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Page 1 of * 61

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

File No. * SR 2024 - * 20

Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

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

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
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| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
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Rule

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| <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) |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
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| Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/> |
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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> |
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| Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

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

Preferred Orders

Contact Information

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

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

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

Date 07/24/2024


(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: 2024.07.24 17:09:23 -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-2024-20 19b-4.docx

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-2024-20 Exhibit 1.docx

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-2024-20 Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to amend Options 2, Sections 5, 6 and 10; and Options 3, Sections 7 and 17; and Options 7, Section 6.

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

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 Options 2, Section 5, Market Maker Quotations, to amend intra-day quoting requirements. The Exchange proposes to amend Options 2, Section 6, Market Maker Orders, and Options 3, Section 7(g), Reserve Orders, to bring additional clarity to the types of orders available to Market Makers. The Exchange proposes to amend Options 2, Section 10, Preferred Orders, to define various terms related to Preferred Orders and harmonize the rule text to other Nasdaq affiliated markets. The Exchange proposes to amend Options 3, Section 17, Kill Switch, to indicate the configurations available in the Kill Switch. Finally, the Exchange proposes to remove dated rule text in Options 7, Section 6, Ports and Other Services.

Each change is described below.

Options 2, Section 5

The Exchange proposes to amend the quoting requirements of a Competitive Market Maker and a Preferred CMM in Options 2, Section 5.

With respect to a Competitive Market Maker, today, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.

The Exchange proposes to amend the quoting obligations for a Competitive Market Maker by requiring a Competitive Market Maker to enter quotations each day in the options classes to which it is appointed. Specifically, the Exchange proposes to require in proposed Options 2, Section 5(e)(1) that,

Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options.

As is the case today, Competitive Market Makers may continue to choose to quote a Quarterly Options Series, any adjusted options series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index option, in addition to regular series in the options class. Such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in Options 2, Section 5(e)(1). The Exchange believes that requiring a Competitive Market Maker to quote each day will increase liquidity on the Exchange.

Additionally, the Exchange proposes to amend the quoting requirements for a Preferred CMM. Today, the last sentence of Options 2, Section 5(e) provides, "A Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, ("Preferred CMM") shall be held to the standard of

a Preferred CMM in the options series of any options class in which it receives the Preferred Order.” Further, today, Options 2, Section 5(e)(3) provides,

Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). A Preferred CMM may be preferred in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).

Today, Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member is considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a Preferred CMM/ Preferred PMM for that day in all series for that option class in which it received the Preferred Order.

Today, the Member must be quoting at the NBBO at the time the Preferred Order is received and must execute the order. If a CMM does not receive a Preferred Order, it will not be considered a Preferred CMM in that options class and any quotations in that

options class by the CMM will not be considered when determining whether it met its Preferred CMM quoting obligations.

At this time, the Exchange proposes to utilize the term “Preferred Market Maker” instead of “Preferred CMM” as both Competitive Market Makers and Primary Market Makers are Preferred Market Makers pursuant to proposed renumbered Options 2, Section 10(a)(1)(iii).³ Also, the Exchange proposes replacing the word “receives” with the word “executes” in Options 2, Section 5(e). The proposed new sentence would provide, “A Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred Market Maker”) shall be held to the standard of a Preferred Market Maker among all options series of any options class in which it executes the Preferred Order.” The Exchange proposes to amend this sentence to specify that the 90% quoting obligation described herein would be among all options series instead of in each assigned option series.

Additionally, the Exchange proposes amendments to Options 2, Section 5(e)(3) to utilize the term “Preferred Market Maker” and amend the quoting obligation as stated in the last sentence of Options 2, Section 5(e) to require that the Preferred Market Maker collectively meet the 90% quoting obligation among all options series in which the Preferred Market Maker executes a Preferred Order. The Exchange proposes to replace the word “receives” with “executes.” As amended, Options 2, Section 5(e)(3) would state,

Preferred Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the

³ Renumbered Options 2, Section 10 (a)(1)(iii) states that a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. A Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Options Series, the Adjusted Options Series, and an options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

The Exchange is amending the Preferred Market Maker quoting obligation to first require that a Market Maker indicate interest in the program with the Exchange.⁴ Once the Market Maker indicates it would like to receive a Preferred Order, that Market Maker would be obligated, collectively, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for

⁴ The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

options on equities and ETFs or with an expiration of twelve months or greater for index options.

A Preferred Market Maker has an ongoing 90% quoting obligation, on a daily basis, from the time a Preferred Market Maker executes its first Preferred Order in the option in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that it is no longer preferred.

The Exchange proposes to replace the word “receives” with “executes” in Options 2, Section 5(e) and (e)(3) rule text because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and received their enhanced allocation. A Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Option Series, the Adjusted Option Series, and an option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

To make clear the manner in which the quoting obligations will be applied, below are some examples.

Example 1

- Assume a Competitive Market Maker was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Competitive Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

Obligations

This Competitive Market Maker is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options series are open for trading among **AAPL, SPY, and ORCL** to fulfill its Competitive Market Maker obligation.

Separately, this Competitive Market Maker would be obligated, separate and apart from its Competitive Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred Market Maker Obligation.

This Competitive Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Competitive Market Maker or Preferred Market Maker requirements.

Example 2

- Assume a Primary Market Maker⁵ was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Primary Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

Obligations

This Primary Market Maker, associated with the same Options Participant, is collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **AAPL, SPY, and ORCL** to fulfill its Primary Market Maker obligation.⁶

Separately, this Primary Market Maker would be obligated, separate and apart from its Primary Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred

⁵ Pursuant to Options 2, Section 5(e), a Member is required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Today, a Primary Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred PMM”) shall be held to the standard of a Preferred PMM in the options series of any options class in which it receives the Preferred Order.

⁶ See Options 2, Section 4(j)(1).

Market Maker obligation.

A Primary Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Primary Market Maker or Preferred Market Maker requirements.

The Exchange proposes to amend Options 2, Section 5(e)(5) that currently states, “GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on a monthly basis.” The Exchange proposes to instead provide that “For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis.” The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

The Exchange will implement the amendments to Options 2, Section 5 on or before April 30, 2025.⁷

Options 2, Section 6 and Options 3, Section 7

Options 2, Section 6, Market Maker Orders, provides Market Makers with information as to the types of orders that may be entered on the Exchange. The current rule text at Options 2, Section 6(a) provides that, in options classes in which the Market Maker is appointed, a Market Maker may enter all order types defined in Options 3,

⁷ The Exchange will provide Members with notification of these changes in an Options Regulatory Alert and the Exchange will announce the implementation date in a second Options Regulatory Alert.

Section 7 in the options classes to which they are appointed under Options 2, Section 3, except Reserve Orders and Customer Cross Orders. Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.

With the changes proposed to the Competitive Market Maker quoting requirements, the Exchange is also removing the last sentence of Options 2, Section 6 which provides, “Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.” Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5.

The Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. The Exchange proposes to modify the current rule text so that it will read clearly and harmonize with rule text on Phlx and BX at Options 2, Section 6. The Exchange proposes to first note that, today, Market Makers may enter all Complex Order types. To make this clear in the rule text, the Exchange proposes to cite to Options 3, Section 14, which governs Complex Orders, in addition to citing to Options 3, Section 7 which governs single-leg orders. Further, the Exchange proposes to remove the current rule text in Options 3, Section 6(b)(1) as the language is superfluous. In its place, the Exchange proposes to amend the text in Options 2, Section 6(a) to remove the title “Options Classes to Which Appointed” and add “non-appointed” to the paragraph so that it reflects all the order types for Market Makers in both appointed and non-appointed classes. The current language in Options 2, Section 6(b)(1) provides,

A Market Maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of

options listed on the Exchange to which the Market Maker is not appointed under Options 2, Section 3, except for Reserve Orders, provided that:

(i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Options 2, Section 4(b)(4); and

(ii) the Market Maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

The Exchange believes that the rule will read more clearly by adding non-appointed to Options 2, Section 6(a) and removing current Options 2, Section 6(b)(1) which says the same thing. Today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Further Options 2, Section 6(b)(1)(i) is a requirement provided for in Options 2, Section 4(b)(4) and does not need to be repeated in this rule. Finally, Options 2, Section 6(b)(1)(ii) is circular because Options 2, Section 6(a) allows Market Makers to enter all orders in appointed options classes except for Reserve Orders which is the same restriction applicable to non-appointed options classes.

The Exchange also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols. The Exchange proposes to amend Options 3, Section 7(g), concerning Reserve Orders, that Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6. The Exchange believes that the addition of this language will remind Market Makers of the obligations noted within Options 2, Section 6.

Options 2, Section 10

Options 2, Section 10 describes Preferred Orders. An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System

(“Preferred Orders”).⁸ The Exchange proposes to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1). The Exchange proposes to amend the definition of a “Preferred Order” to mean any order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider.⁹ The Exchange proposes to provide that the term “Order Flow Provider” means any Member that submits, as agent, orders to the Exchange.¹⁰ Finally, the Exchange proposes to renumber current Options 2, Section 10(a)(1) which states, “A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class” as Options 2, Section 10(a)(1)(iii). These definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange proposes to amend Options 3, Section 17, Kill Switch. Previously, the Exchange amended Options 3, Section 17 in order to decommission graphical user interface (“GUI”) functionality.¹¹ In eliminating the GUI functionality, the Exchange amended Options 3, Section 17(a)(1) to remove language related to the GUI functionality, including rule text related to purging orders at both the user and group level. While the GUI permitted a purge at both the user and group level, the remaining

⁸ See Options 2, Section 10(a).

⁹ See proposed Options 2, Section 10(a)(1)(i).

¹⁰ See proposed Options 2, Section 10(a)(1)(ii).

¹¹ See Securities Exchange Act Release No. 96817 (February 6, 2023), 88 FR 8922 (February 10, 2023) (SR-GEMX-2023-02).

port functionality only removes orders at the user level, as specified in Options 3, Section 17(a)(1). At this time, the Exchange proposes to remove the group level language from Options 3, Section 17(a).¹² This proposed change is intended to clarify the current rule text.

Options 2, Section 6

The Exchange proposes to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023. In 2023, GEMX filed a pricing change¹³ to permit Members to request certain duplicative ports at no additional cost, from November 1, 2023 through November 30, 2023, to facilitate a technology migration. The rule text related to the 2023 technology migration is no longer necessary because the migration is complete and the pricing is no longer applicable. At this time, the Exchange proposes to remove this rule text.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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.

¹² The Exchange proposes to remove the words “or group” and the following sentence that applies to a group. The Exchange proposes to remove this sentence, “Permissible groups must reside within a single broker-dealer.”

¹³ See Securities Exchange Act Release No. 97360 (April 24, 2023), 88 FR 26349 (April 28, 2023) (SR-GEMX-2023-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker are consistent with the act as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day will increase liquidity on the Exchange. The Exchange notes that other markets have similar requirements.¹⁶

The Exchange's proposal to amend the quoting obligations for a Preferred CMM are consistent with the Act. The Exchange proposes to amend the current rule text in Options 2, Section 5 to apply the obligation to a Preferred Market Maker more generally for ease of understanding the rule. The obligations for a Preferred CMM and Preferred PMM are the same and combining the obligations will make this clear. Today, pursuant to Options 2, Section 10, a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. Further, the Exchange proposes to first require that a Market Maker indicate interest in the program with the Exchange.¹⁷ Once a Market Maker indicates interest in the program, the Preferred Market Maker has an ongoing obligation, collectively, to quote in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. The Exchange notes that other markets have similar requirements to quote, collectively, in

¹⁶ See Nasdaq Phlx LLC and Nasdaq BX, Inc. Options 2, Section 5.

¹⁷ The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

90% of the cumulative number of seconds among all options series on a daily basis.¹⁸

Similar to the last sentence of Options 2, Section 5(e), the Exchange proposes to revise Options 2, Section 5(e) to require a Preferred Market Maker who executes a Preferred Order, as described in Options 2, Section 10, to be held to the standard of a Preferred Market Maker among all options series in which the Preferred Market Maker executed a Preferred Order and to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis.

The Preferred Market Maker requirement to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis is in addition to the quoting requirements for a Competitive Market Maker and Primary Market Maker. The Exchange believes that these quoting requirements create a direct nexus between the allocation that would be received by a Preferred Market Maker pursuant to Options 3, Section 10 and the liquidity that the Preferred Market Maker would be required to provide to the market in that particular options series. The Exchange notes that any Preferred Market Maker would need, collectively, to provide two-sided quotes in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order for the entire day and on a daily basis. The Exchange believes that this quoting obligation is designed to promote just and equitable principles

¹⁸ See NYSE Arca, Inc. (“NYSE Arca”) Rule 6.88-O and NYSE American LLC (“NYSE American”) Rule 964.1NY. NYSE Arca Rule 6.88-O(iv) states that these obligations will apply collectively to all series in all of the issues for which the Directed Order Market Maker receives Directed Orders, rather than on an issue-by-issue basis.

of trade by ensuring that Preferred Market Makers quote competitively in as many series as possible to attract Preferred Orders so that they may receive an enhanced allocation as a Preferred Market Maker.

The Exchange's proposal to replace the word "receives" with the word "executes" in Options 2, Section 5(e) and (e)(3) is consistent with the Act and protects investors and the public interest because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and receive their enhanced allocation. Of note, a Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated. Therefore, a Preferred Market Maker has an ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

The Exchange's proposal to amend Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" is consistent with the Act. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph is

consistent with the Act for several reasons. Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, in their appointed and non-appointed classes. Today, Market Makers may not enter Customer Cross Orders in their appointed or non-appointed options classes as only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). With this proposal, the Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. Removing the last sentence of Options 2, Section 6 is consistent with the Act because Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. Removing Options 2, Section 6(b) is consistent with the Act because the language is repetitive of rule text contained in Options 2, Section 6(a) and Options 2, Section 4(b)(4). Finally, adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) is consistent with the Act because it will remind Market Makers of the obligations noted within Options 2, Section 6. The language would harmonize GEMX’s rule text to that of BX and Phlx in Options 2, Section 6.

Options 2, Section 10

The Exchange’s proposal to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1) are consistent with the Act and protect investors and the general public because they clarify the meaning of terms utilized with respect to Preferred Orders. The definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned is consistent with the Act. The Exchange notes that purging orders through ports can only occur at the user level as specified in Options 3, Section 17(a)(1). The amendment will clarify the current rule text.

Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6.C related to a technology migration that took place in 2023 is reasonable, equitable and not unfairly discriminatory because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not impose an undue burden on competition as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers.

The Exchange's proposal to amend the quoting obligations for a Preferred Market Maker does not impose an undue burden on competition because as amended the quoting obligations of Preferred Market Maker would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers or Primary Market Makers. The proposal does not impose an undue burden on inter-market competition as other options markets may impose similar quoting obligations.

Finally, amending Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" does not impose an undue burden on competition. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum. Nor does the amendment to Options 2, Section 5(e)(5) impose an undue burden on inter-market competition as other markets may elect to perform their surveillance in a similar fashion.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph does not impose an undue burden on competition as the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Additionally, today, Market Makers may not enter Customer Cross Orders in non-appointed options classes

because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) does not impose an undue burden on competition because it will remind Market Makers of the obligations noted within Options 2, Section 6. Removing the last sentence of Options 2, Section 6 does not impose an undue burden on competition because all Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. The rule text will harmonize GEMX’s language to Phlx and BX Options 2, Section 6. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy GEMX’s order types and impose similar restrictions.

Options 2, Section 10

The Exchange’s proposal to amend the definition of “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1) does not impose an undue burden on competition because the defined terms provide additional clarity and harmonize to rule text in Phlx at Options 2, Section 10. The proposed changes are not substantive in nature.

Options 3, Section 17

The Exchange’s proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned does not impose an undue burden on competition because no Member may purge orders at the group level. The amendment will clarify the current rule text. The proposal does not impose an undue

burden on inter-market competition as other options markets may similarly copy GEMX's Kill Switch functionality.

Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023 does not impose an undue burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

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

The Exchange does not consent to an extension of the time period for Commission action.

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 19(b)(3)(A)(iii)¹⁹ of the Act and Rule 19b-4(f)(6) thereunder²⁰ 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

interest.

The proposal does not significantly affect the protection of investors or the public interest. The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not significantly affect the protection of investors or the public interest as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day will increase liquidity on GEMX. The Exchange notes that other markets have similar requirements.²¹ The Exchange's proposal to amend the quoting obligations for a Preferred CMM does not significantly affect the protection of investors or the public interest. Applying the obligation to a Preferred Market Maker more generally does not significantly affect the protection of investors or the public interest as today, pursuant to Options 2, Section 10, a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. Other markets have similar requirements including the obligation to quote each day for the entire day.²² Requiring a Preferred Market Maker, collectively, to quote in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order does not significantly affect the protection of investors or the public interest as this would create a direct nexus between the allocation that would be received by a Preferred Market Maker pursuant to Options 3,

²¹ See Nasdaq Phlx LLC and Nasdaq BX, Inc. Options 2, Section 5.

²² See NYSE Arca Rule 6.88-O and NYSE American Rule 964.1NY.

Section 10 and the liquidity that the Preferred Market Maker would be required to provide to the market in that particular options series. This requirement would be in addition to the quoting requirements for a Competitive Market Maker and Primary Market Maker. The Exchange notes that any Preferred Market Maker would need to provide two-sided quotes, collectively, in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis. The proposed rule text would harmonize the Exchange's rules to these other rules.²³ This quoting obligation ensures that Preferred Market Makers quote competitively in as many series as possible to attract Preferred Orders so that they may receive an enhanced allocation as a Preferred Market Maker. Replacing the words "receives" with "executes" does not significantly affect the protection of investor or the public interest because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferenced to them until such time as they execute the Preferred Order and receive their enhanced allocation. Of note, a Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated. Amending Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" does not significantly affect the protection of investors or the public interest. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would

²³ See NYSE Arca Rule 6.88-O and NYSE American Rule 964.1NY.

conduct monthly surveillance at a minimum. The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph does not significantly affect the protection of investors or the public interest because the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Also, the language would harmonize the Exchange's rule text to that of BX and Phlx in Options 2, Section 6. Adding rule text that states that "Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6" in Options 3, Section 7(g) is consistent with the Act because it will remind Market Makers of the obligations noted within Options 2, Section 6. Removing the last sentence of Options 2, Section 6 does not significantly affect the protection of investors or the public interest because Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. Removing the rule text in Options 2, Section 5(e)(3) that states "in which it received the Preferred Order" does not significantly affect the protection of investors or the public interest because the verbiage is unnecessary given the amendment to the sentence. The proposed amendments bring additional clarity to the current quoting obligations that apply to Preferred CMMs in Options 2, Section 5(e). The Exchange's proposal to codify a Preferred PMM's obligations in Options 2, Section 5(e)(4) does not

significantly affect the protection of investors or the public interest because it specifies the current quoting obligations for Preferred PMMs. Today, a Primary Market Maker, similar to a Competitive Market Maker, is required to separately comply with quoting obligations as a Preferred PMM. The Exchange believes the addition of this rule text, which reflects a Preferred PMM's current quoting obligation, will make clear that, today, Preferred PMM's have separate quoting obligations from a Primary Market Maker. The Exchange's proposal to amend the definition of a "Preferred Order" and add a definition for "Order Flow Provider" in new subsection (1) will clarify the meaning of terms utilized with respect to Preferred Orders and will harmonize the rule text to Phlx Options 2, Section 10. The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned will clarify the current rule text. The Exchange's proposal to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023 does not significantly affect the protection of investors or the public interest because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not impose any significant burden on competition as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day would uniformly to all Electronic Access Members that elect to become Competitive Market

Makers. The Exchange's proposal to amend the quoting obligations for a Preferred CMM does not impose any significant burden on competition because as amended the quoting obligations of Preferred Market Maker would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers or Primary Market Makers. Replacing the words "receives" with "executes" does not impose any significant burden on competition as all Preferred Market Makers would have an ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred. Amending Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" does not impose any significant burden on competition. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum. The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph does not impose any significant burden on competition as the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Today, Customer Complex Orders may not be entered by a Market Maker in their appointed or non-appointed classes as only Priority Customers may enter Customer Cross Orders. Removing the last

sentence of Options 2, Section 6 does not impose any significant burden on competition because all Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. The rule text will harmonize the Exchange's language to Phlx and BX Options 2, Section 6. Adding rule text that states that "Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6" in Options 3, Section 7(g) does not impose any significant burden on competition because it will remind Market Makers of the obligations noted within Options 2, Section 6. The Exchange's proposal to amend the definitions for a "Preferred Order" and add a definition for "Order Flow Provider" does not impose any significant burden on competition, rather the terms add clarity. The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned does not impose any significant burden on competition because no Member may purge orders at the group level. The Exchange's proposal to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023 does not impose any significant burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

Furthermore, Rule 19b-4(f)(6)(iii)²⁴ 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.

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

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 Competitive Market Maker obligations are similar to Phlx and BX Options 2, Section 5. The Preferred Market Maker obligations are similar to NYSE Arca Rule 6.88-O and NYSE American Rule 964.1NY.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-20)

July __, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Sections 5, 6 and 10; and Options 3, Sections 7 and 17; and Options 7, Section 6

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 24, 2024, 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 2, Sections 5, 6 and 10; and Options 3, Sections 7 and 17; and Options 7, Section 6.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 2, Section 5, Market Maker Quotations, to amend intra-day quoting requirements. The Exchange proposes to amend Options 2, Section 6, Market Maker Orders, and Options 3, Section 7(g), Reserve Orders, to bring additional clarity to the types of orders available to Market Makers. The Exchange proposes to amend Options 2, Section 10, Preferred Orders, to define various terms related to Preferred Orders and harmonize the rule text to other Nasdaq affiliated markets. The Exchange proposes to amend Options 3, Section 17, Kill Switch, to indicate the configurations available in the Kill Switch. Finally, the Exchange proposes to remove dated rule text in Options 7, Section 6, Ports and Other Services. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend the quoting requirements of a Competitive Market Maker and a Preferred CMM in Options 2, Section 5.

With respect to a Competitive Market Maker, today, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A

Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.

The Exchange proposes to amend the quoting obligations for a Competitive Market Maker by requiring a Competitive Market Maker to enter quotations each day in the options classes to which it is appointed. Specifically, the Exchange proposes to require in proposed Options 2, Section 5(e)(1) that,

Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options.

As is the case today, Competitive Market Makers may continue to choose to quote a Quarterly Options Series, any adjusted options series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index option, in addition to regular series in the options class. Such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in Options 2, Section

5(e)(1). The Exchange believes that requiring a Competitive Market Maker to quote each day will increase liquidity on the Exchange.

Additionally, the Exchange proposes to amend the quoting requirements for a Preferred CMM. Today, the last sentence of Options 2, Section 5(e) provides, “A Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order.” Further, today, Options 2, Section 5(e)(3) provides,

Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). A Preferred CMM may be preferred in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).

Today, Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member is considered preferred in an

assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a Preferred CMM/ Preferred PMM for that day in all series for that option class in which it received the Preferred Order.

Today, the Member must be quoting at the NBBO at the time the Preferred Order is received and must execute the order. If a CMM does not receive a Preferred Order, it will not be considered a Preferred CMM in that options class and any quotations in that options class by the CMM will not be considered when determining whether it met its Preferred CMM quoting obligations.

At this time, the Exchange proposes to utilize the term “Preferred Market Maker” instead of “Preferred CMM” as both Competitive Market Makers and Primary Market Makers are Preferred Market Makers pursuant to proposed renumbered Options 2, Section 10(a)(1)(iii).³ Also, the Exchange proposes replacing the word “receives” with the word “executes” in Options 2, Section 5(e). The proposed new sentence would provide, “A Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred Market Maker”) shall be held to the standard of a Preferred Market Maker among all options series of any options class in which it executes the Preferred Order.” The Exchange proposes to amend this sentence to specify that the 90% quoting obligation described herein would be among all options series instead of in each assigned option series.

Additionally, the Exchange proposes amendments to Options 2, Section 5(e)(3) to utilize the term “Preferred Market Maker” and amend the quoting obligation as stated in

³ Renumbered Options 2, Section 10 (a)(1)(iii) states that a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

the last sentence of Options 2, Section 5(e) to require that the Preferred Market Maker collectively meet the 90% quoting obligation among all options series in which the Preferred Market Maker executes a Preferred Order. The Exchange proposes to replace the word “receives” with “executes.” As amended, Options 2, Section 5(e)(3) would state,

Preferred Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. A Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Options Series, the Adjusted Options Series, and an options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

The Exchange is amending the Preferred Market Maker quoting obligation to first require that a Market Maker indicate interest in the program with the Exchange.⁴ Once the Market Maker indicates it would like to receive a Preferred Order, that Market Maker

⁴ The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

would be obligated, collectively, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

A Preferred Market Maker has an ongoing 90% quoting obligation, on a daily basis, from the time a Preferred Market Maker executes its first Preferred Order in the option in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that it is no longer preferred.

The Exchange proposes to replace the word “receives” with “executes” in Options 2, Section 5(e) and (e)(3) rule text because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and received their enhanced allocation. A Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a

participation entitlement in the Quarterly Option Series, the Adjusted Option Series, and an option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

To make clear the manner in which the quoting obligations will be applied, below are some examples.

Example 1

- Assume a Competitive Market Maker was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Competitive Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

Obligations

This Competitive Market Maker is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options series are open for trading among **AAPL, SPY, and ORCL** to fulfill its Competitive Market Maker obligation.

Separately, this Competitive Market Maker would be obligated, separate and apart from its Competitive Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred Market Maker Obligation.

This Competitive Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Competitive Market Maker or Preferred Market Maker requirements.

Example 2

- Assume a Primary Market Maker⁵ was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.

- Assume this Primary Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.

- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

Obligations

This Primary Market Maker, associated with the same Options Participant, is collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **AAPL, SPY, and ORCL** to fulfill its Primary Market Maker obligation.⁶

Separately, this Primary Market Maker would be obligated, separate and apart from its Primary Market Maker obligations described in this example, to provide two-sided

⁵ Pursuant to Options 2, Section 5(e), a Member is required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Today, a Primary Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred PMM”) shall be held to the standard of a Preferred PMM in the options series of any options class in which it receives the Preferred Order.

⁶ See Options 2, Section 4(j)(1).

quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred Market Maker obligation.

A Primary Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Primary Market Maker or Preferred Market Maker requirements.

The Exchange proposes to amend Options 2, Section 5(e)(5) that currently states, “GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on a monthly basis.” The Exchange proposes to instead provide that “For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis.” The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

The Exchange will implement the amendments to Options 2, Section 5 on or before April 30, 2025.⁷

Options 2, Section 6 and Options 3, Section 7

Options 2, Section 6, Market Maker Orders, provides Market Makers with information as to the types of orders that may be entered on the Exchange. The current rule text at Options 2, Section 6(a) provides that, in options classes in which the Market

⁷ The Exchange will provide Members with notification of these changes in an Options Regulatory Alert and the Exchange will announce the implementation date in a second Options Regulatory Alert.

Maker is appointed, a Market Maker may enter all order types defined in Options 3, Section 7 in the options classes to which they are appointed under Options 2, Section 3, except Reserve Orders and Customer Cross Orders. Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.

With the changes proposed to the Competitive Market Maker quoting requirements, the Exchange is also removing the last sentence of Options 2, Section 6 which provides, “Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.” Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5.

The Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. The Exchange proposes to modify the current rule text so that it will read clearly and harmonize with rule text on Phlx and BX at Options 2, Section 6. The Exchange proposes to first note that, today, Market Makers may enter all Complex Order types. To make this clear in the rule text, the Exchange proposes to cite to Options 3, Section 14, which governs Complex Orders, in addition to citing to Options 3, Section 7 which governs single-leg orders. Further, the Exchange proposes to remove the current rule text in Options 3, Section 6(b)(1) as the language is superfluous. In its place, the Exchange proposes to amend the text in Options 2, Section 6(a) to remove the title “Options Classes to Which Appointed” and add “non-appointed” to the paragraph so that it reflects all the order types for Market Makers in both appointed and non-appointed classes. The current language in Options 2, Section 6(b)(1) provides,

A Market Maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the Market Maker is not appointed under Options 2, Section 3, except for Reserve Orders, provided that:

(i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Options 2, Section 4(b)(4); and

(ii) the Market Maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

The Exchange believes that the rule will read more clearly by adding non-appointed to Options 2, Section 6(a) and removing current Options 2, Section 6(b)(1) which says the same thing. Today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Further Options 2, Section 6(b)(1)(i) is a requirement provided for in Options 2, Section 4(b)(4) and does not need to be repeated in this rule. Finally, Options 2, Section 6(b)(1)(ii) is circular because Options 2, Section 6(a) allows Market Makers to enter all orders in appointed options classes except for Reserve Orders which is the same restriction applicable to non-appointed options classes.

The Exchange also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols. The Exchange proposes to amend Options 3, Section 7(g), concerning Reserve Orders, that Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6. The Exchange believes that the addition of this language will remind Market Makers of the obligations noted within Options 2, Section 6.

Options 2, Section 10

Options 2, Section 10 describes Preferred Orders. An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System

(“Preferred Orders”).⁸ The Exchange proposes to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1). The Exchange proposes to amend the definition of a “Preferred Order” to mean any order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider.⁹ The Exchange proposes to provide that the term “Order Flow Provider” means any Member that submits, as agent, orders to the Exchange.¹⁰ Finally, the Exchange proposes to renumber current Options 2, Section 10(a)(1) which states, “A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class” as Options 2, Section 10(a)(1)(iii). These definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange proposes to amend Options 3, Section 17, Kill Switch. Previously, the Exchange amended Options 3, Section 17 in order to decommission graphical user interface (“GUI”) functionality.¹¹ In eliminating the GUI functionality, the Exchange amended Options 3, Section 17(a)(1) to remove language related to the GUI functionality, including rule text related to purging orders at both the user and group level. While the GUI permitted a purge at both the user and group level, the remaining

⁸ See Options 2, Section 10(a).

⁹ See proposed Options 2, Section 10(a)(1)(i).

¹⁰ See proposed Options 2, Section 10(a)(1)(ii).

¹¹ See Securities Exchange Act Release No. 96817 (February 6, 2023), 88 FR 8922 (February 10, 2023) (SR-GEMX-2023-02).

port functionality only removes orders at the user level, as specified in Options 3, Section 17(a)(1). At this time, the Exchange proposes to remove the group level language from Options 3, Section 17(a).¹² This proposed change is intended to clarify the current rule text.

Options 2, Section 6

The Exchange proposes to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023. In 2023, GEMX filed a pricing change¹³ to permit Members to request certain duplicative ports at no additional cost, from November 1, 2023 through November 30, 2023, to facilitate a technology migration. The rule text related to the 2023 technology migration is no longer necessary because the migration is complete and the pricing is no longer applicable. At this time, the Exchange proposes to remove this rule text.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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.

¹² The Exchange proposes to remove the words “or group” and the following sentence that applies to a group. The Exchange proposes to remove this sentence, “Permissible groups must reside within a single broker-dealer.”

¹³ See Securities Exchange Act Release No. 97360 (April 24, 2023), 88 FR 26349 (April 28, 2023) (SR-GEMX-2023-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker are consistent with the act as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day will increase liquidity on the Exchange. The Exchange notes that other markets have similar requirements.¹⁶

The Exchange's proposal to amend the quoting obligations for a Preferred CMM are consistent with the Act. The Exchange proposes to amend the current rule text in Options 2, Section 5 to apply the obligation to a Preferred Market Maker more generally for ease of understanding the rule. The obligations for a Preferred CMM and Preferred PMM are the same and combining the obligations will make this clear. Today, pursuant to Options 2, Section 10, a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. Further, the Exchange proposes to first require that a Market Maker indicate interest in the program with the Exchange.¹⁷ Once a Market Maker indicates interest in the program, the Preferred Market Maker has an ongoing obligation, collectively, to quote in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. The Exchange notes that other markets have similar requirements to quote, collectively, in

¹⁶ See Nasdaq Phlx LLC and Nasdaq BX, Inc. Options 2, Section 5.

¹⁷ The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

90% of the cumulative number of seconds among all options series on a daily basis.¹⁸

Similar to the last sentence of Options 2, Section 5(e), the Exchange proposes to revise Options 2, Section 5(e) to require a Preferred Market Maker who executes a Preferred Order, as described in Options 2, Section 10, to be held to the standard of a Preferred Market Maker among all options series in which the Preferred Market Maker executed a Preferred Order and to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis.

The Preferred Market Maker requirement to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis is in addition to the quoting requirements for a Competitive Market Maker and Primary Market Maker. The Exchange believes that these quoting requirements create a direct nexus between the allocation that would be received by a Preferred Market Maker pursuant to Options 3, Section 10 and the liquidity that the Preferred Market Maker would be required to provide to the market in that particular options series. The Exchange notes that any Preferred Market Maker would need, collectively, to provide two-sided quotes in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order for the entire day and on a daily basis. The Exchange believes that this quoting obligation is designed to promote just and equitable principles

¹⁸ See NYSE Arca, Inc. (“NYSE Arca”) Rule 6.88-O and NYSE American LLC (“NYSE American”) Rule 964.1NY. NYSE Arca Rule 6.88-O(iv) states that these obligations will apply collectively to all series in all of the issues for which the Directed Order Market Maker receives Directed Orders, rather than on an issue-by-issue basis.

of trade by ensuring that Preferred Market Makers quote competitively in as many series as possible to attract Preferred Orders so that they may receive an enhanced allocation as a Preferred Market Maker.

The Exchange's proposal to replace the word "receives" with the word "executes" in Options 2, Section 5(e) and (e)(3) is consistent with the Act and protects investors and the public interest because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and receive their enhanced allocation. Of note, a Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated. Therefore, a Preferred Market Maker has an ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

The Exchange's proposal to amend Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" is consistent with the Act. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph is

consistent with the Act for several reasons. Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, in their appointed and non-appointed classes. Today, Market Makers may not enter Customer Cross Orders in their appointed or non-appointed options classes as only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). With this proposal, the Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. Removing the last sentence of Options 2, Section 6 is consistent with the Act because Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. Removing Options 2, Section 6(b) is consistent with the Act because the language is repetitive of rule text contained in Options 2, Section 6(a) and Options 2, Section 4(b)(4). Finally, adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) is consistent with the Act because it will remind Market Makers of the obligations noted within Options 2, Section 6. The language would harmonize GEMX’s rule text to that of BX and Phlx in Options 2, Section 6.

Options 2, Section 10

The Exchange’s proposal to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1) are consistent with the Act and protect investors and the general public because they clarify the meaning of terms utilized with respect to Preferred Orders. The definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned is consistent with the Act. The Exchange notes that purging orders through ports can only occur at the user level as specified in Options 3, Section 17(a)(1). The amendment will clarify the current rule text.

Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6.C related to a technology migration that took place in 2023 is reasonable, equitable and not unfairly discriminatory because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not impose an undue burden on competition as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers.

The Exchange's proposal to amend the quoting obligations for a Preferred Market Maker does not impose an undue burden on competition because as amended the quoting obligations of Preferred Market Maker would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers or Primary Market Makers. The proposal does not impose an undue burden on inter-market competition as other options markets may impose similar quoting obligations.

Finally, amending Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" does not impose an undue burden on competition. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum. Nor does the amendment to Options 2, Section 5(e)(5) impose an undue burden on inter-market competition as other markets may elect to perform their surveillance in a similar fashion.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title "Options Classes to Which Appointed" and add "non-appointed" to the paragraph does not impose an undue burden on competition as the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Additionally, today, Market Makers may not enter Customer Cross Orders in non-appointed options classes

because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) does not impose an undue burden on competition because it will remind Market Makers of the obligations noted within Options 2, Section 6. Removing the last sentence of Options 2, Section 6 does not impose an undue burden on competition because all Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. The rule text will harmonize GEMX’s language to Phlx and BX Options 2, Section 6. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy GEMX’s order types and impose similar restrictions.

Options 2, Section 10

The Exchange’s proposal to amend the definition of “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1) does not impose an undue burden on competition because the defined terms provide additional clarity and harmonize to rule text in Phlx at Options 2, Section 10. The proposed changes are not substantive in nature.

Options 3, Section 17

The Exchange’s proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned does not impose an undue burden on competition because no Member may purge orders at the group level. The amendment will clarify the current rule text. The proposal does not impose an undue

burden on inter-market competition as other options markets may similarly copy GEMX's Kill Switch functionality.

Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023 does not impose an undue burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

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 Act¹⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁰

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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 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 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.

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-2024-20 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-2024-20. 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-2024-20 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX, LLC Rules

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Options Rules

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Options 2 Options Market Participants

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Section 5. Market Maker Quotations

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(e) *Intra-day Quotes.* A Market Maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day on the Exchange. On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below. A Member will be required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce. A Member that is a Competitive Market Maker in an options series where the Member is also assigned as the Primary Market Maker in an options series will be held to both the Primary Market Maker and Competitive Market Maker obligations, pursuant to Options 2, Section 5(e), separately, in that options series. A [Competitive] Market Maker who [receives]executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10[,], (“Preferred [CMM]Market Maker”), shall be held to the standard of a Preferred [CMM]Market Maker [in the]among all options series of any options class in which it [receives]executes the Preferred Order.

(1) Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.[On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed

intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any adjusted options series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options.] Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1).

* * * * *

(3) Preferred Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. A Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Options Series, the Adjusted Options Series, and an options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

[Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration

of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).]

* * * * *

(5) GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day.

* * * * *

Section 6. Market Maker Orders

(a) [*Options Classes to Which Appointed.*] Market Makers may enter all order types defined in Options 3, Section 7 in the options classes to which they are appointed and non-appointed under Options 2, Section 3, except Reserve Orders and Customer Cross Orders. [Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.]

(b) [*Options Classes Other Than Those to Which Appointed.*

[(1) A Market Maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the Market Maker is not appointed under Options 2, Section 3, except for Reserve Orders, provided that:

- (i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Options 2, Section 4(b)(4); and
- (ii) the Market Maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.]

[[2]1] Competitive Market Makers. The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1).

([3]2) Primary Market Makers. The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

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Section 10. Preferred Orders

(a) **Preferred Orders.** An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System[(“Preferred Orders”)].

(1) Definitions

(i) The term “Preferred Order” means any order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider.

(ii) The term “Order Flow Provider” means any Member that submits, as agent, orders to the Exchange.

(iii)[(1)] A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

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Options 3 Options Trading Rules

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Section 7. Types of Orders and Order and Quote Protocols

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(g) **Reserve Orders.** A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6.

* * * * *

(s) Reserved.

(t) Reserved.

(u) Opening Sweep. An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments and Market Wide Risk Protection. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8(b)(1) and will be cancelled upon the open if not executed.

(~~u~~y) Block Order. A Block Order is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a).

(~~v~~w) Facilitation Order. A Facilitation Order is an order entered into the Facilitation Mechanism as described in Options 3, Section 11(b).

(~~w~~x) SOM Order. A SOM Order is an order entered into the Solicited Order Mechanism as described in Options 3, Section 11(d).

(~~x~~y) A PIM Order. A PIM Order is an order entered into the Price Improvement Mechanism as described in Options 3, Section 13(a).

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Section 17. Kill Switch

(a) Kill Switch enables Members to initiate a message to the System to promptly cancel and restrict their order activity on Nasdaq GEMX, or across both Nasdaq GEMX and Nasdaq ISE, as described in section (a)(1) below. Members may submit a Kill Switch request to the System for certain identifier(s) ("Identifier") on [either]a user [or group]level. [Permissible groups must reside within a single Member firm.] The System will send an automated message to the Member when a Kill Switch request has been processed by the Exchange's System.

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Options 7 Pricing Schedule

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Section 6. Connectivity Fees

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C. Ports and Other Services

[GEMX Members will be required to transition from legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports to new FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports in conjunction with a technology infrastructure migration.]

GEMX will not assess the below port fees for any new FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, which are duplicative of legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, acquired as part of the migration from November 1, 2023 through November 30, 2023 ("Transition Period").

GEMX will continue to assess the below fees for legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports during the Transition Period. GEMX will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 29, 2023. Additionally, GEMX will assess the SR-GEMX-2023-05 Page 35 of 35

below port fees for any new legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports acquired during the Transition Period.

Starting in December 1, 2023, the below fees would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.]

The below charges are assessed by GEMX for connectivity to GEMX.

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