

Required fields are shown with yellow backgrounds and asterisks.

Filing by Nasdaq GEMX, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Proposal to amend GEMX Rule 701, entitled Opening, GEMX Rule 803, entitled Obligations of Market Makers, and GEMX Rule 100, entitled Definitions.

**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 Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 11/28/2018	Global Chief Legal & Policy Officer
By Edward S. Knight	
(Name *)	

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend GEMX Rule 701, entitled “Opening,” GEMX Rule 803, entitled “Obligations of Market Makers” and GEMX Rule 100, entitled “Definitions.”

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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

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

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

a. Purpose

GEMX proposes several amendments in this rule change. First, the Exchange proposes to amend GEMX Rule 701, entitled "Opening" and GEMX Rule 803, entitled "Obligations of Market Makers" to correct inconsistencies between the Exchange's rule text and the operation of the System. Second, the Exchange proposes to add definitions to GEMX Rule 100 to define "in-the-money" and "out-of-the-money" option series. Third, the Exchange proposes to correct various cross references to Rule 100. Each amendment will be described in more detail below.

Rules 701 and 803

Today, for the Opening Process, GEMX Rule 701(a)(8) defines a "Valid Width Quote" as a two-sided electronic quotation submitted by a Market Maker that consists of a bid/ask differential that is compliant with Rule 803(b)(4).<sup>3</sup> Specifically, for the

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<sup>3</sup> GEMX Rule 803(b)(4) provides:

"To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. Prior to the opening rotation, spread differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that the Exchange may establish differences other than the above for one or more options series.

(i) The bid/offer differentials stated in subparagraph (b)(4) of this Rule shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security."

Opening Process, GEMX Rule 803(b)(4) states that, for in-the money option series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. In practice, however, the Exchange's System permits a Valid Width Quote in the Opening Process to be as wide as the quotation for the underlying security on the **primary** (listing) market.<sup>4</sup>

### Proposal

The Exchange proposes to codify its current practice and correctly reflect in its Rules that the Valid Width Quote in the Opening Process apply a primary market analysis, not a national best bid or offer ("NBBO") analysis.<sup>5</sup> Specifically, this proposal would conform the current rule text to the current System by amending the definition of a Valid Width Quote in Rule 701, "Opening," so that, in the case of in-the-money option series<sup>6</sup> where the market for the underlying security is wider than the differentials set forth within GEMX Rule 803(b)(4), the bid/ask differential may be as wide as the quotation for the underlying security on the primary<sup>7</sup> (listing) market, or its decimal equivalent rounded down to the nearest minimum increment.

The Exchange believes that utilizing the primary market in the Opening Process is reasonable given the close connection between the primary market and the Opening

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<sup>4</sup> In connection with the GEMX migration, the primary market was utilized beginning on February 27, 2017 as each symbol migrated to the INET platform.

<sup>5</sup> The Exchange notes that today GEMX utilizes the primary market in calculating the bid/ask differential during the Opening Process. This rule change would amend the rule to reflect GEMX's current practice.

<sup>6</sup> An at-the-money option series would also qualify. An out-of-the-money series would not qualify.

<sup>7</sup> The term "primary market" means the principal market in which an underlying security is traded. See GEMX Rule 100(a)(49).

Process. For example, GEMX Rule 701(c)(2) provides, “For all options, the underlying security, including indexes, must be open on the primary market for a certain time period as determined by the Exchange for the Opening Process to commence. The time period shall be no less than 100 milliseconds and no more than 5 seconds.”

Today, in order to open, the Exchange requires either: (i) the Primary Market Maker's (“PMM”) Valid Width Quote; (ii) the Valid Width Quotes of at least two Competitive Market Makers (“CMM”); or (iii) if neither the PMM’s Valid Width Quote nor the Valid Width Quotes of two CMMs have been submitted within such timeframe, one CMM has submitted a Valid Width Quote. The Exchange notes that it requires Market Makers to submit Valid Width Quotes during the Opening Process to guarantee liquidity, unlike other markets which may not require market makers to quote during the opening.<sup>8</sup> Further, amending the rule text to conform to its current practice will avoid confusion and continue to permit GEMX to remain one of the strongest openings in the industry.

#### Discretion

The Exchange proposes to codify its current practice and amend GEMX Rule 803(b)(4) to adopt rule text which permits the Exchange intra-day discretion for bid/ask differentials similar to the discretion currently permitted in the Opening Process. The Exchange proposes to add a sentence to the end of the paragraph in GEMX Rule

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<sup>8</sup> The Nasdaq Options Market (“NOM”) does not require NOM Market Makers to quote during the opening, however if a NOM Market Maker decided to quote during the opening, the Market Maker would be permitted to submit a bid/ask differential with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. See NOM Rules at Chapter VII, Section 6(d)(ii).

803(b)(4) indicating the Exchange may establish differences other than the above for one or more series or classes of options. The Exchange notes that it utilizes this discretion today to grant relief for individual options classes as well as relief for all option classes based upon specific criteria. Today, Market Makers may request quote relief. When determining whether to grant quote relief the Exchange considers, among other factors, the following: (i) pending corporate actions with undisclosed or uncertain terms; (ii) company or industry news with anticipated significant market impact; (iii) government news of a sensational nature. The Exchange believes that it is necessary to grant quote relief in certain circumstances where a Market Maker may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.<sup>9</sup>

#### Rule 100

GEMX rules currently do not define an “in-the-money” or “out-of-the-money” option series. As part of this rule change, the Exchange proposes to define these above-referenced terms within GEMX Rule 100 to bring greater transparency to its rules with respect to Market Maker quoting. The Exchange proposes to define the term “in-the-money” option at Rule 100(a)(28), which is currently reserved, as the following: for call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. The Exchange proposes to define an “out-of-the-money” option at Rule 100(a)(41), which is currently reserved, to mean the following: for

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<sup>9</sup> See Nasdaq Phlx LLC Rule 1014(c)(i)(A)(1)(a), Miami International Securities Exchange LLC Rule 604b(4), Cboe Exchange, Inc. Rule 8.7(d), NYSE American LLC Rule 925NY(b)(4), NYSE Arca, Inc. 6.37-O(b)(4).

call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market.<sup>10</sup> Each of these definitions would apply for purposes of Market Maker quoting obligations in Rules 701 and 803. The Exchange notes that it specifically proposes to reference the rules related to Market Maker quoting obligations to avoid any confusion with the manner in which “in-the-money” and “out-of-the-money” options series are defined for purposes of other options rules.

The Exchange has added these definitions into the existing rule in alphabetical order. The Exchange proposes to renumber the rule to account for the addition of these two new definitions and proposes to amend cross-references to Rule 100 within the Rulebook to reflect the proposed new numbering within Rule 100.

#### Cross References

The Exchange proposes to amend cross-references to Rule 100 in Rules 713 and 720 to refer to the current definitions.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove

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<sup>10</sup> The Exchange notes that it does not utilize a last sale calculation. The Exchange believes that the quotation for the underlying security on the primary market provides an accurate reflection of the market. A last sale calculation may not be an accurate reflection of the market because the last sale may not be representative of the primary market in all cases, particularly if a halt were to occur.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange notes that today GEMX utilizes the primary market in calculating the bid/ask differential during the Opening Process, although the current rule does not reflect this practice. This rule change would amend the rule to reflect GEMX's current practice.

#### Rules 701 and 803

The Exchange's proposal to amend the Opening Process to conform to current practice is consistent with the Act because while the Exchange believes that relying on the primary market or the NBBO accurately reflect the current trading environment and take into consideration market conditions, the Exchange's current Opening Process is designed to utilize the primary standard during the Opening Process.<sup>13</sup>

#### Discretion

The Exchange's proposal to amend its rule to permit intra-day discretion to conform to current practice is consistent with the Act because such discretion is necessary to permit the Exchange the ability to attract liquidity from Market Makers while also maintaining a fair and orderly market. Market Makers accept a certain amount of risk when quoting on the Exchange. The Exchange imposes quoting and other obligations on Market Makers.<sup>14</sup> The Exchange notes that these risks which Market Makers accept each trading day are calculated risks. The Exchange notes that it considers certain factors, which are likely unforeseen, in determining whether to grant

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<sup>13</sup> GEMX Rule 701(c)(2) provides, "For all options, the underlying security, including indexes, must be open on the primary market for a certain time period as determined by the Exchange for the Opening Process to commence. The time period shall be no less than 100 milliseconds and no more than 5 seconds."

<sup>14</sup> See GEMX Rules 803 and 804.

relief either in individual options classes or for all option classes based upon specific criteria. Specifically, the Exchange considers, among other factors, the following: (i) pending corporate actions with undisclosed or uncertain terms; (ii) company or industry news with anticipated significant market impact; (iii) government news of a sensational nature. The Exchange believes that it is necessary to grant quote relief in certain circumstances where a Market Maker may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.<sup>15</sup>

#### Rule 100

The Exchange's proposal to define the terms "in-the-money" and "out-of-the-money" for purposes of Market Maker quoting obligations in Rules 701 and 803 is consistent with the Act and protects investors and the public interest by bringing greater transparency to the Rulebook. Each of these defined terms would apply for purposes of Market Maker quoting obligations in Rules 701 and 803. The Exchange notes that it specifically proposes to reference the rules related to Market Maker quoting obligations to avoid any confusion with the manner in which "in-the-money" and "out-of-the-money" options series are defined for purposes of other options rules.

#### Cross-References

The Exchange's proposal to amend cross-references to Rule 100 within Rules 713, 720 and Rule 1901 to refer to the current definitions is consistent with the Act because it will correct references to definitions.

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<sup>15</sup> See note 9 above.

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

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

Rules 701 and 803

The Exchange's proposal to codify its current practice of utilizing the primary market in the Opening Process does not unduly burden competition because the current practice maintains a close connection between the primary market and the Opening Process. The primary market reflects the current trading environment. The Exchange notes that the proposal does not create an undue burden on intra-market competition because Market Makers are the only market participants subject to quoting requirements and these participants have valuable information with respect to the underlying instrument under the current process to make informed decisions and take calculated risks in the marketplace when providing liquidity. Market Makers remain responsible for maintaining fair and orderly markets.

Discretion

The Exchange's proposal to codify the Exchange's ability to permit intra-day discretion similar to the discretion currently permitted in the Opening Process does not impose an undue burden on competition because Market Makers are the only market participants subject to quoting requirements and the proposal specifically considers the need for Market Makers to have information to make informed decisions to make calculated risks in the marketplace so that they may provide liquidity while maintaining fair and orderly markets. The proposed amendments do not create undue burdens on

inter-market competition because other options markets have the same intra-day requirements.<sup>16</sup>

#### Rule 100

The Exchange's proposal to define the terms "in-the-money" or "out-of-the-money" for purposes of Market Maker quoting obligations in Rules 701 and 803 does not unduly burden competition, rather it adds greater transparency to the Rulebook and makes clear the applicability of the definitions to avoid confusion with respect to the remainder of the options rules.

#### Cross-References

The Exchange's proposal to amend cross-references to Rule 100 in Rules 713, 720 and Rule 1901 to refer to the current definitions does not unduly burden competition because it will correct references to definitions.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>17</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>18</sup> in that it effects a change

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<sup>16</sup> See note 9 above.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange's codification of its current practice of utilizing the primary market does not significantly affect the protection of investors or the public interest because there is a close connection between the primary market and the Opening Process whereby the Opening Process relies on the primary market. The Exchange's codification of its current practice of utilizing the primary market does not impose any significant burden on competition because the primary market accurately reflects the current trading environment. Further, the codification would conform the rules and the System. The Exchange's proposal to codify its ability to permit intra-day discretion does not significantly affect the protection of investors or the public interest because it may be necessary to grant quote relief in certain circumstances where a Market Maker may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.<sup>19</sup> The Exchange's proposal to define the terms "in-the-money" or "out-of-the-money" and amend cross-references to Rule 100 do not significantly affect the protection of investors or the public interest because the Exchange is adding transparency and correct definition within its rules. The Exchange's proposal to define an "in-the-money" or "out-of-the-money" and amend cross-references to Rule 100 does not impose any significant burden on

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<sup>19</sup> See note 9 above.

competition because the Exchange desires to add transparency and reduce potential confusion with respect to other options rules.

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

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

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the operative delay to permit the Exchange to codify its current practice within its rules immediately. It is consistent with the protection of investors and the public interest to update the current rule to accurately reflect the operation of the Exchange's System. To avoid any confusion, the Exchange is requesting to amend the rules immediately within its Rulebook.

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

NOM's rules permit a wider bid/ask differential today.<sup>20</sup>

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.

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<sup>20</sup> See note 8 above.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2018-39)

November \_\_, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Bid/Ask Differentials

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 28, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rule 701, entitled “Opening,” GEMX Rule 803, entitled “Obligations of Market Makers” and GEMX Rule 100, entitled “Definitions.”

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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

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

1. Purpose

GEMX proposes several amendments in this rule change. First, the Exchange proposes to amend GEMX Rule 701, entitled "Opening" and GEMX Rule 803, entitled "Obligations of Market Makers" to correct inconsistencies between the Exchange's rule text and the operation of the System. Second, the Exchange proposes to add definitions to GEMX Rule 100 to define "in-the-money" and "out-of-the-money" option series. Third, the Exchange proposes to correct various cross references to Rule 100. Each amendment will be described in more detail below.

Rules 701 and 803

Today, for the Opening Process, GEMX Rule 701(a)(8) defines a "Valid Width Quote" as a two-sided electronic quotation submitted by a Market Maker that consists of a bid/ask differential that is compliant with Rule 803(b)(4).<sup>3</sup> Specifically, for the

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<sup>3</sup> GEMX Rule 803(b)(4) provides:

"To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. Prior to the opening rotation, spread differentials shall be no more than

Opening Process, GEMX Rule 803(b)(4) states that, for in-the money option series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. In practice, however, the Exchange's System permits a Valid Width Quote in the Opening Process to be as wide as the quotation for the underlying security on the **primary** (listing) market.<sup>4</sup>

### Proposal

The Exchange proposes to codify its current practice and correctly reflect in its Rules that the Valid Width Quote in the Opening Process apply a primary market analysis, not a national best bid or offer ("NBBO") analysis.<sup>5</sup> Specifically, this proposal would conform the current rule text to the current System by amending the definition of a Valid Width Quote in Rule 701, "Opening," so that, in the case of in-the-money option

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\$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that the Exchange may establish differences other than the above for one or more options series.

(i) The bid/offer differentials stated in subparagraph (b)(4) of this Rule shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security."

<sup>4</sup> In connection with the GEMX migration, the primary market was utilized beginning on February 27, 2017 as each symbol migrated to the INET platform.

<sup>5</sup> The Exchange notes that today GEMX utilizes the primary market in calculating the bid/ask differential during the Opening Process. This rule change would amend the rule to reflect GEMX's current practice.

series<sup>6</sup> where the market for the underlying security is wider than the differentials set forth within GEMX Rule 803(b)(4), the bid/ask differential may be as wide as the quotation for the underlying security on the primary<sup>7</sup> (listing) market, or its decimal equivalent rounded down to the nearest minimum increment.

The Exchange believes that utilizing the primary market in the Opening Process is reasonable given the close connection between the primary market and the Opening Process. For example, GEMX Rule 701(c)(2) provides, “For all options, the underlying security, including indexes, must be open on the primary market for a certain time period as determined by the Exchange for the Opening Process to commence. The time period shall be no less than 100 milliseconds and no more than 5 seconds.”

Today, in order to open, the Exchange requires either: (i) the Primary Market Maker's (“PMM”) Valid Width Quote; (ii) the Valid Width Quotes of at least two Competitive Market Makers (“CMM”); or (iii) if neither the PMM’s Valid Width Quote nor the Valid Width Quotes of two CMMs have been submitted within such timeframe, one CMM has submitted a Valid Width Quote. The Exchange notes that it requires Market Makers to submit Valid Width Quotes during the Opening Process to guarantee liquidity, unlike other markets which may not require market makers to quote during the opening.<sup>8</sup> Further, amending the rule text to conform to its current practice will avoid

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<sup>6</sup> An at-the-money option series would also qualify. An out-of-the-money series would not qualify.

<sup>7</sup> The term “primary market” means the principal market in which an underlying security is traded. See GEMX Rule 100(a)(49).

<sup>8</sup> The Nasdaq Options Market (“NOM”) does not require NOM Market Makers to quote during the opening, however if a NOM Market Maker decided to quote during the opening, the Market Maker would be permitted to submit a bid/ask differential with a difference not to exceed \$5 between the bid and offer

confusion and continue to permit GEMX to remain one of the strongest openings in the industry.

#### Discretion

The Exchange proposes to codify its current practice and amend GEMX Rule 803(b)(4) to adopt rule text which permits the Exchange intra-day discretion for bid/ask differentials similar to the discretion currently permitted in the Opening Process. The Exchange proposes to add a sentence to the end of the paragraph in GEMX Rule 803(b)(4) indicating the Exchange may establish differences other than the above for one or more series or classes of options. The Exchange notes that it utilizes this discretion today to grant relief for individual options classes as well as relief for all option classes based upon specific criteria. Today, Market Makers may request quote relief. When determining whether to grant quote relief the Exchange considers, among other factors, the following: (i) pending corporate actions with undisclosed or uncertain terms; (ii) company or industry news with anticipated significant market impact; (iii) government news of a sensational nature. The Exchange believes that it is necessary to grant quote relief in certain circumstances where a Market Maker may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.<sup>9</sup>

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regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. See NOM Rules at Chapter VII, Section 6(d)(ii).

<sup>9</sup> See Nasdaq Phlx LLC Rule 1014(c)(i)(A)(1)(a), Miami International Securities Exchange LLC Rule 604b(4), Cboe Exchange, Inc. Rule 8.7(d), NYSE American LLC Rule 925NY(b)(4), NYSE Arca, Inc. 6.37-O(b)(4).

Rule 100

GEMX rules currently do not define an “in-the-money” or “out-of-the-money” option series. As part of this rule change, the Exchange proposes to define these above-referenced terms within GEMX Rule 100 to bring greater transparency to its rules with respect to Market Maker quoting. The Exchange proposes to define the term “in-the-money” option at Rule 100(a)(28), which is currently reserved, as the following: for call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. The Exchange proposes to define an “out-of-the-money” option at Rule 100(a)(41), which is currently reserved, to mean the following: for call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market.<sup>10</sup> Each of these definitions would apply for purposes of Market Maker quoting obligations in Rules 701 and 803. The Exchange notes that it specifically proposes to reference the rules related to Market Maker quoting obligations to avoid any confusion with the manner in which “in-the-money” and “out-of-the-money” options series are defined for purposes of other options rules.

The Exchange has added these definitions into the existing rule in alphabetical order. The Exchange proposes to renumber the rule to account for the addition of these

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<sup>10</sup> The Exchange notes that it does not utilize a last sale calculation. The Exchange believes that the quotation for the underlying security on the primary market provides an accurate reflection of the market. A last sale calculation may not be an accurate reflection of the market because the last sale may not be representative of the primary market in all cases, particularly if a halt were to occur.

two new definitions and proposes to amend cross-references to Rule 100 within the Rulebook to reflect the proposed new numbering within Rule 100.

#### Cross References

The Exchange proposes to amend cross-references to Rule 100 in Rules 713 and 720 to refer to the current definitions.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange notes that today GEMX utilizes the primary market in calculating the bid/ask differential during the Opening Process, although the current rule does not reflect this practice. This rule change would amend the rule to reflect GEMX's current practice.

#### Rules 701 and 803

The Exchange's proposal to amend the Opening Process to conform to current practice is consistent with the Act because while the Exchange believes that relying on the primary market or the NBBO accurately reflect the current trading environment and take into consideration market conditions, the Exchange's current Opening Process is designed to utilize the primary standard during the Opening Process.<sup>13</sup>

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> GEMX Rule 701(c)(2) provides, "For all options, the underlying security, including indexes, must be open on the primary market for a certain time period

### Discretion

The Exchange's proposal to amend its rule to permit intra-day discretion to conform to current practice is consistent with the Act because such discretion is necessary to permit the Exchange the ability to attract liquidity from Market Makers while also maintaining a fair and orderly market. Market Makers accept a certain amount of risk when quoting on the Exchange. The Exchange imposes quoting and other obligations on Market Makers.<sup>14</sup> The Exchange notes that these risks which Market Makers accept each trading day are calculated risks. The Exchange notes that it considers certain factors, which are likely unforeseen, in determining whether to grant relief either in individual options classes or for all option classes based upon specific criteria. Specifically, the Exchange considers, among other factors, the following: (i) pending corporate actions with undisclosed or uncertain terms; (ii) company or industry news with anticipated significant market impact; (iii) government news of a sensational nature. The Exchange believes that it is necessary to grant quote relief in certain circumstances where a Market Maker may not have enough information to maintain fair and orderly markets. The Exchange notes that other markets have similar discretion for intra-day quotes today.<sup>15</sup>

### Rule 100

The Exchange's proposal to define the terms "in-the-money" and "out-of-the-money" for purposes of Market Maker quoting obligations in Rules 701 and 803 is

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as determined by the Exchange for the Opening Process to commence. The time period shall be no less than 100 milliseconds and no more than 5 seconds."

<sup>14</sup> See GEMX Rules 803 and 804.

<sup>15</sup> See note 9 above.

consistent with the Act and protects investors and the public interest by bringing greater transparency to the Rulebook. Each of these defined terms would apply for purposes of Market Maker quoting obligations in Rules 701 and 803. The Exchange notes that it specifically proposes to reference the rules related to Market Maker quoting obligations to avoid any confusion with the manner in which “in-the-money” and “out-of-the-money” options series are defined for purposes of other options rules.

#### Cross-References

The Exchange’s proposal to amend cross-references to Rule 100 within Rules 713, 720 and Rule 1901 to refer to the current definitions is consistent with the Act because it will correct references to definitions.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

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

#### Rules 701 and 803

The Exchange’s proposal to codify its current practice of utilizing the primary market in the Opening Process does not unduly burden competition because the current practice maintains a close connection between the primary market and the Opening Process. The primary market reflects the current trading environment. The Exchange notes that the proposal does not create an undue burden on intra-market competition because Market Makers are the only market participants subject to quoting requirements and these participants have valuable information with respect to the underlying instrument under the current process to make informed decisions and take calculated risks

in the marketplace when providing liquidity. Market Makers remain responsible for maintaining fair and orderly markets.

#### Discretion

The Exchange's proposal to codify the Exchange's ability to permit intra-day discretion similar to the discretion currently permitted in the Opening Process does not impose an undue burden on competition because Market Makers are the only market participants subject to quoting requirements and the proposal specifically considers the need for Market Makers to have information to make informed decisions to make calculated risks in the marketplace so that they may provide liquidity while maintaining fair and orderly markets. The proposed amendments do not create undue burdens on inter-market competition because other options markets have the same intra-day requirements.<sup>16</sup>

#### Rule 100

The Exchange's proposal to define the terms "in-the-money" or "out-of-the-money" for purposes of Market Maker quoting obligations in Rules 701 and 803 does not unduly burden competition, rather it adds greater transparency to the Rulebook and makes clear the applicability of the definitions to avoid confusion with respect to the remainder of the options rules.

#### Cross-References

The Exchange's proposal to amend cross-references to Rule 100 in Rules 713, 720 and Rule 1901 to refer to the current definitions does not unduly burden competition because it will correct references to definitions.

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<sup>16</sup> See note 9 above.

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 Act<sup>17</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2018-39 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-2018-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-GEMX-2018-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq GEMX Rulebook**

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**1. Definitions****Rule 100. Definitions**

(a) No change.

(1) – (27) No change.

(28) [Reserved.]The term “in-the-money” shall mean the following: for call options, all strike prices at or below the offer in the underlying security on the primary listing market; for put options, all strike prices at or above the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Rules 701 and 803.

(29) – (40) No change.

(41) [Reserved.]The term “out-of-the-money” shall mean the following: for call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market. This definition shall only apply for purposes of Market Maker quoting obligations in Rules 701 and 803.

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**Rule 701. Opening**

(a) No change.

(1) – (7) No change.

(8) A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that [consists of a bid/ask differential that is compliant with Rule 803(b)(4)]meets the following requirements: differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its

decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

(9) No change.

(b) – (l) No change.

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### **Rule 713. Priority of Quotes and Orders**

(a) *Definitions.*

As provided in Rule 100(a)([4]6) and (a)([34]38), a "bid" is a quotation or limit order to buy options contracts and an "offer" is a quotation or limit order to sell options contracts. "Quotations," which are defined in Rule 100(a)([48]57), may only be entered on the Exchange by market makers in the options classes to which they are appointed under Rule 802. Limit orders may be entered by market makers in certain circumstances as provided in the Rules and by Electronic Access Members (either as agent or as principal). "Priority Customer Orders" and "Professional Orders" are defined in Rule 100(a)([43B]51) and ([43C]52).

(b) – (e) No change.

#### ***Supplementary Material to Rule 713***

No change.

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### **Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors**

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) *Definitions.*

(1) *Customer.* For purposes of this Rule, Customer has the same definition as Priority Customer in Rule 100(a)([43A]51).

(2) – (4) No change.

(b) – (k) No change.

*Supplementary Material to Rule 720*

No change.

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### **Rule 803. Obligations of Market Makers**

(a) No change.

(b) No change.

(1) – (3) No change.

(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. [Prior to the opening rotation, spread differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that the Exchange may establish differences other than the above for one or more options series.]The Exchange may establish differences other than the above for one or more series or classes of options.

(i) - (ii) No change.

(c) - (d) No change.

*Supplementary Material to Rule 803*

No change.

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