

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 38	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 10 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 *).

Proposal to adopt a new rule titled Transfer of Positions within Options 6, Section 5

Contact Information

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

First Name * Angela Last Name * Dunn
 Title * Principal Associate General Counsel
 E-mail * angela.dunn@nasdaq.com
 Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

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

(Title *)
 Date 04/07/2020
 By John Zecca
 EVP and Chief Legal Officer
 john.zecca@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 EFFS 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

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 adopt a new rule titled “Transfer of Positions” within Options 6, Section 5.

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 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

The Exchange proposes to adopt a new rule titled, “Transfer of Positions” within Options 6, Section 5, which is currently reserved. Today, GEMX does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the GEMX. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.³

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled “Transfer of Positions” to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7.

Currently, GEMX has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), “*Permissible Transfers*. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

³ See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

- (1) pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.⁴

The Exchange proposes to define "Person" as "an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof."⁵ The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule

⁴ See Cboe Rule 6.7(a).

⁵ See Cboe Rule 1.1.

change states that existing positions of a Member or a non-Member may be subject to an transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.⁶ The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.⁷ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.⁸ Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.⁹

⁶ See proposed Options 6, Section 5(a)(5) and (7).

⁷ See proposed Options 6, Section 5(h).

⁸ For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

⁹ See Cboe Rule 6.7(b).

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on GEMX, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for GEMX transactions) at the Clearing Corporation rather than into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker’s universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer

is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date¹⁰; or (4) the then-current market price of the positions at the time the transfer is effected.¹¹

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).¹² The notice must indicate: the Exchange-listed options positions

¹⁰ For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

¹¹ See Cboe Rule 6.7(c).

¹² This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules.

to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.¹³ The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original

In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

¹³ See Cboe Rule 6.7(d).

trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.¹⁴

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.¹⁵

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring

¹⁴ See Cboe Rule 6.7(e).

¹⁵ See Cboe Rule 6.7(f).

movements of positions.¹⁶ The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.¹⁷

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)²⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

¹⁶ See Cboe Rule 6.7(g).

¹⁷ See Cboe Rule 6.7(h).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78f(b)(5).

of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of

²¹

Id.

positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's

positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),²² the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

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

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

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the

²² See Cboe Rule 6.7(f).

criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions.

As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²³ of the Act and Rule 19b-4(f)(6) thereunder²⁴ in that it effects a change

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

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

The Exchange's proposal does not significantly affect the protection of investors or the public interest because the proposed transfer rule is similar to Cboe Rule 6.7. The proposed rule permits transfers pursuant to proposed Options 6, Section 5 under limited circumstances for non-recurring situations where transfers may be achieved to facilitate non-recurring movements of positions. The Exchange's proposal does not impose any significant burden on competition because the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied.

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

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 requests that the Commission waive the operative delay to permit the Exchange to adopt a transfer rule similar to CBOE Rule 6.7. The Exchange believes adopting this rule will benefit investors and the general public because it will provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.²⁵

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

This proposal is similar to CBOE Rule 6.7.

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.

²⁵

See CBOE Rule 6.7.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2020-10)

April __, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule Titled Transfer of Positions within Options 6, Section 5

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 April 7, 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 adopt a new rule titled “Transfer of Positions” within Options 6, Section 5.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to adopt a new rule titled, "Transfer of Positions" within Options 6, Section 5, which is currently reserved. Today, GEMX does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the GEMX. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.³

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled "Transfer of Positions" to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, GEMX has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), "*Permissible Transfers*. Existing positions in options listed on the Exchange of a

³ See Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR-Cboe-2019-035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

- (1) pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.⁴

The Exchange proposes to define "Person" as "an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political

⁴ See Cboe Rule 6.7(a).

subdivision thereof.”⁵ The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to an transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.⁶ The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.⁷ Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.⁸ Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to

⁵ See Cboe Rule 1.1.

⁶ See proposed Options 6, Section 5(a)(5) and (7).

⁷ See proposed Options 6, Section 5(h).

⁸ For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.⁹

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on GEMX, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for GEMX transactions) at the Clearing Corporation rather than into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker’s universal account in this circumstance to achieve this purpose.

⁹ See Cboe Rule 6.7(b).

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date¹⁰; or (4) the then-current market price of the positions at the time the transfer is effected.¹¹

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner

¹⁰ For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

¹¹ See Cboe Rule 6.7(c).

determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).¹² The notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.¹³ The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the

¹² This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

¹³ See Cboe Rule 6.7(d).

information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.¹⁴

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.¹⁵

¹⁴ See Cboe Rule 6.7(e).

¹⁵ See Cboe Rule 6.7(f).

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.¹⁶ The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.¹⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed transfer rule is consistent with

¹⁶ See Cboe Rule 6.7(g).

¹⁷ See Cboe Rule 6.7(h).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)²⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the

²⁰ 15 U.S.C. 78f(b)(5).

²¹ Id.

purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or

her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),²² the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

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

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

²² See Cboe Rule 6.7(f).

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

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 Act²³ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁴

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2020-10 on the subject line.

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 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.

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-2020-10. 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-2020-10 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.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 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 6 Options Trade Administration

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Section 5.[Reserved.] Transfer of Positions

(a) Permissible Transfers. Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves on or more of the following events:

- (1) pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- (2) the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- (3) the consolidation of accounts where no change in ownership is involved;
- (4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- (5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;
- (6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- (7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;
- (8) the donation of positions to a not-for-profit corporation;
- (9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- (10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.

For purposes of this rule, the term "Person" shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or

unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(b) *Netting.* Unless otherwise permitted by paragraph (f), when effecting a transfer pursuant to paragraph (a), no position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.

(c) *Transfer Price.* The transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be:

(1) the original trade prices of the positions that appear on the books of the transferring Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct errors under subparagraph (a)(1) must be transferred at the correct original trade prices;

(2) mark-to-market prices of the positions at the close of trading on the transfer date;

(3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; or

(4) the then-current market price of the positions at the time the transfer is effected.

(d) *Prior Written Notice.* A Member(s) and its Clearing Member(s) (to the extent that the Member is not self-clearing) must submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account(s) of a Member(s), except that notification is not required for transfers to correct errors pursuant to subparagraph (a)(1) of this Rule.

(1) The notice must indicate (A) the Exchange-listed options positions to be transferred, (B) the nature of the transaction, (C) the enumerated provision(s) under paragraph (a) pursuant to which the positions are being transferred, (D) the name of the counterparty(ies), (E) the anticipated transfer date, (F) the method for determining the transfer price under paragraph (e) below, and (G) any other information requested by the Exchange.

(2) Receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of this Rule. Notwithstanding submission of written notice to Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of this Rule will be subject to appropriate disciplinary action in accordance with the Rules.

(e) *Records.* Each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the notice to the Exchange pursuant to subparagraph (d)(1), as well as information on (1) the actual Exchange-listed options transferred; (2) the actual transfer date; and (3) the actual transfer price (and the original trade

dates, if applicable). The Exchange may also request the Member Holder or Clearing Member to provide other information.

(f) *Presidential Exemptions.* In addition to the exemptions set forth in paragraph (a) of this Rule, the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members), when, in the judgment of the Chief Executive Officer or the President or his or her designee, allowing the transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances, such as the possibility that the market value of the Person's positions will be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.

(g) *Routine, Recurring Transfers.* The transfer procedure set forth in this Rule is intended to facilitate non-routine, nonrecurring movements of positions. The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

(h) *Exchange-Listed Options.* The transfer procedure set forth in this Rule is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.

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