality may facilitate Market Makers' provision of liquidity on the Exchange, thereby benefitting all market participants through additional execution opportunities at potentially improved prices.

The Exchange also believes that its Active Quote Protection proposal does not impose an undue burden on inter-market competition as the proposed risk protection is similar to an existing risk protection on MEMX²⁵ as described above, and any options market could adopt similar rules.

Lastly, the Exchange does not believe that the proposed technical amendments in Options 3, Section 15(a)(3)(B) will impose an undue burden on competition as these are non-substantive changes to promote clarity in the rules and make the Rulebook easier to navigate for 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)

The foregoing rule change has become effective pursuant to Section

²⁵ See supra note 6.

19(b)(3)(A)(iii)²⁶ of the Act and Rule 19b-4(f)(6) thereunder²⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

As it relates to the proposed Active Quote Protection functionality, the Exchange believes that its proposal does not significantly affect the protection of investors or the public interest, and does not impose a significant burden on competition, because it will enhance the risk protection tools available to Market Makers by introducing a new method of establishing and monitoring for risk parameters that will be offered as an alternative to existing Rapid Fire risk parameters, thereby supporting a Market Maker's ability to manage their risk on the Exchange. The Exchange further believes that having the new Active Quote Protection risk protection leverage the existing MWSB functionality will similarly support a Market Maker's ability to manage their risk on the Exchange by including Active Quote Protection purge events to the MWSB counter. The Exchange believes that providing Market Makers with additional tools in the manner described above to manage their risk parameters serves to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because Market Makers will be better able to manage risks with these tools.

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6).

As noted above, the proposed Active Quote Protection functionality is similar to existing active risk counter functionality on another options exchange, which currently allows users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.²⁸

Furthermore, Rule 19b-4(f)(6)(iii)²⁹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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

The Exchange's Active Quote Protection proposal is similar to MEMX Rule 21.16(b).³⁰

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

Not applicable.

²⁸ See supra note 6.

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See supra note 6.

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-2023-08)

July __, 2023

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 3, Section 15 (Risk Protections) to Adopt an Active Quote Protection

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 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 Options 3, Section 15 (Risk Protections) to adopt an active quote protection.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change is to adopt an active risk counter functionality called active quote protection (“Active Quote Protection”) in Options 3, Section 15. The Exchange intends to introduce the foregoing changes with its upcoming technology migration to enhanced Nasdaq, Inc. (“Nasdaq”) functionality, and intends to begin implementation prior to December 29, 2023.³ The Exchange has announced the initial migration date and symbol rollout schedule to Members in an Options Trader Alert.⁴

The Exchange proposes to offer an optional active risk counter functionality called Active Quote Protection, which will be available to Market Makers as an alternative to existing passive risk counter functionality described in Options 3, Section 15(a)(3)(B) (i.e., “Automated Quotation Adjustments”).⁵ The proposed Active Quote Protection functionality will be similar to existing active risk counter functionality on another options exchange, which currently allows exchange users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is

³ See Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR-GEMX-2023-04) (delaying the implementation of all GEMX technology migration rule filings).

⁴ See Options Trader Alert #2023-4 at <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2023-4>.

⁵ As described below, the Exchange will specifically define this passive risk counter functionality as “Rapid Fire” within this Rule.

reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.⁶

Today, the Exchange requires Market Makers to configure risk exposure thresholds based on various metrics for each options class, including percentage of executed quotes (“Percentage Threshold”), total number of executed contracts (“Volume Threshold”), absolute value of the difference between long and short positions (“Delta Threshold”), and absolute value of the difference between contracts bought and contracts sold (“Vega Threshold”) (collectively, “Thresholds”).⁷ As set forth in Options 3, Section 15(a)(3)(B)(i), the System tracks each Threshold with a corresponding risk counter over a Market Maker-specified rolling time period not to exceed 30 seconds. Furthermore, Section 15(a)(3)(B)(i) and (ii) describes that when a risk counter exceeds the corresponding Threshold during the specified time period, the System would automatically remove the Market Maker’s quotes in all series of the applicable options class (each, a “Purge Event”). As a result of a Purge Event, the corresponding risk counter and Threshold would reset upon such removal. The Exchange also notes that pursuant to Section 15(a)(3)(B)(iii) today, the Thresholds and risk counters can be completely reset if the Market Maker specifically requests the System to remove quotes in all series of an options class. This risk protection is passive in that the risk counters

⁶ See MEMX LLC (“MEMX”) Rule 21.16(b) (Active Risk Counter). See also Securities Exchange Act Release No. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR-MEMX-2022-10). Similar to the proposed Active Quote Protection, the active risk counter on MEMX is voluntary and offers a way for users to proactively manage their risk. The MEMX risk protection, however, allows the user to actively manage all the risk limits specified in MEMX’s rule (e.g., executed contracts, notional value, etc.) whereas the Exchange’s proposal would allow Market Makers to actively manage executed contracts only, as discussed later in this filing. In addition, the Exchange’s proposal will only apply to quotes whereas MEMX’s functionality applies to both orders and quotes.

⁷ The Thresholds are described in detail in Options 3, Section 15(a)(3)(B)(i)(a) – (d). If a Market Maker does not provide a parameter for each Threshold, the Exchange will apply default parameters announced to Members.

wait to reset until the expiry of a specified time period, a Purge Event, or when the Market Maker otherwise sends a specific instruction to the Exchange to remove quotes to completely reset the counters.

The Exchange now proposes to introduce a new risk protection called Active Quote Protection that would enable Market Makers to actively manage their executed contract limit (“Contract Limit”) by sending an electronic instruction to the Exchange to decrement their executed contract limit counter (“Limit Counter”) by a specified amount at any time, rather than waiting until the expiry of a defined time period, when the risk limit is exceeded (like a Purge Event), or when the Market Maker otherwise sends a specific instruction to purge quotes to completely reset the risk counter. The Contract Limit, as set by the Market Maker, would apply for the duration of the trading day. Once the Market Maker’s Limit Counter exceeds the Contract Limit set by the Market Maker, the System would automatically remove quotes in all series of the applicable options class submitted through the Exchange’s Specialized Quote Feed protocol,⁸ identical to how the quote removal mechanism works for a Purge Event today.⁹ Today, Purge Events are triggered under the existing Automated Quotation Adjustments on the first execution that exceeds the applicable Threshold. Once an execution occurs, the System checks all Thresholds to see if they have been exceeded. If exceeded, the Market Maker’s quote would be purged pursuant to Options 3, Section 15(a)(3)(B)(iii). In order to remain consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS, any marketable orders or quotes that are executable against a Market

⁸ Specialized Quote Feed or “SQF” is an interface that only Market Makers may use to submit quotes to the Exchange. See Supplementary Material .03(c) to Options 3, Section 7.

⁹ See Options 3, Section 15(a)(3)(B)(ii) (renumbered as Section 15(a)(3)(B)(iii) under this proposal, as noted below).

Maker's quotes that are received¹⁰ prior to the time the applicable Threshold is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed their pre-set Percentage Threshold, Volume Threshold, Delta Threshold, or Vega Threshold.¹¹

Under Active Quote Protection, the System would similarly handle the Market Maker's quote in that the quote could be filled one execution over the Contract Limit before the Market Maker's remaining quotes are cancelled by the System in order to be consistent with the firm quote obligations under Rule 602 of Regulation NMS. Specifically, the Exchange notes that any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹² prior to the time the Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, regardless of whether the execution would cause the Market Maker to exceed the Contract Limit.¹³

Additionally, under Active Quote Protection, Market Makers will be able to submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero.¹⁴ Market Makers that elect to use

¹⁰ The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

¹¹ See current Options 3, Section 15(a)(3)(B)(ii)(b). The Exchange will renumber this as Section 15(a)(3)(B)(iii)(b) and clarify this provision in the manner described later in this filing.

¹² See supra note 10.

¹³ For both the current Automated Quotation Adjustments and proposed Active Quote Protection, the System will execute marketable interest up to the size of the Market Maker's quote, but cannot guarantee interest will be fully executed, as is the case with any execution in the Exchange's order book. There is always the possibility that the Market Maker's quote size (and/or Market Maker's quote plus other interest on the order book) may not be sufficient volume to fill the incoming interest.

¹⁴ As discussed later in this filing, in order to re-enter the System after their quotes are purged pursuant to the Active Quote Protection, Market Makers will need to submit the same request to fully decrement their Limit Counter to zero.

the proposed Active Quote Protection on a badge¹⁵ will not be able to use the existing Threshold risk protections described above on the same badge (i.e., the active and passive risk counter functionality would be mutually exclusive per badge) given that it would be unnecessarily complex to implement from a technology standpoint. Market Makers may be associated with multiple badges today, so if they want to use both risk protections for their activity on the Exchange, they will be able to set either the active or passive risk counter functionality on each one.

To effectuate the foregoing changes, the Exchange proposes to set forth the new risk protection in subparagraph (B)(ii) of Options 3, Section 15(a)(3), as follows:¹⁶

In lieu of Rapid Fire, a Market Maker may provide an executed contract limit (“Contract Limit”) that, if exceeded, the System will automatically remove the Market Maker’s quotes in all series of an options class submitted through SQF. The System will apply the Contract Limit for the duration of the trading day. For each class of options, the System will maintain an active limit counter that will track the current number of contracts executed through the Market Maker’s quotes (“Limit Counter”). If the Limit Counter exceeds the Contract Limit established by the Market Maker, the System will automatically remove the Market Maker’s quotes as described in Section 15(a)(3)(B)(iii). Market Makers may submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero, including to re-enter the System as described in Section 15(a)(3)(B)(v). For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker’s badge.

As described above, once the Limit Counter exceeds the Contract Limit set by the Market Maker under the proposed Active Quote Protection, the System would automatically remove quotes in the same manner as currently specified for a Purge Event in proposed subparagraph (B)(iii) of Options 3, Section 15(a)(3). Accordingly, the

¹⁵ A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

¹⁶ As a result, the Exchange will also renumber existing subparagraphs (B)(ii) – (vi) as proposed subparagraphs (B)(iii) – (vii).

Exchange proposes to add Active Quote Protection's Contract Limit throughout this Rule. Specifically, proposed subparagraph (B)(iii) will provide that the System will automatically remove quotes in all series of an options class when the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected series when the above thresholds have been exceeded. Proposed subparagraph (B)(iii)(a) will provide that the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, and Contract Limit are considered independently of each other.

Further, as discussed above, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹⁷ prior to the time the applicable Threshold or Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, even if such execution would cause the Market Maker to exceed any of their pre-set risk limits with respect to any of the foregoing risk parameters. The Exchange notes that the current related Rule in sub-paragraph (B)(ii)(b)(3) only mentions that quotes will execute up to the Market Maker's size, and is silent on marketable orders. In addition, the current Rule does not specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote. As such, the Exchange proposes to add this specificity in proposed subparagraph (B)(iii)(b)(3) to better describe how the System operates today for Automated Quotation Adjustments and how the System will operate for proposed Active Quote Protection. In particular, sub-paragraph (B)(iii)(b)(3) will provide:

¹⁷ See supra note 10.

The System will execute any marketable orders or quotes that are executable against a Market Maker's quote and received prior to the time the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit is triggered up to the size of the Market Maker's quote, even if such execution results in executions in excess of the Market Maker's applicable Threshold or Contract Limit with respect to any parameter.

In addition, when the System removes quotes as a result of exceeding the Contract Limit under Active Quote Protection, the Exchange proposes to require the Market Maker to submit a request to re-enter the System. This request will be the same type of message as the request described in proposed subparagraph (B)(ii) where the Market Maker must request to fully decrement their Limit Counter back to zero in order to re-enter the System. This requirement will be added in proposed subparagraph (B)(v) of Options 3, Section 15(a)(3), and will be similar to how the existing quote purge mechanism works for the Thresholds today, except the Market Maker needs to send a separate message (i.e., a re-entry indicator) to re-enter the System when their quotes are purged as a result of exceeding any of the existing Thresholds.

Similar to how default parameters are currently applied for each of the existing Thresholds described above, the Exchange proposes to apply a default parameter for the Active Quote Protection Contract Limit (which would be announced to Members) if the Market Maker opting to use Active Quote Protection does not provide a Contract Limit at the outset.¹⁸ Accordingly, proposed subparagraph (B)(vi) will provide that if a Market Maker does not provide a parameter for each of the automated quotation removal protections described in (B)(i)(a) – (d) and (B)(ii) above, the Exchange will apply default parameters, which are announced to Members.

¹⁸ The Exchange will initially set the default Contract Limit at 100 contracts.

The Exchange also proposes that the new Active Quote Protection would leverage the existing market-wide speed bump (“MWSB”) functionality currently set forth in Options 3, Section 15(a)(3)(B)(vi) (renumbered as Section 15(a)(3)(B)(vii) under this proposal). Today, MWSB is a risk protection offered alongside the current Automated Quotation Adjustments and triggers when, during a time period established by the Market Maker, the total number of Purge Events exceeds a market-wide parameter provided to the Exchange by the Market Maker.¹⁹ When MWSB is triggered, the Exchange automatically purges the Market Maker’s quotes in all classes, and the Market Maker must request re-entry to the System by contacting the Exchange’s Operations Department. Today, MWSB is meant to provide Market Makers with protection from the risk of multiple executions across multiple series of an option or across multiple options. This risk protection recognizes that risk to Market Makers is not limited to a single series in an option or even to all series in an option; Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. MWSB is therefore intended to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange believes that tracking the number of Active Quote Protection Purge Events for a Market Maker against its MWSB market-wide parameter would be similarly useful for managing market risk.

¹⁹ Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE.

To that end, the Exchange proposes to update MWSB to add purge events under Active Quote Protection to the MWSB counter such that Active Quote Protection purge events and Purge Events under the current Automated Quotation Adjustments will be aggregated together as counting toward the specified market-wide parameter.

Accordingly, the Exchange proposes to add references to the Active Quote Protection rule (i.e., proposed subparagraph (B)(ii) of Options 3, Section 15(a)(3)) throughout the MWSB rule in proposed subparagraph (B)(vii), specifically:

In addition to the automated quotation removal protections described in (B)(i)(a) - (d) and (B)(ii) above, a Market Maker must provide a market wide parameter by which the Exchange will automatically remove a Market Maker's quotes in all classes when, during a time period established by the Market Maker, the total number of quote removal events specified in (B)(i)(a) - (d) and (B)(ii) exceeds the market wide parameter provided to the Exchange by the Market Maker. Market Makers may request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE. Market Makers must request the Exchange enable re-entry by contacting the Exchange's Operations Department.

The following example illustrates the proposed behavior of the Active Quote Protection risk protection:

Market Maker AAPL

Contract Limit: 100

- Market Maker trades a transaction for 10 contracts in AAPL; Limit Counter goes from 0 to 10.
- Market Maker sends a request to decrement its Limit Counter in AAPL for 10 contracts; Limit Counter goes from 10 to 0.
- Market Maker trades a transaction for 20 contracts in AAPL; Limit Counter goes from 0 to 20.

- Market Maker trades a transaction for 50 contracts in AAPL; Limit Counter goes from 20 to 70.
- Market Maker sends a request to decrement its Limit Counter in AAPL for 20 contracts; Limit Counter goes from 70 to 50.
- Market Maker trades a transaction for 60 contracts in AAPL; Limit Counter goes from 50 to 110 and all Market Maker quotes in AAPL are automatically purged after the execution because the Limit Counter exceeded the Market Maker's Contract Limit of 100 executed contracts.
- At this point, the Market Maker must send a request to fully decrement its Limit Counter in AAPL back to zero in order to begin quoting again.

The following example illustrates how MWSB will work with the proposed

Active Quote Protection functionality:

- Assume Market Maker in AAPL and SPY has Automated Quotation Adjustments set for AAPL and Active QP set for SPY.
- Market Maker sets its MWSB market-wide parameter so that it is triggered at 25 purge events within a 20 second time period.
- On a given trading day, if an Active Quote Protection Purge Event is triggered 15 times in SPY and an Automated Quotation Adjustment Purge Event is triggered 10 times in AAPL, all within 20 seconds, then the Exchange will automatically remove all of the Market Maker's quotes AAPL and SPY.

Technical Amendments

The Exchange proposes a few technical, non-substantive amendments in Options 3, Section 15(a)(3)(B). With the addition of the new Active Quote Protection rule in

proposed subparagraph (B)(ii), the Exchange proposes to renumber existing subparagraphs (B)(ii) – (vi) as proposed subparagraphs (B)(iii) – (vii) and make related changes to update existing cross-cites within Section 15(a)(3)(B). The Exchange also proposes to title subparagraph (B)(i) as “Rapid Fire” and subparagraph (B)(vii) as “Market-Wide Speed Bump” to more clearly identify which rules apply to which risk protections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed Active Quote Protection risk protection is consistent with the Act because it will enhance the risk protection tools available to Market Makers by introducing a new method of establishing and monitoring for risk parameters that will be offered as an alternative to existing Rapid Fire risk parameters, thereby supporting a Market Maker’s ability to manage their risk on the Exchange, and also providing them with flexibility to use additional tools to manage risk. As noted above, while the passive (Rapid Fire) and active (Active QP) risk counter functionality will be mutually exclusive on each badge, Market Makers will still be able to use both to cover their activity on the Exchange by getting multiple badges and setting each risk counter by badge. The Exchange believes that offering more risk management tools to

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

Market Makers would mitigate their exposure to excessive risk. The Exchange further believes that having the new Active Quote Protection functionality leverage the existing MWSB functionality will similarly support a Market Maker's ability to manage their risk on the Exchange by including Active Quote Protection purge events to the MWSB counter. As noted above, the risk to Market Makers is not limited to a single series in an option or even multiple series in an option as Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. Today, MWSB is designed to assist Market Makers in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker. The Exchange therefore believes that tracking the number of Active Quote Protection purge events for a Market Maker against its MWSB market-wide parameter would be similarly useful for managing market risk so that they can provide deep and liquid markets to the benefit of all investors. Ultimately, the Exchange believes that providing Market Makers with additional tools in the manner described above to manage their risk parameters serves to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because Market Makers will be better able to manage risks with these tools.

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting

Authority have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

The Exchange further represents that its proposal will continue to operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable interest that is executable against a Market Maker's quotes that are received²² by the Exchange prior to the time this functionality is triggered will be automatically executed at the price up to the Market Maker's size, regardless of whether such execution results in executions in excess of the Market Maker's pre-set Contract Limit.²³ As discussed above, this is also in line with how current Rapid Fire operates today. The Exchange believes that the proposed changes in proposed sub-paragraph (B)(iii)(b) to specify that this Rule will apply to marketable orders and quotes (currently silent on marketable orders), and to specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote, will promote clarity in how the System currently operates for Rapid Fire and will operate for Active Quote Protection.

As noted above, the proposed Active Quote Protection functionality is similar to existing active risk counter functionality on another options exchange, which currently allows users to actively decrement the risk counter by a specified amount at any time, rather than waiting until a risk limit is reached or the user otherwise sends a specific instruction to the exchange to completely reset the counting program.²⁴

²² See supra note 10.

²³ See proposed subparagraph (B)(iii)(b) of Options 3, Section 15(a)(3).

²⁴ See supra note 6.

Technical Amendments

The Exchange believes that the technical amendments in Options 3, Section 15(a)(3)(B) described above are consistent with the Act because they will promote clarity in the rules and make the Rulebook easier to navigate for market participants by updating rule numbering and existing cross-cites as described above. Furthermore, the Exchange also believes that adding the defined terms for Rapid Fire and MWSB in the rule text will promote clarity so that Members can more easily locate the relevant functionalities in the Rulebook.

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

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

The Exchange does not believe that the proposed Active Quote Protection functionality will impose any undue burden on intra-market competition as it is aimed at mitigating exposure to excessive risk when trading on the Exchange. While the Exchange will offer the proposed functionality to Market Makers only, the proposed risk protection is intended to provide Market Makers with an additional tool to manage their risk parameters in a manner they deem appropriate. As such, the Exchange believes that the proposed functionality may facilitate Market Makers' provision of liquidity on the Exchange, thereby benefitting all market participants through additional execution opportunities at potentially improved prices.

The Exchange also believes that its Active Quote Protection proposal does not impose an undue burden on inter-market competition as the proposed risk protection is

similar to an existing risk protection on MEMX²⁵ as described above, and any options market could adopt similar rules.

Lastly, the Exchange does not believe that the proposed technical amendments in Options 3, Section 15(a)(3)(B) will impose an undue burden on competition as these are non-substantive changes to promote clarity in the rules and make the Rulebook easier to navigate for 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

²⁵ See *supra* note 6.

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2023-08 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-2023-08. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2023-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

Nasdaq GEMX, LLC Rules

* * * * *

Options 3 Options Trading Rules

* * * * *

Section 15. Simple Order Risk Protections

(a) No change.

* * * * *

(3) The following are Market Maker risk protections on GEMX:

* * * * *

(B) Automated Quotation Adjustments.

(i) **Rapid Fire.** Market Makers are required to utilize the Percentage, Volume, Delta and Vega Thresholds, each a Threshold, described in (a) - (d) below. For each of these features, the System will automatically remove a Market Maker's quotes in all series in an options class when any of the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold, as described below, has been exceeded. A Market Maker is required to specify a period of time not to exceed 30 seconds ("Specified Time Period") during which the System will automatically remove a Market Maker's quotes in all series of an options class. The Specified Time Period will commence for an options class every time an execution occurs in any series in such option class and will continue until the System removes quotes as described in (iii) or (iv)[ii]) or the Specified Time Period expires. The Specified Time Period operates on a rolling basis among all series in an options class in that there may be Specified Time Periods occurring simultaneously for each Threshold and such Specified Time Periods may overlap. The Specified Time Periods will be the same value for each protection described in (a) - (d) below.

(a) **Percentage Threshold.** A Market Maker must provide a specified percentage ("Percentage Threshold"), of not less than 1%, by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each series in an options class, the System will determine (i) during a Specified Time Period and for each side in a given series, a percentage calculated by dividing the size of a Market Maker's quote size

executed in a particular series (the numerator) by the Market Maker's quote size available at the time of execution plus the total number of the Market Maker's quote size previously executed during the unexpired Specified Time Period (the denominator) ("Series Percentage"); and (ii) the sum of the Series Percentage in the options class ("Issue Percentage") during a Specified Time Period. The System tracks and calculates the net impact of positions in the same options class; long call percentages are offset by short call percentages, and long put percentages are offset by short put percentages in the Issue Percentage. If the Issue Percentage exceeds the Percentage Threshold the System will automatically remove a Market Maker's quotes in all series of the options class during the Specified Time Period.

(b) **Volume Threshold.** A Market Maker must provide a Volume Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class when the Market Maker executes a number of contracts which exceeds the designated number of contracts in all series in an options class.

(c) **Delta Threshold.** A Market Maker must provide a Delta Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each class of options, the System will maintain a Delta counter, which tracks the absolute value of the difference between (i) purchased call contracts plus sold put contracts and (ii) sold call contracts plus purchased put contracts. If the Delta counter exceeds the Delta Threshold established by the Member, the System will automatically remove a Market Maker's quotes in all series of the options class.

(d) **Vega Threshold.** A Market Maker must provide a Vega Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each class of options, the System will maintain a Vega counter, which tracks the absolute value of purchased contracts minus sold contracts. If the Vega counter exceeds the Vega Threshold established by the Member, the System will automatically remove a Market Maker's quotes in all series of the options class.

(ii) Active Quote Protection. In lieu of Rapid Fire, a Market Maker may provide an executed contract limit ("Contract Limit") that, if exceeded, the System will automatically remove the Market Maker's quotes in all series of an options class submitted through SQF. The System will apply the Contract Limit for the duration of the trading day. For each class of options, the System will maintain an active limit counter that will track the current number of contracts executed through the Market Maker's quotes ("Limit Counter"). If the Limit Counter exceeds the Contract Limit established by the Market Maker, the System will automatically remove the Market Maker's quotes as described in Section 15(a)(3)(B)(iii). Market Makers may submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement

their Limit Counter to zero, including to re-enter the System as described in Section 15(a)(3)(B)(v). For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker's badge.

(iii) The System will automatically remove quotes in all series of an options class when the Percentage Threshold, Volume Threshold, Delta Threshold, [or] Vega Threshold, or the Contract Limit has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected series when the above thresholds have been exceeded.

(a) The Percentage Threshold, Volume Threshold, Delta Threshold, [and] Vega Threshold, and Contract Limit are considered independently of each other.

(b) [Quotes will be automatically executed up to the Market Maker's size regardless of whether the execution would cause the Market Maker to exceed the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold.]The System will execute any marketable orders or quotes that are executable against a Market Maker's quote and received prior to the time the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit is triggered up to the size of the Market Maker's quote, even if such execution results in executions in excess of the Market Maker's applicable Threshold or Contract Limit with respect to any parameter.

(iv)[ii] Notwithstanding Options 3, Section 15(b)(3)(B)(i) and (iii) above, if a Market Maker requests the System to remove quotes in all series of an options class, the System will automatically reset all Thresholds.

([i]v) When the System removes quotes as a result of exceeding the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold, the Market Maker must send a re-entry indicator to re-enter the System. When the System removes quotes as a result of exceeding the Contract Limit, the Market Maker must submit a request to fully decrement their Limit Counter to zero in order to re-enter the System.

(vi) If a Market Maker does not provide a parameter for each of the automated quotation removal protections described in (B)(i)(a) - (d) and (B)(ii) above, the Exchange will apply default parameters, which are announced to Members.

(vii) **Market-Wide Speed Bump.** In addition to the automated quotation removal protections described in (B)(i)(a) - (d) and (B)(ii) above, a Market Maker must provide a market wide parameter by which the Exchange will automatically remove a Market Maker's quotes in all classes when, during a time period established by the Market Maker, the total number of quote removal events specified in (B)(i)(a) - (d) and (B)(ii) exceeds the market wide parameter provided to the Exchange by the Market Maker. Market Makers may

request the Exchange to set the market wide parameter to apply to just Nasdaq GEMX or across Nasdaq GEMX and Nasdaq ISE. Market Makers must request the Exchange enable re-entry by contacting the Exchange's Operations Department.

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