

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="31"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="04"/> Amendment No. (req. for Amendments *) <input type="text"/>
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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 checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input 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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

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 * Last Name *
 Title *
 E-mail *
 Telephone * 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 By

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 *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 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

Add Remove View

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

Add Remove View

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 GEMX’s Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled “Regular Order Fees and Rebates.”

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, titled “Regular Order Fees and Rebates.” Specifically, GEMX proposes to amend the Qualifying Tier Thresholds in Table 1.

The Exchange originally filed the proposed pricing changes on February 3, 2020 (SR-GEMX-2020-01). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Today, GEMX has 4 tiers as part of its Qualifying Tier Thresholds in Table 1 of Options 7, Section 3 as follows:

Qualifying Tier Thresholds

Table 1		
Tier	Total Affiliated Member ADV	Priority Customer Maker ADV
Tier 1	0-99,999	0-19,999
Tier 2	100,000-224,999, or executes 1% to less than 2% of Customer Total Consolidated Volume	20,000-99,999
Tier 3	225,000-349,999, or executes 2% to less than 3% of Customer Total Consolidated Volume	100,000-149,999
Tier 4	350,000 or more, or executes 3% or greater of Customer Total Consolidated Volume	150,000 or more

All market participants can qualify for Tiers 1 through 4, provided they meet the requisite volume thresholds specified in Table 1 above. The maker and taker fees for all market

participants represented in Table 1, displayed above, are dependent on qualifying for a particular tier. With respect to these tiers, the highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The Exchange proposes to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member.³ Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65%⁴ of Customer Total Consolidated Volume.⁵ A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. The Exchange notes by way of comparison that the

³ As proposed, the Total Affiliated Member % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms. See proposed Pricing Schedule at Options 7, Section 3.

⁴ For example, 0.65% of Customer Total Consolidated Volume is approximately 100,000 contracts per day.

⁵ As proposed, for purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See proposed Pricing Schedule at Options 7, Section 3.

proposed new percentage tiers for Non-Priority Customer are equivalent in terms of requisite volume to the current tiers.

The Exchange also proposes to amend the current Qualifying Tier Thresholds by replacing the ADV thresholds with total industry percentage thresholds with respect to tier volumes for Members that submit Priority Customer maker orders.⁶ Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed new percentage for Priority Customer maker 1-3 tiers are equivalent in terms of requisite volume to the existing tiers. Priority maker Tier 4 requires additional volume to meet the proposed criteria of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day, as compared to a current ADV of 150,000 contracts.

The Exchange is proposing to amend these volume requirements to align with increasing Member activity on GEMX over time. The Exchange believes that Members will not be impacted by this proposal with the exception of the Tier 4 Priority Customer

⁶ As proposed, the Priority Customer maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols. See proposed Pricing Schedule at Options 7, Section 3.

maker tier, which is more stringent as a result of this proposal.⁷ While the Tier 4 Priority Customer tier is more stringent, the proposed pricing is intended to continue to reward Members that submit Priority Customer order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. The Total Affiliated Member % of Customer Total Consolidated Volume category, as proposed and described below, includes all volume executed on the Exchange in all symbols and order types, as is the case today. The maker/taker fees will remain the same for all Member orders⁸ regardless of the tier achieved.

Finally, the Exchange proposes to amend the notes within Options 7, Section 3, which follow the Qualifying Tier Thresholds, to replace the term “ADV” with “% of Customer Total Consolidated Volume” to conform the text to the amendments proposed herein.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁷ Based on 2019 participant tier qualifications, the Exchange anticipates that market participants will continue to qualify for the Tier 4 Priority Customer maker tier, notwithstanding the additional volume requirements.

⁸ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction

¹¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

services. The Exchange is only one of options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the Act.¹³ The Exchange is proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers may change in any given month due to increases or decreases in industry volume, the

¹³ The Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. As proposed, for purposes of measuring Total Affiliated and/or Appointed Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements. The Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue (and corresponding increased Member activity) over time. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements and therefore the Exchange does not anticipate any impact to Non-Priority Customers as a result of replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member.

The Exchange's proposal to amend the current Qualifying Tier Thresholds for Priority Customers makers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the Act.¹⁴ The Exchange is proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the

¹⁴ The Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume.

proposed tiers may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements for Tier 1 through 3 and therefore the Exchange does not anticipate any impact to Members that submit Priority Customer maker orders as a result of replacing the ADV thresholds with total industry percentage thresholds. However, with this proposal, Priority Customer Tier 4 is more stringent than the current tier level. Despite the increased volume amount to qualify for proposed Priority Customer Tier 4 of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts, the maker/taker tiered fee structure is intended to continue to reward Members to bring more order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. Overall, the Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue (and corresponding increased Member activity) over time.

The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer maker Qualifying Tier Thresholds is equitable and not unfairly discriminatory. The proposed tiers will be applied uniformly to all market participants, respectively. Furthermore, the Exchange believes that the qualifying tier thresholds are equitable and not unfairly discriminatory as all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. The Exchange believes that Members will not be

impacted by this proposal, with the exception of the Tier 4 Priority Customer maker.

With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for proposed Tier 4 as compared to today (1.20% of Customer Total Consolidated Volume is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts). Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Further, the maker/taker fees will remain the same for all Member orders¹⁵ regardless of the tier achieved.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing

¹⁵ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition. The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer Qualifying Tier Thresholds do not impose an undue burden on intramarket competition. The tiers will be applied uniformly to all market participants. Furthermore, all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements, with the exception of the Tier 4 Priority Customer maker. With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for the current Tier 4. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. As to the remainder of the proposed tiers, the Exchange does not anticipate any impact to market participants as a result of replacing the ADV thresholds with total industry percentage thresholds. Finally, the maker/taker fees will remain the same for all Member orders¹⁶ regardless of the tier achieved. For the foregoing reasons, the Exchange does not believe that its proposal will have an undue burden on intramarket competition.

¹⁶ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2020-04)

February __, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 3, Titled Regular Order Fees and Rebates

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 February 12, 2020, 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’s Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled “Regular Order Fees and Rebates.”

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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, titled “Regular Order Fees and Rebates.” Specifically, GEMX proposes to amend the Qualifying Tier Thresholds in Table 1.

The Exchange originally filed the proposed pricing changes on February 3, 2020 (SR-GEMX-2020-01). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Today, GEMX has 4 tiers as part of its Qualifying Tier Thresholds in Table 1 of Options 7, Section 3 as follows:

Qualifying Tier Thresholds

Table 1		
Tier	Total Affiliated Member ADV	Priority Customer Maker ADV
Tier 1	0-99,999	0-19,999
Tier 2	100,000-224,999, or executes 1% to less than 2% of Customer Total Consolidated Volume	20,000-99,999

Tier 3	225,000-349,999, or executes 2% to less than 3% of Customer Total Consolidated Volume	100,000-149,999
Tier 4	350,000 or more, or executes 3% or greater of Customer Total Consolidated Volume	150,000 or more

All market participants can qualify for Tiers 1 through 4, provided they meet the requisite volume thresholds specified in Table 1 above. The maker and taker fees for all market participants represented in Table 1, displayed above, are dependent on qualifying for a particular tier. With respect to these tiers, the highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The Exchange proposes to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member.³ Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65%⁴ of Customer Total

³ As proposed, the Total Affiliated Member % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms. See proposed Pricing Schedule at Options 7, Section 3.

⁴ For example, 0.65% of Customer Total Consolidated Volume is approximately 100,000 contracts per day.

Consolidated Volume.⁵ A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. The Exchange notes by way of comparison that the proposed new percentage tiers for Non-Priority Customer are equivalent in terms of requisite volume to the current tiers.

The Exchange also proposes to amend the current Qualifying Tier Thresholds by replacing the ADV thresholds with total industry percentage thresholds with respect to tier volumes for Members that submit Priority Customer maker orders.⁶ Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed new percentage for

⁵ As proposed, for purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See proposed Pricing Schedule at Options 7, Section 3.

⁶ As proposed, the Priority Customer maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols. See proposed Pricing Schedule at Options 7, Section 3.

Priority Customer maker 1-3 tiers are equivalent in terms of requisite volume to the existing tiers. Priority maker Tier 4 requires additional volume to meet the proposed criteria of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day, as compared to a current ADV of 150,000 contracts.

The Exchange is proposing to amend these volume requirements to align with increasing Member activity on GEMX over time. The Exchange believes that Members will not be impacted by this proposal with the exception of the Tier 4 Priority Customer maker tier, which is more stringent as a result of this proposal.⁷ While the Tier 4 Priority Customer tier is more stringent, the proposed pricing is intended to continue to reward Members that submit Priority Customer order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. The Total Affiliated Member % of Customer Total Consolidated Volume category, as proposed and described below, includes all volume executed on the Exchange in all symbols and order types, as is the case today. The maker/taker fees will remain the same for all Member orders⁸ regardless of the tier achieved.

Finally, the Exchange proposes to amend the notes within Options 7, Section 3, which follow the Qualifying Tier Thresholds, to replace the term “ADV” with “% of Customer Total Consolidated Volume” to conform the text to the amendments proposed herein.

⁷ Based on 2019 participant tier qualifications, the Exchange anticipates that market participants will continue to qualify for the Tier 4 Priority Customer maker tier, notwithstanding the additional volume requirements.

⁸ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange’s proposal to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the Act.¹³ The Exchange is

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ The Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. As proposed, for purposes of measuring Total Affiliated

proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements. The Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue (and corresponding increased Member activity) over time. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements and therefore the Exchange does not anticipate any impact to Non-Priority Customers as a result of replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member.

The Exchange's proposal to amend the current Qualifying Tier Thresholds for Priority Customers makers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the Act.¹⁴ The

and/or Appointed Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

¹⁴ The Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes

Exchange is proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements for Tier 1 through 3 and therefore the Exchange does not anticipate any impact to Members that submit Priority Customer maker orders as a result of replacing the ADV thresholds with total industry percentage thresholds. However, with this proposal, Priority Customer Tier 4 is more stringent than the current tier level. Despite the increased volume amount to qualify for proposed Priority Customer Tier 4 of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts, the maker/taker tiered fee structure is intended to continue to reward Members to bring more order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. Overall, the Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue

Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume.

(and corresponding increased Member activity) over time.

The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer maker Qualifying Tier Thresholds is equitable and not unfairly discriminatory. The proposed tiers will be applied uniformly to all market participants, respectively. Furthermore, the Exchange believes that the qualifying tier thresholds are equitable and not unfairly discriminatory as all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. The Exchange believes that Members will not be impacted by this proposal, with the exception of the Tier 4 Priority Customer maker. With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for proposed Tier 4 as compared to today (1.20% of Customer Total Consolidated Volume is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts). Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Further, the maker/taker fees will remain the same for all Member orders¹⁵ regardless of the tier achieved.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will

¹⁵ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition. The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer Qualifying Tier Thresholds do not impose an undue burden on intramarket competition. The tiers will be applied uniformly to all market participants. Furthermore, all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements, with the exception of the Tier 4 Priority Customer maker. With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for the current Tier 4. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. As to the remainder of the proposed tiers, the Exchange does not anticipate

any impact to market participants as a result of replacing the ADV thresholds with total industry percentage thresholds. Finally, the maker/taker fees will remain the same for all Member orders¹⁶ regardless of the tier achieved. For the foregoing reasons, the Exchange does not believe that its proposal will have an undue burden on intramarket competition.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

¹⁶ The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-04 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-2020-04. 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-2020-04 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX, LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

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Qualifying Tier Thresholds

Table 1

Tier

	<u>Total Affiliated Member [ADV]% of Customer Total Consolidated Volume</u>	<u>Priority Customer Maker [ADV]% of Customer Total Consolidated Volume</u>
Tier 1	[0-99,999]Executes less than 0.65% of <u>Customer Total Consolidated Volume</u>	[0-19,999] <u>Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume</u>
Tier 2	[100,000-224,999, or] [e]Executes [1%]0.65% to less than [2%]1.5% of Customer Total Consolidated Volume	[20,000-99,999] <u>Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume</u>
Tier 3	[225,000-349,999, or] [e]Executes	[100,000-149,999] <u>Executes Priority Customer Maker</u>

	[2%] <u>1.5%</u> to less than [3%] <u>2.50%</u> of Customer Total Consolidated Volume	<u>volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume</u>
Tier 4	[350,000 or more, or] [e]Executes [3%] <u>2.5%</u> or greater of Customer Total Consolidated Volume	[150,000 or more] <u>Executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume</u>

- For purposes of measuring Total Affiliated Member [ADV]% of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.
- The highest tier threshold attained above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.
- All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.
- The Total Affiliated Member [ADV]% of Customer Total Consolidated Volume, category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.
- The Priority Customer Maker [ADV]% of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

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