Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 13
Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

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

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

A proposal to amend the Pricing Schedule at Options 7 to specify pricing related to unrelated market or marketable interest

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 10/23/2023

By John Zecca
(Name *)

(Title *)
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: 2023.10.23 11:37:43 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add / Remove / View SR-GEMX-2023-13 19b-4.doc	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add / Remove / View SR-GEMX-2023-13 Exhibit 1.doc	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies * Add / Remove / View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add / Remove / View	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add / Remove / View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add / Remove / View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add / Remove / View SR-GEMX-2023-13 Exhibit 5.doc	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add / Remove / View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC ("GEMX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend its Pricing Schedule at Options 7 to specify pricing related to unrelated market or marketable interest.

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

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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 Exchange proposes to amend the Exchange's Pricing Schedule at Options 7 to specify pricing related to unrelated market or marketable interest. Specifically, the Exchange proposes to specify the current manner in which the Exchange assesses fees and rebates with respect to unrelated market or marketable interest received prior to the commencement of an auction in the Facilitation Mechanism ("FAC"),[3] Solicited Order Mechanism ("SOL"),[4] and Price Improvement Mechanism ("PIM"),[5] and during such auctions. In addition, the Exchange also proposes a few non-substantive amendments to Options 7 that will bring more clarity to the Exchange's Pricing Schedule. Each change is discussed below.

Unrelated Interest

As a general rule, today, if an order executed in FAC ("FAC Order"), SOL ("SOL Order"), or PIM ("PIM Order") executes against unrelated market or marketable interest

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3 The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. See Options 3, Section 11(b).

4 The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Options 3, Section 11(d).

5 The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13(a).

received **during** an auction, the Exchange would assess the applicable Crossing Order[6] pricing in its Pricing Schedule. If the FAC, SOL, or PIM Order executes against unrelated market or marketable interest received **prior** to an auction, the Exchange would assess applicable order book pricing in its Pricing Schedule. As discussed below, the Exchange applies these concepts to unrelated market or marketable interest in line with Member expectations and to treat similarly situated Members in a uniform manner. The Exchange notes that it currently denotes in the Pricing Schedule that it would apply separate Crossing Order pricing for any contra-side interest submitted after the commencement of an auction in FAC, SOL, or PIM (which includes unrelated market and marketable interest received during the auction) by grouping such interest as Responses to Crossing Orders.[7] The Exchange further notes that today, it specifies throughout Options 7 how it will price Responses to Crossing Orders.[8] While the Exchange has delineated the treatment of unrelated market and marketable interest received by the Exchange **during** a FAC, SOL, and PIM auction in its Pricing Schedule, the Exchange believes that further clarity would be beneficial to Members as to how the Exchange currently assesses pricing for such interest received **prior** to the commencement of the auction. As such, the Exchange proposes to memorialize these

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6 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

7 "Responses to Crossing Order" is **any** contra-side interest (i.e., orders & quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism. Contra-side interest in this context therefore includes both contra-side interest submitted specifically **in response** to an auction notification, and unrelated market and marketable contra-side interest submitted to the order book during the auction.

8 See Section 3 (setting forth fees for Responses to Crossing Orders except PIM Orders); and Section 3, note 12 (setting forth fees for Responses to PIM Orders).

concepts in its Pricing Schedule by adding new paragraph (d) to Options 7, Section 1, titled "Unrelated Market or Marketable Interest Pricing." Proposed paragraph (d) would state that the following concepts would apply to FAC, SOL, and PIM Orders in Penny Symbols and Non-Penny Symbols (excluding Index Options).[9] The Exchange also proposes to note that all transactions in Index Options are subject to separate pricing in Options 7, Section 3. Today, the Exchange charges separate transaction fees for all executions (including executions in FAC, SOL, and PIM) in Index Options.[10] As such, the Exchange believes it is appropriate to clarify that these Index Options fees are excluded from the unrelated interest concepts in new paragraph (d).

Specifically, under new paragraph (d)(1), when the FAC Order or SOL Order executes against unrelated market or marketable interest received **during** an auction, the FAC Order or SOL Order will be assessed the applicable Fees for Crossing Orders (excluding PIM Orders) in Options 7, Section 3.[11] The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to Crossing Orders (excluding PIM Orders) in Options 7, Section 3.[12]

Under new paragraph (d)(2), when the PIM Order executes against unrelated market or marketable interest received **during** an auction, the PIM Order will be assessed

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9 Today, the index options fees in Options 7, Section 3 apply only to NDX, and are assessed to all executions in NDX. <u>See</u> Options 7, Section 3, note 6.

10 Currently, the transaction fees are \$0.75 per contract for all non-Priority Customer NDX orders and \$0.00 for all Priority Customer NDX orders.

11 Thus the FAC and SOL Order would be assessed the current Fee for Crossing Orders (excluding PIM Orders) of \$0.20 per contract for all non-Priority Customer orders, and \$0.00 per contract for Priority Customer orders.

12 Thus, unrelated interest would be assessed the current Penny Symbol Fee for Responses to Crossing Orders (excluding PIM Orders) of \$0.50 per contract for all market participant orders in Penny Symbols and \$1.10 per contract for all market participant orders in Non-Penny Symbols.

the applicable Fees for PIM Orders in Options 7, Section 3, note 11.[13] The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to PIM Orders in Options 7, Section 3, note 12.[14]

Under new paragraph (d)(3), when the FAC Order, SOL Order, or PIM Order executes against unrelated market or marketable interest received **prior** to the commencement of an auction, the FAC Order, SOL Order, or PIM Order would be subject to the applicable taker pricing in Options 7, Section 3.[15] The unrelated market or marketable interest received prior to the commencement of an auction will be assessed the applicable maker pricing in Options 7, Section 3.[16]

Unrelated market or marketable interest resting on the Exchange's order book, whether received prior to the commencement of a FAC, SOL, or PIM auction or during such auction, would be allocated in accordance with Options 3, Section 11(b)(4) (FAC), Section 11(d)(3) (SOL), and Section 13(d) (PIM).

The Exchange applies order book pricing in accordance with Options 7, Section 3 to interest received **prior** to a FAC, SOL, and PIM auction that subsequently trades with a FAC, SOL, or PIM Order (which is considered unrelated market or marketable interest for purposes of the auction) because the Exchange seeks to treat the Member who submitted such interest in a similar manner as any other Member who submits interest to

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13 Thus PIM Orders would be assessed the current Fee for PIM Orders of $0.05 per contract for all non-Priority Customer orders and Priority Customer orders on the contra-side of a PIM auction. There is currently no fee for Priority Customer orders on the agency side of a PIM auction.

14 Thus, unrelated interest would be assessed the current Fee for Responses to PIM Orders of $0.05 per contract for all market participant orders.

15 Thus the FAC, SOL, and PIM Order would be assessed the current volume-based Tiers 1-5 taker fees in Options 7, Section 3 by market participant category.

16 Thus, unrelated interest would be assessed the current volume-based Tiers 1-5 maker rebates in Options 7, Section 3 by market participant category. Note that today, Market Maker and Priority Customer orders are eligible for the higher maker rebates in Tiers 2-5 whereas all other market participant orders would receive the Tier 1 maker rebate.

the order book. The Member that submitted such interest would not have been aware at the time that a FAC, SOL, or PIM auction was in progress, and therefore would not have expected to be assessed separate Crossing Order pricing.[17] In such instances, the unrelated market or marketable interest that posted to the order book prior to the commencement of the auction would be treated as posting liquidity to the order book (makers of liquidity) and assessed maker pricing in accordance with Options 7, Section 3. The FAC, SOL, and PIM Order that trades against the unrelated interest would be considered as removing liquidity from the order book (takers of liquidity) and assessed taker pricing in accordance with Options 7, Section 3. This is consistent with taker pricing assessed to any Member that removes liquidity from the order book.

In contrast, the Exchange applies Crossing Order pricing in Options 7, Section 3 to the unrelated market or marketable interest when the interest arrived **during** a FAC, SOL, and PIM auction. Members submitting interest to the order book during one of these auctions are aware that they may be allocated in the auction.[18] The Exchange assesses the applicable response fee in Options 7, Section 3 to Members submitting such interest in the same manner that responders to the FAC, SOL, and PIM auction are assessed fees for their auction responses. In other words, the unrelated market or marketable interest that received an allocation within the FAC, SOL, or PIM auction would be uniformly subject to the same fees as those Members that submitted auction responses and were allocated.

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17 Members become aware of ongoing FAC, SOL, and PIM auctions as the Exchange disseminates an auction notification in the form of a "broadcast message" when the Exchange receives a FAC, SOL, and PIM Order for auction processing. The broadcast message is sent by the Exchange to all Members and includes the series, price, side, and size of the Agency Order. See Options 3, Sections 11(b)(2), 11(d)(2), and 13(c).

18 See supra note 17.

The Exchange's pricing models for the order book and FAC/SOL/PIM auctions each seek to attract liquidity to the Exchange and reward Members differently for the different types of order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the FAC/SOL/PIM auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Technical Amendments

The Exchange proposes a few technical, non-substantive amendments throughout Options 7. Specifically, the Exchange proposes to title paragraph (b) in Options 7, Section 1 as "Fee Disputes" and paragraph (c) as "Definitions" to more clearly identify the applicable rules within the Pricing Schedule.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] 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. Further the proposal 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.

Unrelated Interest

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19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that its proposal to specify how the Exchange currently prices unrelated market or marketable interest received is consistent with the Act because memorializing these concepts in new paragraph (d) of Options 7, Section 1 will promote greater clarity and transparency in the rules and make the Pricing Schedule easier to navigate for market participants. As discussed above, the Exchange already denotes how unrelated market or marketable interest received **during** a FAC, SOL, and PIM auction is priced by grouping such interest as Responses to Crossing Orders and Responses to PIM Orders today. How the Exchange prices unrelated market or marketable interest received **prior** to a FAC, SOL, and PIM auction, however, is not currently detailed in the Exchange's Pricing Schedule. As such, the Exchange believes that by consolidating and describing these concepts in one place in the Pricing Schedule, Members can more easily locate the related rules and avoid any potential investor confusion.

As discussed above, the Exchange will memorialize that it will assess book pricing for unrelated market or marketable interest received **prior** to the commencement of a FAC, SOL, or PIM auction by stating that such interest would be assessed the applicable maker pricing. The FAC, SOL and PIM Order that such interest executes against would be assessed applicable taker pricing. The Exchange applies order book pricing in this scenario because at the time the unrelated market or marketable interest was submitted and posted to the order book, Members would not have been aware of an ongoing FAC/SOL/PIM auction and therefore would not expect to be subject to Responses to Crossing Order fees in Section 3 and Responses to PIM Order fees in Section 3, note 12.[21] In contrast, the Exchange applies Responses to Crossing Order fees

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[21] See supra note 17.

in Section 3 and Responses to PIM Order fees in Section 3, note 12 to the unrelated market or marketable interest when it arrives **during** the FAC/SOL/PIM auction because Members submitting interest to the order book at that time would be aware that they may be allocated in the FAC/SOL/PIM auction.[22] Additionally, the Exchange's pricing models for the order book and FAC/SOL/PIM auctions each seek to attract liquidity to the Exchange and reward Members differently for different types of order flow. To this end, the Exchange's pricing considers the manner in which interest interacts with the FAC/SOL/PIM auction based on the timing of when such interest entered which order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Further, the Exchange's proposal to memorialize current practice that unrelated market or marketable interest received **prior** to the commencement of a FAC/SOL/PIM auction would be assessed the applicable maker pricing is reasonable, equitable, and not unfairly discriminatory because all Members who submitted such interest that posted to the order book **prior** to the commencement of the auction (and executes against the FAC/SOL/PIM Order) would be uniformly assessed the same pricing as any other Member who posted liquidity on the order book. Further, all Members who submitted a FAC/SOL/PIM Order that executed against such interest would be uniformly assessed the same pricing as any other Member who removed liquidity from the order book.

Similarly, the Exchange believes that its proposal to specify current practice that unrelated market or marketable interest received **during** a FAC/SOL/PIM auction would

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[22] See supra note 17.

be assessed the applicable Responses to Crossing Order (including PIM Order) pricing as described above is reasonable, equitable, and not unfairly discriminatory because all Members who submitted such interest would be uniformly assessed the same pricing as any other Member who submitted responses into the FAC/SOL/PIM auction.

Lastly, the Exchange believes that its proposal to specify that Index Options fees are excluded from the unrelated interest concepts in new paragraph (d) is reasonable, equitable, and not unfairly discriminatory because all transactions in Index Options (including transactions in FAC, SOL, and PIM) are presently subject to separate pricing in Options 7, Section 3.[23] By clarifying this exclusion, the Exchange believes it will avoid potential confusion as to the applicability of its Pricing Schedule to the benefit of all market participants.

Technical Amendments

The Exchange believes that adding titles to paragraphs (b) and (c) of Options 7, Section 1 is consistent with the Act because they will promote clarity so that market participants can more easily locate the relevant rules in the Pricing Schedule.

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 its proposal would impose an undue burden on intra-market competition. The pricing of unrelated interest in the manner described above uniformly treats similarly situated market participants. Specifically, all Members

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[23] See supra notes 9 and 10.

who submitted unrelated market or marketable interest that posted to the order book **prior** to the commencement of the auction (and executes against the FAC/SOL/PIM Order) would be uniformly assessed the same pricing as any other Member who posted liquidity on the order book. All Members who submitted a FAC/SOL/PIM Order that executed against such interest would be uniformly assessed the same pricing as any other Member who removed liquidity from the order book. Additionally, all Members who submitted unrelated market or marketable interest to the order book **during** the FAC/SOL/PIM auction (which ends up participating and executing against the auction order) would be uniformly assessed the same pricing as any other Member who submitted responses into the FAC/SOL/PIM auction.

In terms of inter-market competition, the Exchange continues to believe that the way that it prices unrelated market or marketable interest remains competitive with other options markets given that the Exchange's current pricing models for the order book and for FAC/SOL/PIM auctions are all designed to attract order flow to the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[24] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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24 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-GEMX-2023-13)

October __, 2023

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Pricing Schedule at Options 7 to Specify Pricing Related to Unrelated Market or Marketable Interest

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 October 23, 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 its Pricing Schedule at Options 7 to specify pricing related to unrelated market or marketable interest.

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

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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 Exchange proposes to amend the Exchange's Pricing Schedule at Options 7 to specify pricing related to unrelated market or marketable interest. Specifically, the Exchange proposes to specify the current manner in which the Exchange assesses fees and rebates with respect to unrelated market or marketable interest received prior to the commencement of an auction in the Facilitation Mechanism ("FAC"),[3] Solicited Order Mechanism ("SOL"),[4] and Price Improvement Mechanism ("PIM"),[5] and during such auctions. In addition, the Exchange also proposes a few non-substantive amendments to Options 7 that will bring more clarity to the Exchange's Pricing Schedule. Each change is discussed below.

Unrelated Interest

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3 The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. See Options 3, Section 11(b).

4 The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See Options 3, Section 11(d).

5 The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. See Options 3, Section 13(a).

As a general rule, today, if an order executed in FAC ("FAC Order"), SOL ("SOL Order"), or PIM ("PIM Order") executes against unrelated market or marketable interest received **during** an auction, the Exchange would assess the applicable Crossing Order[6] pricing in its Pricing Schedule. If the FAC, SOL, or PIM Order executes against unrelated market or marketable interest received **prior** to an auction, the Exchange would assess applicable order book pricing in its Pricing Schedule. As discussed below, the Exchange applies these concepts to unrelated market or marketable interest in line with Member expectations and to treat similarly situated Members in a uniform manner. The Exchange notes that it currently denotes in the Pricing Schedule that it would apply separate Crossing Order pricing for any contra-side interest submitted after the commencement of an auction in FAC, SOL, or PIM (which includes unrelated market and marketable interest received during the auction) by grouping such interest as Responses to Crossing Orders.[7] The Exchange further notes that today, it specifies throughout Options 7 how it will price Responses to Crossing Orders.[8] While the Exchange has delineated the treatment of unrelated market and marketable interest received by the Exchange **during** a FAC, SOL, and PIM auction in its Pricing Schedule, the Exchange believes that further clarity would be beneficial to Members as to how the

[6] A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

[7] "Responses to Crossing Order" is **any** contra-side interest (i.e., orders & quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism. Contra-side interest in this context therefore includes both contra-side interest submitted specifically **in response** to an auction notification, and unrelated market and marketable contra-side interest submitted to the order book during the auction.

[8] See Section 3 (setting forth fees for Responses to Crossing Orders except PIM Orders); and Section 3, note 12 (setting forth fees for Responses to PIM Orders).

Exchange currently assesses pricing for such interest received **prior** to the commencement of the auction. As such, the Exchange proposes to memorialize these concepts in its Pricing Schedule by adding new paragraph (d) to Options 7, Section 1, titled "Unrelated Market or Marketable Interest Pricing." Proposed paragraph (d) would state that the following concepts would apply to FAC, SOL, and PIM Orders in Penny Symbols and Non-Penny Symbols (excluding Index Options).[9] The Exchange also proposes to note that all transactions in Index Options are subject to separate pricing in Options 7, Section 3. Today, the Exchange charges separate transaction fees for all executions (including executions in FAC, SOL, and PIM) in Index Options.[10] As such, the Exchange believes it is appropriate to clarify that these Index Options fees are excluded from the unrelated interest concepts in new paragraph (d).

Specifically, under new paragraph (d)(1), when the FAC Order or SOL Order executes against unrelated market or marketable interest received **during** an auction, the FAC Order or SOL Order will be assessed the applicable Fees for Crossing Orders (excluding PIM Orders) in Options 7, Section 3.[11] The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to Crossing Orders (excluding PIM Orders) in Options 7, Section 3.[12]

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9 Today, the index options fees in Options 7, Section 3 apply only to NDX, and are assessed to all executions in NDX. See Options 7, Section 3, note 6.

10 Currently, the transaction fees are $0.75 per contract for all non-Priority Customer NDX orders and $0.00 for all Priority Customer NDX orders.

11 Thus the FAC and SOL Order would be assessed the current Fee for Crossing Orders (excluding PIM Orders) of $0.20 per contract for all non-Priority Customer orders, and $0.00 per contract for Priority Customer orders.

12 Thus, unrelated interest would be assessed the current Penny Symbol Fee for Responses to Crossing Orders (excluding PIM Orders) of $0.50 per contract for all market participant orders in Penny Symbols and $1.10 per contract for all market participant orders in Non-Penny Symbols.

Under new paragraph (d)(2), when the PIM Order executes against unrelated market or marketable interest received **during** an auction, the PIM Order will be assessed the applicable Fees for PIM Orders in Options 7, Section 3, note 11.[13] The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to PIM Orders in Options 7, Section 3, note 12.[14]

Under new paragraph (d)(3), when the FAC Order, SOL Order, or PIM Order executes against unrelated market or marketable interest received **prior** to the commencement of an auction, the FAC Order, SOL Order, or PIM Order would be subject to the applicable taker pricing in Options 7, Section 3.[15] The unrelated market or marketable interest received prior to the commencement of an auction will be assessed the applicable maker pricing in Options 7, Section 3.[16]

Unrelated market or marketable interest resting on the Exchange's order book, whether received prior to the commencement of a FAC, SOL, or PIM auction or during such auction, would be allocated in accordance with Options 3, Section 11(b)(4) (FAC), Section 11(d)(3) (SOL), and Section 13(d) (PIM).

The Exchange applies order book pricing in accordance with Options 7, Section 3 to interest received **prior** to a FAC, SOL, and PIM auction that subsequently trades with a FAC, SOL, or PIM Order (which is considered unrelated market or marketable interest

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13 Thus PIM Orders would be assessed the current Fee for PIM Orders of $0.05 per contract for all non-Priority Customer orders and Priority Customer orders on the contra-side of a PIM auction. There is currently no fee for Priority Customer orders on the agency side of a PIM auction.

14 Thus, unrelated interest would be assessed the current Fee for Responses to PIM Orders of $0.05 per contract for all market participant orders.

15 Thus the FAC, SOL, and PIM Order would be assessed the current volume-based Tiers 1-5 taker fees in Options 7, Section 3 by market participant category.

16 Thus, unrelated interest would be assessed the current volume-based Tiers 1-5 maker rebates in Options 7, Section 3 by market participant category. Note that today, Market Maker and Priority Customer orders are eligible for the higher maker rebates in Tiers 2-5 whereas all other market participant orders would receive the Tier 1 maker rebate.

for purposes of the auction) because the Exchange seeks to treat the Member who submitted such interest in a similar manner as any other Member who submits interest to the order book. The Member that submitted such interest would not have been aware at the time that a FAC, SOL, or PIM auction was in progress, and therefore would not have expected to be assessed separate Crossing Order pricing.[17] In such instances, the unrelated market or marketable interest that posted to the order book prior to the commencement of the auction would be treated as posting liquidity to the order book (makers of liquidity) and assessed maker pricing in accordance with Options 7, Section 3. The FAC, SOL, and PIM Order that trades against the unrelated interest would be considered as removing liquidity from the order book (takers of liquidity) and assessed taker pricing in accordance with Options 7, Section 3. This is consistent with taker pricing assessed to any Member that removes liquidity from the order book.

In contrast, the Exchange applies Crossing Order pricing in Options 7, Section 3 to the unrelated market or marketable interest when the interest arrived **during** a FAC, SOL, and PIM auction. Members submitting interest to the order book during one of these auctions are aware that they may be allocated in the auction.[18] The Exchange assesses the applicable response fee in Options 7, Section 3 to Members submitting such interest in the same manner that responders to the FAC, SOL, and PIM auction are assessed fees for their auction responses. In other words, the unrelated market or marketable interest that received an allocation within the FAC, SOL, or PIM auction

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17 Members become aware of ongoing FAC, SOL, and PIM auctions as the Exchange disseminates an auction notification in the form of a "broadcast message" when the Exchange receives a FAC, SOL, and PIM Order for auction processing. The broadcast message is sent by the Exchange to all Members and includes the series, price, side, and size of the Agency Order. See Options 3, Sections 11(b)(2), 11(d)(2), and 13(c).

18 See supra note 17.

would be uniformly subject to the same fees as those Members that submitted auction responses and were allocated.

The Exchange's pricing models for the order book and FAC/SOL/PIM auctions each seek to attract liquidity to the Exchange and reward Members differently for the different types of order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the FAC/SOL/PIM auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Technical Amendments

The Exchange proposes a few technical, non-substantive amendments throughout Options 7. Specifically, the Exchange proposes to title paragraph (b) in Options 7, Section 1 as "Fee Disputes" and paragraph (c) as "Definitions" to more clearly identify the applicable rules within the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] 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. Further the proposal is designed to promote just and equitable principles of trade, to

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

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.

Unrelated Interest

The Exchange believes that its proposal to specify how the Exchange currently prices unrelated market or marketable interest received is consistent with the Act because memorializing these concepts in new paragraph (d) of Options 7, Section 1 will promote greater clarity and transparency in the rules and make the Pricing Schedule easier to navigate for market participants. As discussed above, the Exchange already denotes how unrelated market or marketable interest received **during** a FAC, SOL, and PIM auction is priced by grouping such interest as Responses to Crossing Orders and Responses to PIM Orders today. How the Exchange prices unrelated market or marketable interest received **prior** to a FAC, SOL, and PIM auction, however, is not currently detailed in the Exchange's Pricing Schedule. As such, the Exchange believes that by consolidating and describing these concepts in one place in the Pricing Schedule, Members can more easily locate the related rules and avoid any potential investor confusion.

As discussed above, the Exchange will memorialize that it will assess book pricing for unrelated market or marketable interest received **prior** to the commencement of a FAC, SOL, or PIM auction by stating that such interest would be assessed the applicable maker pricing. The FAC, SOL and PIM Order that such interest executes against would be assessed applicable taker pricing. The Exchange applies order book pricing in this scenario because at the time the unrelated market or marketable interest was submitted and posted to the order book, Members would not have been aware of an ongoing FAC/SOL/PIM auction and therefore would not expect to be subject to

Responses to Crossing Order fees in Section 3 and Responses to PIM Order fees in Section 3, note 12.[21] In contrast, the Exchange applies Responses to Crossing Order fees in Section 3 and Responses to PIM Order fees in Section 3, note 12 to the unrelated market or marketable interest when it arrives **during** the FAC/SOL/PIM auction because Members submitting interest to the order book at that time would be aware that they may be allocated in the FAC/SOL/PIM auction.[22] Additionally, the Exchange's pricing models for the order book and FAC/SOL/PIM auctions each seek to attract liquidity to the Exchange and reward Members differently for different types of order flow. To this end, the Exchange's pricing considers the manner in which interest interacts with the FAC/SOL/PIM auction based on the timing of when such interest entered which order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

Further, the Exchange's proposal to memorialize current practice that unrelated market or marketable interest received **prior** to the commencement of a FAC/SOL/PIM auction would be assessed the applicable maker pricing is reasonable, equitable, and not unfairly discriminatory because all Members who submitted such interest that posted to the order book **prior** to the commencement of the auction (and executes against the FAC/SOL/PIM Order) would be uniformly assessed the same pricing as any other Member who posted liquidity on the order book. Further, all Members who submitted a FAC/SOL/PIM Order that executed against such interest would be uniformly assessed the same pricing as any other Member who removed liquidity from the order book.

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21 See supra note 17.

22 See supra note 17.

Similarly, the Exchange believes that its proposal to specify current practice that unrelated market or marketable interest received **during** a FAC/SOL/PIM auction would be assessed the applicable Responses to Crossing Order (including PIM Order) pricing as described above is reasonable, equitable, and not unfairly discriminatory because all Members who submitted such interest would be uniformly assessed the same pricing as any other Member who submitted responses into the FAC/SOL/PIM auction.

Lastly, the Exchange believes that its proposal to specify that Index Options fees are excluded from the unrelated interest concepts in new paragraph (d) is reasonable, equitable, and not unfairly discriminatory because all transactions in Index Options (including transactions in FAC, SOL, and PIM) are presently subject to separate pricing in Options 7, Section 3.[23] By clarifying this exclusion, the Exchange believes it will avoid potential confusion as to the applicability of its Pricing Schedule to the benefit of all market participants.

Technical Amendments

The Exchange believes that adding titles to paragraphs (b) and (c) of Options 7, Section 1 is consistent with the Act because they will promote clarity so that market participants can more easily locate the relevant rules in the Pricing Schedule.

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.

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[23] See supra notes 9 and 10.

The Exchange does not believe that its proposal would impose an undue burden on intra-market competition. The pricing of unrelated interest in the manner described above uniformly treats similarly situated market participants. Specifically, all Members who submitted unrelated market or marketable interest that posted to the order book **prior** to the commencement of the auction (and executes against the FAC/SOL/PIM Order) would be uniformly assessed the same pricing as any other Member who posted liquidity on the order book. All Members who submitted a FAC/SOL/PIM Order that executed against such interest would be uniformly assessed the same pricing as any other Member who removed liquidity from the order book. Additionally, all Members who submitted unrelated market or marketable interest to the order book **during** the FAC/SOL/PIM auction (which ends up participating and executing against the auction order) would be uniformly assessed the same pricing as any other Member who submitted responses into the FAC/SOL/PIM auction.

In terms of inter-market competition, the Exchange continues to believe that the way that it prices unrelated market or marketable interest remains competitive with other options markets given that the Exchange's current pricing models for the order book and for FAC/SOL/PIM auctions are all designed to attract order flow to the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[24] 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2023-13 on the subject line.

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[24] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-13. 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-2023-13 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.[25]

Sherry R. Haywood,

Assistant Secretary.

[25] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is <u>underlined</u>.

Nasdaq GEMX, LLC Rules

* * * * *

Options 7 Pricing Schedule

Section 1. General Provisions

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(b) <u>Fee Disputes.</u> All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than sixty (60) calendar days after receipt of a billing invoice.

(c) <u>Definitions.</u> For purposes of assessing fees, the following references should serve as guidance. Terms not defined in this Pricing Schedule shall have the meaning ascribed to them under Nasdaq GEMX Rules. Fees and rebates are listed per contract per leg unless otherwise noted.

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<u>**(d) Unrelated Market or Marketable Interest Pricing**</u>

<u>The below applies to orders in Penny Symbols and Non-Penny Symbols (excluding Index Options)* executed in the Exchange's Facilitation Mechanism (“FAC Order”), Solicited Order Mechanism (“SOL Order”), and Price Improvement Mechanism (“PIM Order”).</u>

<u>(1) The FAC Order or SOL Order executes against unrelated market or marketable interest received **during** an auction:</u>

<u>(A) The FAC Order or SOL Order will be assessed the applicable Fees for Crossing Orders (excluding PIM Orders) in Section 3 below.</u>

<u>(B) The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to Crossing Orders (excluding PIM Orders) in Section 3 below.</u>

<u>(2) The PIM Order executes against unrelated market or marketable interest received **during** an auction:</u>

<u>(A) The PIM Order will be assessed the applicable Fees for PIM Orders in Section 3, note 11 below.</u>

(B) The unrelated market or marketable interest received during an auction will be assessed the applicable Fees for Responses to PIM Orders in Section 3, note 12 below.

(3) The FAC Order, SOL Order, or PIM Order executes against unrelated market or marketable interest received **prior** to the commencement of an auction:

(A) The FAC Order, SOL Order, or PIM Order would be subject to the applicable taker pricing in Section 3 below.

(B) The unrelated market or marketable interest received prior to the commencement of an auction will be assessed the applicable maker pricing in Section 3 below.

* All transactions in Index Options are subject to separate pricing in Section 3 below.

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