

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 35	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 14	Amendment No. (req. for Amendments *)
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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"/>
Pilot <input type="checkbox"/>			Rule		
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 *).

A proposal to amend its Rulebook and By-Laws

Contact Information

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

First Name * Sun Last Name * Kim
 Title * Associate General Counsel
 E-mail * sun.kim@nasdaq.com
 Telephone * (212) 231-5106 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 09/23/2019 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange’s board (“Board”) and Regulatory Oversight Committee (“ROC”), and (iv) make additional, non-substantive edits.

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 the Board of Directors of the Exchange (the “Board”) on November 7, 2018. No other action is necessary for the filing of the rule change.

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

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

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 its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.³

Rules 200 – 203

Chapter 2 of the Exchange’s Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200 – 203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange’s inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.⁴ Accordingly, the Exchange proposes to delete Rules 200 – 203 as obsolete or duplicative because the provisions related to the organization and

³ All references herein and in the Exhibit 5 to “the Company” mean the Exchange. Company is defined in the By-Laws to mean Nasdaq GEMX, LLC.

⁴ See Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR-GEMX-2017-37) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC’s structure); and Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR-GEMX-2018-24) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange’s board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (“BX”), The Nasdaq Stock Market LLC (“Nasdaq”), and Nasdaq PHLX LLC (“Phlx”).

administration of committees are now set forth in the Exchange's Limited Liability Company Agreement ("LLC Agreement") and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer and President of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.⁵ With the changes in SR-GEMX-2017-37 and SR-GEMX-2018-24, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.⁶ In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks, pertaining to committees composed solely of Directors and committees not composed solely of Directors.⁷ The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

⁵ For example, the Exchange's former Business Conduct Committee ("BCC") was established by the Chief Executive Officer and President pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR-GEMX-2018-24. See Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR-GEMX-2018-24).

⁶ See By-Law Article III, Sections 4 – 6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

⁷ See BX By-Law Article IV, Sections 4.12 – 4.14 and Article VII; Nasdaq By-Law Article III, Sections 4-6 and Article VI; and Phlx By-Law Article V.

By-Law Article I

Currently, the definition of “Non-Industry Director” in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.⁸ Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange’s rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange’s Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director⁹ under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”) would still fall under (iii) an individual who would not be an Industry Director.¹⁰ With the proposed changes, these Non-Industry Directors could fall under

⁸ In addition, the term “Non-Industry Director” encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. See By-Law Article I, Section (w).

⁹ The term "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. See By-Law Article I, Section (z).

¹⁰ The term "Industry Director" means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who

both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a "Non-Industry member" of a committee.¹¹

Currently, the Exchange's Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).¹² As set forth in Article I, Section (z), a "Public Director" is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. "Issuer representative"

may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I, Section (m).

¹¹ See By-Law Article I, Section (x).

¹² See By-Law Article III, Section 2(a).

is not defined specifically in the Exchange's By-Laws, but is implicitly defined in the term Non-Industry Director as "an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange."¹³ The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.¹⁴ Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the

¹³ See By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to "an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates."

¹⁴ This is consistent with the longstanding best practice of the Exchange's ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered "independent directors" as defined in Nasdaq Rule 5605. See By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.¹⁵

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.¹⁶ Accordingly, current Board qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.¹⁷

By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires that the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).¹⁸ The Exchange adopted this

¹⁵ See By-Law Article I, Section (aa).

¹⁶ The term "Member Representative Director" means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See By-Law Article I, Section (r). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the “rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs...”

¹⁷ See By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. See LLC Agreement Section 9(a).

¹⁸ By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal

provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.¹⁹ As noted above, unlike Nasdaq, the Exchange does not currently operate an equities listing market and therefore believes it is more appropriate to align its Board composition requirements on this point with the By-Laws of BX and Phlx, which both currently require only one Director representative of issuers and investors, regardless of Board size.²⁰ The Exchange's proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be "representative of issuers and investors."

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee ("ROC") be comprised of three members, each of whom shall be a Public Director and an "independent director" as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of at least three members, as is currently set forth in the ROC Charter.²¹ All members of the ROC will continue to be Public Directors and "independent directors" as defined in Nasdaq

or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.

¹⁹ See Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR-GEMX-2017-37).

²⁰ See BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3-2(a). Similar to the Exchange, BX and Phlx do not currently operate equities listing markets.

²¹ The ROC Charter is available at: <http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25>.

Rule 5605. Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,²³ in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be 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.

Rules 200 – 203

As discussed above, the Exchange proposes to delete Rules 200 – 203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange's current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.²⁴ Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.²⁵ Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the

²⁴ See supra note 14.

²⁵ See supra notes 16 and 17, with accompanying text.

Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be "representative of issuers and investors." The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board composition to reflect a balance among Non-Industry Directors (including Public Directors and Director representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board).²⁶ Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's Board qualifications on this

²⁶

See supra note 18.

point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.²⁷

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and "independent directors" as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name will bring greater clarity to the Exchange's rules, which protects investors and the public interest.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, 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.

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.

²⁷ See supra note 20.

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)²⁸ of the Act and Rule 19b-4(f)(6) thereunder²⁹ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed changes to its Rulebook and By-Laws to remove obsolete provisions relating to the organization and administration of committees, modify Director categorizations, and amend the Board and ROC compositional requirements would not significantly affect the protection of investors and the public interest. As discussed above, the proposed changes are intended to delete obsolete or duplicative rules, reflect current Exchange governance or operational practices, and, for the proposed Board composition changes related to Director representatives, conform to similar standards of its affiliates.³⁰ Furthermore, the composition of the Board will continue to be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ See supra note 20.

Directors, and Member Representative Directors, and therefore continue to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. In addition, the Exchange does not believe that this proposal imposes any significant burden on competition because the proposed amendments do not address competitive issues but is concerned solely with the administration and governance of the Exchange, as discussed above.

Furthermore, Rule 19b-4(f)(6)(iii)³¹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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 respectfully requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may amend its LLC Agreement and By-Laws as soon as possible. The

³¹ 17 CFR 240.19b-4(f)(6)(iii).

Exchange Board meeting will take place on September 25, 2019 to address certain housekeeping items, which has historically included various Board committee appointments, including the ROC. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to conform to similar standards of its affiliates, reflect current Exchange governance practices, and bring greater clarity to the Exchange's rules, each as discussed above, in a timely manner, thereby creating more consistent and clear standards for the administration and governance across the Nasdaq, Inc.-owned affiliated exchanges.

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

The proposed amendments to the Board composition requirements in By-Law Article III, Section 2(a) are based on BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3-2(a).

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-2019-14)

September __, 2019

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Rulebook and By-Laws

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 September 23, 2019, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange’s board (“Board”) and Regulatory Oversight Committee (“ROC”), and (iv) make additional, non-substantive edits.

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.

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 its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.³

Rules 200 – 203

Chapter 2 of the Exchange's Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200 – 203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange's inception. The Exchange has since amended its committee structure and related rules to align with those

³ All references herein and in the Exhibit 5 to "the Company" mean the Exchange. Company is defined in the By-Laws to mean Nasdaq GEMX, LLC.

of its affiliates.⁴ Accordingly, the Exchange proposes to delete Rules 200 – 203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange’s Limited Liability Company Agreement (“LLC Agreement”) and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer and President of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.⁵ With the changes in SR-GEMX-2017-37 and SR-GEMX-2018-24, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members.⁶ In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks,

⁴ See Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR-GEMX-2017-37) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC’s structure); and Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR-GEMX-2018-24) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange’s board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (“BX”), The Nasdaq Stock Market LLC (“Nasdaq”), and Nasdaq PHLX LLC (“Phlx”).

⁵ For example, the Exchange’s former Business Conduct Committee (“BCC”) was established by the Chief Executive Officer and President pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR-GEMX-2018-24. See Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR-GEMX-2018-24).

⁶ See By-Law Article III, Sections 4 – 6. In addition, the provisions governing the Exchange Review Council are specified in By-Law, Article VI.

pertaining to committees composed solely of Directors and committees not composed solely of Directors.⁷ The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

By-Law Article I

Currently, the definition of “Non-Industry Director” in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.⁸ Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange’s rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange’s Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated

⁷ See BX By-Law Article IV, Sections 4.12 – 4.14 and Article VII; Nasdaq By-Law Article III, Sections 4-6 and Article VI; and Phlx By-Law Article V.

⁸ In addition, the term “Non-Industry Director” encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. See By-Law Article I, Section (w).

by the Exchange as a Public Director⁹ under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”) would still fall under (iii) an individual who would not be an Industry Director.¹⁰ With the proposed changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange’s affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The

⁹ The term "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. See By-Law Article I, Section (z).

¹⁰ The term "Industry Director" means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I, Section (m).

Exchange also proposes to make conforming changes to the definition of a “Non-Industry member” of a committee.¹¹

Currently, the Exchange’s Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).¹² As set forth in Article I, Section (z), a “Public Director” is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. “Issuer representative” is not defined specifically in the Exchange’s By-Laws, but is implicitly defined in the term Non-Industry Director as “an officer, director, or employee or an issuer of securities listed on the national securities exchange operated by the Exchange.”¹³ The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or

¹¹ See By-Law Article I, Section (x).

¹² See By-Law Article III, Section 2(a).

¹³ See By-Law Article I, Section (w). As discussed above, the Exchange will amend this provision to refer to “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.”

FINRA, which would prohibit the individual from being considered a Public Director.¹⁴ Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.¹⁵

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors.¹⁶ Accordingly, current Board qualification requirements such

¹⁴ This is consistent with the longstanding best practice of the Exchange’s ultimate parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board’s Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered “independent directors” as defined in Nasdaq Rule 5605. See By-Law Article III, Section 5(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

¹⁵ See By-Law Article I, Section (aa).

¹⁶ The term "Member Representative Director" means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange’s By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See By-Law Article I, Section (r). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the “rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs...”

as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.¹⁷

By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires that the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).¹⁸ The Exchange adopted this provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.¹⁹ As noted above, unlike Nasdaq, the Exchange does not currently operate an equities listing market and therefore believes it is more appropriate to align its Board composition requirements on this point with the By-Laws of BX and Phlx, which both currently require only one Director representative of issuers and investors, regardless of Board size.²⁰ The

¹⁷ See By-Law Article III, Section 2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. See LLC Agreement Section 9(a).

¹⁸ By-Law Article III, Section 2(a) also requires that the number of Non-Industry Directors (which includes Public Directors and issuer representatives) shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. Furthermore, Section 9(a) of the LLC Agreement requires that at least 20% of the Directors be Member Representative Directors. These Board qualifications are not being amended.

¹⁹ See Securities Exchange Act Release No. 81802 (October 3, 2017), 82 FR 47055 (October 10, 2017) (SR-GEMX-2017-37).

²⁰ See BX By-Law Article IV, Section 4.3; and Phlx By-Law Article III, Section 3-2(a). Similar to the Exchange, BX and Phlx do not currently operate equities listing markets.

Exchange's proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be "representative of issuers and investors."

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee ("ROC") be comprised of three members, each of whom shall be a Public Director and an "independent director" as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of at least three members, as is currently set forth in the ROC Charter.²¹ All members of the ROC will continue to be Public Directors and "independent directors" as defined in Nasdaq Rule 5605. Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,²³ in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove

²¹ The ROC Charter is available at: <http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25>.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(1), (b)(3), and (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.

Rules 200 – 203

As discussed above, the Exchange proposes to delete Rules 200 – 203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange's current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance

practices.²⁴ Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.²⁵ Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be "representative of issuers and investors." The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board composition to reflect a balance among Non-Industry Directors (including Public Directors and Director

²⁴ See supra note 14.

²⁵ See supra notes 16 and 17, with accompanying text.

representatives of issuers and investors), Industry Directors, and Member Representative Directors (with the latter continuing to constitute 20% of the Board).²⁶ Accordingly, the Exchange believes that the changes to the Board qualifications proposed herein will more accurately reflect current Exchange operations while continuing to meet the statutory requirements under Section 6(b)(3) of the Act. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's Board qualifications on this point into greater conformity with those of BX and Phlx, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.²⁷

By-Law Article III, Section 5(c)

The Exchange believes that the proposed rule change in By-Law Article III, Section 5(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and "independent directors" as defined in Nasdaq Rule 5605 will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical changes in Section 5(c) to correct a typographical error and to update Nasdaq's name will bring greater clarity to the Exchange's rules, which protects investors and the public interest.

²⁶ See supra note 18.

²⁷ See supra note 20.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, 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.

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 Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

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

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

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

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2019-14 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-2019-14. 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-2019-14 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.³⁰

Eduardo A. Aleman
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq GEMX Rules

* * * * *

[2. Administration

Rule 200. Establishment of Committees

The Chief Executive Officer and President, with the approval of the Board, shall appoint any committee members that are not Directors to committees established upon delegated authority by the Board as set forth in the By-Laws, or established by the Chief Executive Officer and President pursuant to authority delegated to him by the Board.

Rule 201. Removal of Committee Members

The Chief Executive Officer and President may, with the approval of the Board, remove any committee member for refusal, neglect, or inability to discharge such committee member's duties.

Rule 202. Committee Procedures

Except as otherwise provided in the By-Laws, the Rules or resolution of the Board, each committee shall determine its own time and manner of conducting its meetings, and the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

Rule 203. General Duties and Powers of Committees

Each committee shall administer the provisions of the By-Laws and the Rules pertaining to matters within its jurisdiction. Each committee shall have such other powers and duties as may be delegated to it by the Board. Each committee is subject to the control and supervision of the Board.]

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BY-LAWS OF NASDAQ GEMX, LLC

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Article I DEFINITIONS

* * * * *

(w) "Non-Industry Director" means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on

[the]a national securities exchange operated by the Company or one of its affiliates; or (iii) any other individual who would not be an Industry Director.

(x) "Non-Industry member" means an Exchange Review Council member or a member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on [the]a national securities exchange operated by the Company or one of its affiliates; or (iii) any other individual who would not be an Industry member.

* * * * *

(z) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Company or one of its affiliates shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

(aa) "Public member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Company or one of its affiliates shall not be precluded from being considered a "Public member" solely on the basis of such directorship.

* * * * *

Article III BOARD OF DIRECTORS

* * * * *

Section 2. Qualifications

(a) The number of Non-Industry Directors, including at least one Public Director and at least one [issuer]Director representative [(or if the Board consists of ten or more Directors, at least two issuer representatives)]of issuers and investors, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.

(b) No change.

* * * * *

Section 5. Committees Composed Solely of Directors

(a) – (b) No change.

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Company's regulatory and self-regulatory organization responsibilities; assess the Company's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Company's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Company's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor[.]. The Regulatory Oversight Committee shall consist of at least three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 5605 of the Rules of [t]The [NASDAQ]Nasdaq Stock Market LLC.

* * * * *