

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="63"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="12"/>	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"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<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 type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

A proposal to amend GEMX's Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled Regular Order Fees and Rebates.

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

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend GEMX’s Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled “Regular Order Fees and Rebates.”

The Exchange originally filed the proposed pricing changes on April 30, 2020 (SR-GEMX-2020-11). On May 11, 2020, the Exchange withdrew that filing and submitted this filing.

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.” GEMX proposes to amend its Regular Order Fees and Rebates in Penny Symbols. Specifically, the Exchange proposes various amendments to its Maker Rebates and Taker Fees, as well as qualification tiers. Each amendment is described below.

Technical Correction

The Exchange proposes to remove “and SPY” from the title “Penny Symbols and SPY” as SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Maker Rebates

With respect to the Tier 1 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker³ a \$0.28 per contract rebate, a Non-Nasdaq GEMX Market Maker (FarMM)⁴ a \$0.25 per contract rebate, a Firm Proprietary/ Broker Dealer⁵

³ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

⁴ A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See GEMX Options 7, Section 1.

⁵ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See GEMX Options 7, Section 1.

a \$0.25 per contract rebate, a Professional Customer⁶ a \$0.25 per contract rebate and a Priority Customer⁷ a \$0.25 per contract rebate. The Exchange proposes to lower Tier 1 Maker Rebates for all non-Priority Customers. Specifically, the Exchange proposes to lower a Market Maker from \$0.28 to \$0.20 per contract, a Non-Nasdaq GEMX Market Maker (FarMM) from \$0.25 to \$0.20 per contract, a Firm Proprietary/ Broker Dealer from \$0.25 to \$0.20 per contract, and a Professional Customer from \$0.25 to \$0.20 per contract. A Priority Customer will continue to receive a Tier 1 Maker Rebate of \$0.25 per contract. Priority Customers would receive the highest Tier 1 Maker Rebate with this proposal. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers to \$0.20 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 2 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.30 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 2 Maker Rebate. Priority Customers receive a \$0.40 per contract Tier 2 Maker Rebate. The Exchange is proposing to amend the Tier 2 Maker Rebate for Market

⁶ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See GEMX Options 7, Section 1.

⁷ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail”. A “Retail” order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See GEMX Options 7, Section 1.

Makers from \$0.30 to \$0.25 per contract. The Exchange is not otherwise amending the Tier 2 Maker Rebates. Priority Customers would continue to receive the highest Tier 2 Maker Rebates with this proposal. While the Exchange is lowering the Tier 2 Maker Rebate for Market Makers to \$0.25 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 3 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.35 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 3 Maker Rebate. Priority Customers receive a \$0.48 per contract Tier 3 Maker Rebate. The Exchange is proposing to amend the Tier 3 Maker Rebate for Market Makers from \$0.35 to \$0.30 per contract. The Exchange is not otherwise amending the Tier 3 Maker Rebates. Priority Customers would continue to receive the highest Tier 3 Maker Rebates with this proposal. While the Exchange is lowering the Tier 3 Maker Rebate for Market Makers to \$0.30 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 4 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 4 Maker Rebate. Priority Customers receive a \$0.53 per contract Tier 4 Maker Rebate. The Exchange is proposing to amend the Tier 4 Maker Rebate for Market Makers from \$0.45 to \$0.41 per contract. The Exchange is not otherwise amending the

Tier 4 Maker Rebates. Priority Customers would continue to receive the highest Tier 4 Maker Rebates with this proposal. While the Exchange is lowering the Tier 4 Maker Rebate for Market Makers to \$0.41 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Penny Symbols. The Exchange proposes to pay a Market Maker a \$0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Tier 5 Maker Rebate. Priority Customers would receive a \$0.53 per contract Tier 5 Maker Rebate. With this proposal, Priority Customers would receive the highest Tier 5 Maker Rebate. The Exchange believes that these new Tier 5 Maker Rebates for Market Makers and Priority Customers will attract a greater amount of order flow on GEMX in Penny Symbols because of the opportunity to receive these rebates.

Taker Fees

With respect to the Tier 1 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.48 per contract fee. The Exchange is proposing to increase the Tier 1 Taker Fee for Priority Customers from \$0.48 to \$0.49 per contract. The Exchange is not otherwise amending the Tier 1 Taker Fees. Priority Customers would continue to pay the lowest Tier 1 Taker Fee with this proposal. While the Exchange is increasing the Tier 1 Taker Fees for Priority Customers to \$0.49 per contract in Penny

Symbols, the Exchange is proposing to add new Tier 5 Taker Fees, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 2 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.47 per contract fee. The Exchange is proposing to increase the Tier 2 Taker Fee for Priority Customers from \$0.47 to \$0.48 per contract. The Exchange is not otherwise amending the Tier 2 Taker Fees. Priority Customers would continue to pay the lowest Tier 2 Taker Fee with this proposal. While the Exchange is increasing the Tier 2 Taker Fees for Priority Customers to \$0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 3 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.47 per contract fee. The Exchange is proposing to increase the Tier 3 Taker Fee for Priority Customers from \$0.47 to \$0.48 per contract. The Exchange is not otherwise amending the Tier 3 Taker Fees. Priority Customers would continue to pay the lowest Tier 3 Taker Fee with this proposal. While the Exchange is increasing the Tier 3 Taker Fees for Priority Customers to \$0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 4 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) a \$0.48 per contract fee. The Exchange currently assesses Firm Proprietary/ Broker Dealers and Professional Customers a \$0.49 per contract fee. Priority Customers are assessed a \$0.45 per contract fee. The Exchange is proposing to decrease the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange is not otherwise amending the Tier 4 Taker Fees. Priority Customers would pay an even lower Tier 4 Taker Fee with this proposal, which should attract a greater amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to obtain lower fees.

The Exchange proposes to adopt new Tier 5 Taker Fees in Penny Symbols. The Exchange proposes to assess a Market Maker and a Non-Nasdaq GEMX Market Maker (FarMM) a \$0.48 per contract fee. The Exchange proposes to assess a Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.49 per contract fee. Priority Customers would be assessed a \$0.42 per contract fee. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fee. Proposed Tier 5 Taker Fees will attract a greater amount of order flow on GEMX in Penny Symbols because of the opportunity to obtain lower Priority Customer fees.

Further, note 4 in Options 7, Section 3 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders would be charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process will receive the applicable Maker Rebate based on the tier

achieved.⁸ Additionally, note 13 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. Currently, Taker Fee Tiers 1 – 4 are subject to notes 4 and 13.

Qualifying Tier Thresholds

The Exchange proposes to amend the Qualifying Tiers within Options 7, Section

3. Currently, there are 4 qualifying tiers:

Table 1

Tier	Total Affiliated Member % of Customer Total Consolidated Volume	Priority Customer Maker % of Customer Total Consolidated Volume
Tier 1	Executes less than 0.65% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume
Tier 2	Executes 0.65% to less than 1.5% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume
Tier 3	Executes 1.5% to less than 2.50% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume

⁸ The Exchange proposes to replace the phrase “opening rotation” with “Opening Process” to conform the title within note 4 to the title of Options 3, Section 8. The Exchange also proposes to capitalize the terms “Maker Rebate” and “Taker Fee” in notes 3, 4, 5, 13 and 16.

	Executes 2.5% or greater of Customer Total Consolidated Volume	Consolidated Volume Executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume
Tier 4		

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. Specifically, the Exchange proposes to amend the Tier 4 Qualifying Tier Threshold. The Exchange proposes to amend the description of Tier 4 in the Total Affiliated Member % of Customer Total Consolidated Volume,⁹ which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute 2.5% to less than 3.5% of Customer Total Consolidated Volume. The Exchange also proposes to amend the description of the

⁹ 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.

Tier 4 Priority Customer Maker % of Customer Total Consolidated Volume,¹⁰ which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume.

The Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold which for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. Also, the Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, which requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

The Exchange is amending the Tier 4 Qualifying Tier Threshold so that it may add a new Tier 5 Qualifying Tier Threshold. The Exchange believes that Members may execute a greater amount of volume on GEMX to qualify for higher rebates and lower fees. 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.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹²

¹⁰ The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

¹¹ 15 U.S.C. 78f(b).

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 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.”¹³

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁴ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁵ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁶

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁵ See NetCoalition, at 534 - 535.

¹⁶ Id. at 537.

Further, “[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’....”¹⁷ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Maker Rebates

The Exchange’s proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers is reasonable. With this proposal, Priority Customers would receive the highest Maker Rebates in Tiers 1-4, respectively. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers as well as the Tier 2, 3 and 4 Maker Rebates for Market Makers, the Exchange is proposing new Tier 5 Maker Rebates, which would provide Market Makers and Priority Customers an opportunity to obtain higher rebates, provided they meet the qualifications. While the proposal generally decreases Maker Rebates for Market Makers and non-Priority Customers, the Exchange believes that the proposed rebate structure will remain attractive to all Members.

¹⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers is equitable and not unfairly discriminatory. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a \$0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁸ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is reasonable. The Exchange proposes to pay a Market Maker a \$0.45 per contract Tier 5 rebate and Priority Customers a \$0.53 per contract Tier 5 rebate. Priority Customers would receive the highest Tier 5 Maker Rebate. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates

¹⁸ See GEMX Options 2, Section 5.

encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is equitable and not unfairly discriminatory. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁹ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers²⁰ is reasonable. The Exchange's proposal, while increasing the Tier 1 - 3 Taker Fees for Priority Customers, will remain attractive to all Members. Priority Customers would continue to pay the lowest Tier 1 - 3 Taker Fees with this proposal. Further, decreasing the Tier 4 Taker Fee for Priority Customers will attract a greater

¹⁹ Id.

²⁰ The Exchange's proposal increases the Tier 1 Priority Customer Taker fee from \$0.48 to \$0.49 per contract. The Tier 2 Priority Customer Taker fee is being increased from \$0.47 to \$0.48 per contract. The Tier 3 Priority Customer Taker Fee is being increased from \$0.47 to \$0.48 per contract. Finally, the Tier 4 Priority Customer Taker Fee is being decreased from \$0.45 to \$0.43 per contract.

amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to receive this lower fee. Also, the Tier 4 Taker Fee for Priority Customer will remain the lowest Tier 4 Taker Fee. With this proposal, Market Makers and Priority Customers will continue to be incentivized to submit order flow on GEMX.

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers is equitable and not unfairly discriminatory. The proposed amendments continue to provide Priority Customers with the lowest Tier 1 - 4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees²¹ is reasonable. The proposed Tier 5 Taker Fees will attract a greater amount of Priority Customer orders on GEMX in Penny Symbols because of the opportunity to obtain these lower fees by submitting qualifying order flow. All Members may obtain the Tier 5 Taker Fees provided they submit qualifying order flow.

The Exchange's proposal to adopt new Tier 5 Taker Fees is equitable and not unfairly discriminatory. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to

²¹ The Exchange proposes the following Tier 5 Taker Fees: Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) would be assessed a \$0.48 per contract fee; Firm Proprietary/ Broker Dealers and Professional Customers would be assessed a \$0.49 per contract fee; and Priority Customers would be assessed a \$0.42 per contract fee.

assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be assessed to those participants that submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Similar to Tiers 1 – 4 of the Taker Fees, the Exchange states that during the Opening Process, non-Priority Customers would be charged the Taker Fee for trades executed. Also, Priority Customers executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved. The Exchange believes that it is fair and equitable to charge its "taker" fee for non-Priority Customers executed during the Opening Process in order to avoid the negative economics associated with paying a rebate on both sides of each trade. In addition, the fee is reasonable, because the Exchange desires to attract Priority Customers into its Opening Process and therefore proposes to pay those orders certain rebates. The Exchange does not believe that it is unfairly discriminatory not to similarly charge its "taker" fee to Priority Customers. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. The Exchange believes continuing to provide rebates to Priority Customers whose orders are executed during the Opening Process, similar to the

Tier 1 - 4 Taker Fees, will attract order flow to GEMX and thereby create liquidity to the benefit of all market participants who trade on the Exchange.

The Exchange's proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Non-Priority Customers will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Also, Priority Customers will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. This proposed fee structure in note 13 is similar to the Tier 1 - 4 Taker Fees. The Exchange's pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it is reasonable and equitable to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total

Consolidated Volume,²² which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is reasonable. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,²³ which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is reasonable. With this proposal, the Exchange adopts a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee with certain qualifications that currently would fall within the Tier 4 Maker Rebate and the Tier 4 Taker Fee, respectively. The new Tier 5 Maker Rebate offers higher rebates and the new Tier 5 Taker Fee offers lower fees than the equivalent Tier 4 Maker Rebate and Tier 4 Taker Fee. The Exchange believes that amending the Tier 4 Qualifying Tier Threshold will allow Members to continue to receive the same rebates and fees as today, provided they continue to submit the same qualifying volume, with the possibility of achieving higher rebates and lower fees with the new Tier 5 Maker Rebate and Tier 5 Taker Fee.

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total

²² 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.

²³ The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is reasonable. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume is reasonable. The Exchange's proposal seeks to incentivize Members to submit a greater amount of order flow on GEMX in order to earn higher rebates and lower fees. The Exchange believes that adopting a new Tier 5 Qualifying Tier Threshold in conjunction with a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee will encourage Members to submit a greater amount of order flow on GEMX in Penny Symbols.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" is reasonable as SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols. The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" is equitable and not unfairly discriminatory as this amendment will not cause a change in pricing to any market participant. All other

technical amendments to capitalize terms and rename the “opening rotation” to refer to “Opening Process” are non-substantive amendments.

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 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.

Maker Rebates

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers does not impose an undue burden on competition. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a \$0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).²⁴ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols does not impose an undue burden on competition. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).²⁵ Incentivizing Market Makers to provide greater liquidity

²⁴ See GEMX Options 2, Section 5.

²⁵ Id.

benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers does not impose an undue burden on competition. The proposed amendments continue to provide Priority Customers with the lowest Tier 1 - 4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees does not impose an undue burden on competition. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be uniformly assessed to those participants that

submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. Assessing a "taker" fee for non-Priority Customers executed during the Opening Process avoids the negative economics associated with paying a rebate on both sides of each trade. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. Providing rebates to Priority Customers executed during the Opening Process, similar to the Tier 1 - 4 Taker Fees, will attract that order flow to GEMX and thereby create liquidity to the benefit of all market participants who trade on the Exchange.

The Exchange's proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. This proposed fee structure in note 13 is similar to the Tier 1 - 4 Taker Fees. The Exchange's pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it does not impose an undue burden on competition to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority

Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume does not impose an undue burden on competition. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume does not impose an undue burden on competition. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of

Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" does not impose an undue burden on competition because the amendment will not cause a change in pricing to any market participant. All other technical amendments to capitalize terms and rename the "opening rotation" to refer to "Opening Process" are non-substantive amendments.

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,²⁶ 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.

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.

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2020-12)

May __, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend GEMX's Pricing Schedule

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 May 11, 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 GEMX's Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled "Regular Order Fees and Rebates."

The Exchange originally filed the proposed pricing changes on April 30, 2020 (SR-GEMX-2020-11). On May 11, 2020, the Exchange withdrew that filing and submitted this filing.

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.” GEMX proposes to amend its Regular Order Fees and Rebates in Penny Symbols. Specifically, the Exchange proposes various amendments to its Maker Rebates and Taker Fees, as well as qualification tiers. Each amendment is described below.

Technical Correction

The Exchange proposes to remove “and SPY” from the title “Penny Symbols and SPY” as SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Maker Rebates

With respect to the Tier 1 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker³ a \$0.28 per contract rebate, a Non-Nasdaq GEMX

³ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively.

Market Maker (FarMM)⁴ a \$0.25 per contract rebate, a Firm Proprietary/ Broker Dealer⁵ a \$0.25 per contract rebate, a Professional Customer⁶ a \$0.25 per contract rebate and a Priority Customer⁷ a \$0.25 per contract rebate. The Exchange proposes to lower Tier 1 Maker Rebates for all non-Priority Customers. Specifically, the Exchange proposes to lower a Market Maker from \$0.28 to \$0.20 per contract, a Non-Nasdaq GEMX Market Maker (FarMM) from \$0.25 to \$0.20 per contract, a Firm Proprietary/ Broker Dealer from \$0.25 to \$0.20 per contract, and a Professional Customer from \$0.25 to \$0.20 per contract. A Priority Customer will continue to receive a Tier 1 Maker Rebate of \$0.25 per contract. Priority Customers would receive the highest Tier 1 Maker Rebate with this proposal. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers to \$0.20 per contract in Penny Symbols, the Exchange is proposing to add a

See Options 1, Section 1(a)(21).

⁴ A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See GEMX Options 7, Section 1.

⁵ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See GEMX Options 7, Section 1.

⁶ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See GEMX Options 7, Section 1.

⁷ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail”. A “Retail” order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See GEMX Options 7, Section 1.

new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 2 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.30 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 2 Maker Rebate. Priority Customers receive a \$0.40 per contract Tier 2 Maker Rebate. The Exchange is proposing to amend the Tier 2 Maker Rebate for Market Makers from \$0.30 to \$0.25 per contract. The Exchange is not otherwise amending the Tier 2 Maker Rebates. Priority Customers would continue to receive the highest Tier 2 Maker Rebates with this proposal. While the Exchange is lowering the Tier 2 Maker Rebate for Market Makers to \$0.25 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 3 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.35 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 3 Maker Rebate. Priority Customers receive a \$0.48 per contract Tier 3 Maker Rebate. The Exchange is proposing to amend the Tier 3 Maker Rebate for Market Makers from \$0.35 to \$0.30 per contract. The Exchange is not otherwise amending the Tier 3 Maker Rebates. Priority Customers would continue to receive the highest Tier 3 Maker Rebates with this proposal. While the Exchange is lowering the Tier 3 Maker Rebate for Market Makers to \$0.30 per contract in Penny Symbols, the Exchange is

proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

With respect to the Tier 4 Maker Rebate in Penny Symbols, the Exchange currently pays a Market Maker a \$0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers are not eligible for a Tier 4 Maker Rebate. Priority Customers receive a \$0.53 per contract Tier 4 Maker Rebate. The Exchange is proposing to amend the Tier 4 Maker Rebate for Market Makers from \$0.45 to \$0.41 per contract. The Exchange is not otherwise amending the Tier 4 Maker Rebates. Priority Customers would continue to receive the highest Tier 4 Maker Rebates with this proposal. While the Exchange is lowering the Tier 4 Maker Rebate for Market Makers to \$0.41 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Maker Rebate, as described in more detail below. This new Tier 5 Maker Rebate will pay higher rebates to Market Makers.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Penny Symbols. The Exchange proposes to pay a Market Maker a \$0.45 per contract rebate, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Tier 5 Maker Rebate. Priority Customers would receive a \$0.53 per contract Tier 5 Maker Rebate. With this proposal, Priority Customers would receive the highest Tier 5 Maker Rebate. The Exchange believes that these new Tier 5 Maker Rebates for Market Makers and Priority Customers will attract a greater amount of order flow on GEMX in Penny Symbols because of the opportunity to receive these rebates.

Taker Fees

With respect to the Tier 1 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.48 per contract fee. The Exchange is proposing to increase the Tier 1 Taker Fee for Priority Customers from \$0.48 to \$0.49 per contract. The Exchange is not otherwise amending the Tier 1 Taker Fees. Priority Customers would continue to pay the lowest Tier 1 Taker Fee with this proposal. While the Exchange is increasing the Tier 1 Taker Fees for Priority Customers to \$0.49 per contract in Penny Symbols, the Exchange is proposing to add new Tier 5 Taker Fees, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 2 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.47 per contract fee. The Exchange is proposing to increase the Tier 2 Taker Fee for Priority Customers from \$0.47 to \$0.48 per contract. The Exchange is not otherwise amending the Tier 2 Taker Fees. Priority Customers would continue to pay the lowest Tier 2 Taker Fee with this proposal. While the Exchange is increasing the Tier 2 Taker Fees for Priority Customers to \$0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 3 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm

Proprietary/ Broker Dealers and Professional Customers a \$0.50 per contract fee. Priority Customers are assessed a \$0.47 per contract fee. The Exchange is proposing to increase the Tier 3 Taker Fee for Priority Customers from \$0.47 to \$0.48 per contract. The Exchange is not otherwise amending the Tier 3 Taker Fees. Priority Customers would continue to pay the lowest Tier 3 Taker Fee with this proposal. While the Exchange is increasing the Tier 3 Taker Fees for Priority Customers to \$0.48 per contract in Penny Symbols, the Exchange is proposing to add a new Tier 5 Taker Fee, as described in more detail below. The new Tier 5 Taker Fee will offer lower fees for Priority Customers.

With respect to the Tier 4 Taker Fee in Penny Symbols, the Exchange currently assesses Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) a \$0.48 per contract fee. The Exchange currently assesses Firm Proprietary/ Broker Dealers and Professional Customers a \$0.49 per contract fee. Priority Customers are assessed a \$0.45 per contract fee. The Exchange is proposing to decrease the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange is not otherwise amending the Tier 4 Taker Fees. Priority Customers would pay an even lower Tier 4 Taker Fee with this proposal, which should attract a greater amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to obtain lower fees.

The Exchange proposes to adopt new Tier 5 Taker Fees in Penny Symbols. The Exchange proposes to assess a Market Maker and a Non-Nasdaq GEMX Market Maker (FarMM) a \$0.48 per contract fee. The Exchange proposes to assess a Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.49 per contract fee. Priority Customers would be assessed a \$0.42 per contract fee. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fee. Proposed Tier 5 Taker Fees will attract a greater

amount of order flow on GEMX in Penny Symbols because of the opportunity to obtain lower Priority Customer fees.

Further, note 4 in Options 7, Section 3 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders would be charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved.⁸ Additionally, note 13 would be applicable to this new Tier 5 Taker Fee. Therefore, non-Priority Customer orders will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. Currently, Taker Fee Tiers 1 – 4 are subject to notes 4 and 13.

Qualifying Tier Thresholds

The Exchange proposes to amend the Qualifying Tiers within Options 7, Section

3. Currently, there are 4 qualifying tiers:

Table 1

Tier	Total Affiliated Member % of Customer Total Consolidated Volume	Priority Customer Maker % of Customer Total Consolidated Volume
Tier 1	Executes less than 0.65% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume

⁸ The Exchange proposes to replace the phrase “opening rotation” with “Opening Process” to conform the title within note 4 to the title of Options 3, Section 8. The Exchange also proposes to capitalize the terms “Maker Rebate” and “Taker Fee” in notes 3, 4, 5, 13 and 16.

Tier 2	Executes 0.65% to less than 1.5% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume
Tier 3	Executes 1.5% to less than 2.50% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume
Tier 4	Executes 2.5% or greater of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume

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. Specifically, the Exchange proposes to amend the Tier 4 Qualifying Tier Threshold. The Exchange proposes to amend the description of Tier 4 in the Total Affiliated Member %

of Customer Total Consolidated Volume,⁹ which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute 2.5% to less than 3.5% of Customer Total Consolidated Volume. The Exchange also proposes to amend the description of the Tier 4 Priority Customer Maker % of Customer Total Consolidated Volume,¹⁰ which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange proposes to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume.

The Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold which for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. Also, the Exchange proposes to adopt a new Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, which requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

The Exchange is amending the Tier 4 Qualifying Tier Threshold so that it may add a new Tier 5 Qualifying Tier Threshold. The Exchange believes that Members may execute a greater amount of volume on GEMX to qualify for higher rebates and lower

⁹ 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.

¹⁰ The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

fees. 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.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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 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.”¹³

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁴ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.¹⁵ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁶

Further, “[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’ . . .”¹⁷ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Maker Rebates

The Exchange’s proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers is reasonable. With this proposal, Priority Customers would receive the highest Maker Rebates in Tiers 1-4, respectively. While the Exchange is lowering the Tier 1 Maker Rebate for all non-Priority Customers as well as the Tier 2, 3 and 4 Maker Rebates

¹⁵ See NetCoalition, at 534 - 535.

¹⁶ Id. at 537.

¹⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

for Market Makers, the Exchange is proposing new Tier 5 Maker Rebates, which would provide Market Makers and Priority Customers an opportunity to obtain higher rebates, provided they meet the qualifications. While the proposal generally decreases Maker Rebates for Market Makers and non-Priority Customers, the Exchange believes that the proposed rebate structure will remain attractive to all Members.

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers is equitable and not unfairly discriminatory. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a \$0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁸ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

¹⁸ See GEMX Options 2, Section 5.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is reasonable. The Exchange proposes to pay a Market Maker a \$0.45 per contract Tier 5 rebate and Priority Customers a \$0.53 per contract Tier 5 rebate. Priority Customers would receive the highest Tier 5 Maker Rebate. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols is equitable and not unfairly discriminatory. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁹ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers²⁰ is reasonable. The Exchange's proposal, while increasing the Tier 1 - 3

¹⁹ Id.

²⁰ The Exchange's proposal increases the Tier 1 Priority Customer Taker fee from \$0.48 to \$0.49 per contract. The Tier 2 Priority Customer Taker fee is being

Taker Fees for Priority Customers, will remain attractive to all Members. Priority Customers would continue to pay the lowest Tier 1 - 3 Taker Fees with this proposal. Further, decreasing the Tier 4 Taker Fee for Priority Customers will attract a greater amount of Priority Customer order flow on GEMX in Penny Symbols because of the opportunity to receive this lower fee. Also, the Tier 4 Taker Fee for Priority Customer will remain the lowest Tier 4 Taker Fee. With this proposal, Market Makers and Priority Customers will continue to be incentivized to submit order flow on GEMX.

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers is equitable and not unfairly discriminatory. The proposed amendments continue to provide Priority Customers with the lowest Tier 1 - 4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees²¹ is reasonable. The proposed Tier 5 Taker Fees will attract a greater amount of Priority Customer orders on GEMX in Penny Symbols because of the opportunity to obtain these lower fees by

increased from \$0.47 to \$0.48 per contract. The Tier 3 Priority Customer Taker Fee is being increased from \$0.47 to \$0.48 per contract. Finally, the Tier 4 Priority Customer Taker Fee is being decreased from \$0.45 to \$0.43 per contract.

²¹ The Exchange proposes the following Tier 5 Taker Fees: Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) would be assessed a \$0.48 per contract fee; Firm Proprietary/ Broker Dealers and Professional Customers would be assessed a \$0.49 per contract fee; and Priority Customers would be assessed a \$0.42 per contract fee.

submitting qualifying order flow. All Members may obtain the Tier 5 Taker Fees provided they submit qualifying order flow.

The Exchange's proposal to adopt new Tier 5 Taker Fees is equitable and not unfairly discriminatory. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be assessed to those participants that submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Similar to Tiers 1 – 4 of the Taker Fees, the Exchange states that during the Opening Process, non-Priority Customers would be charged the Taker Fee for trades executed. Also, Priority Customers executed during the Opening Process will receive the applicable Maker Rebate based on the tier achieved. The Exchange believes that it is fair and equitable to charge its "taker" fee for non-Priority Customers executed during the Opening Process in order to avoid the negative economics associated with paying a rebate on both sides of each trade. In addition, the fee is reasonable, because the Exchange desires to attract Priority Customers into its Opening Process and therefore

proposes to pay those orders certain rebates. The Exchange does not believe that it is unfairly discriminatory not to similarly charge its “taker” fee to Priority Customers. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. The Exchange believes continuing to provide rebates to Priority Customers whose orders are executed during the Opening Process, similar to the Tier 1 - 4 Taker Fees, will attract order flow to GEMX and thereby create liquidity to the benefit of all market participants who trade on the Exchange.

The Exchange’s proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee is reasonable, equitable and not unfairly discriminatory. Non-Priority Customers will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Also, Priority Customers will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. This proposed fee structure in note 13 is similar to the Tier 1 - 4 Taker Fees. The Exchange’s pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it is reasonable and equitable to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority

Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume,²² which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is reasonable. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,²³ which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is reasonable. With this proposal, the Exchange adopts a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee with certain qualifications that currently would fall within the Tier 4 Maker Rebate and the Tier 4 Taker Fee, respectively. The new Tier 5 Maker Rebate offers higher rebates and the new Tier 5 Taker Fee offers lower fees than the equivalent Tier 4 Maker Rebate and Tier 4 Taker Fee. The Exchange believes that amending the Tier 4 Qualifying Tier Threshold will allow Members to continue to receive the same rebates and fees as today, provided they

²² 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.

²³ The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

continue to submit the same qualifying volume, with the possibility of achieving higher rebates and lower fees with the new Tier 5 Maker Rebate and Tier 5 Taker Fee.

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is reasonable. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume is reasonable. The Exchange's proposal seeks to incentivize Members to submit a greater amount of order flow on GEMX in

order to earn higher rebates and lower fees. The Exchange believes that adopting a new Tier 5 Qualifying Tier Threshold in conjunction with a new Tier 5 Maker Rebate and a new Tier 5 Taker Fee will encourage Members to submit a greater amount of order flow on GEMX in Penny Symbols.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume is equitable and not unfairly discriminatory. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" is reasonable as SPY has no separate pricing within Options 7, Section 3 and

SPY is part of the Penny Pilot Program and would otherwise be subject to the pricing applicable to Penny Symbols. The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" is equitable and not unfairly discriminatory as this amendment will not cause a change in pricing to any market participant. All other technical amendments to capitalize terms and rename the "opening rotation" to refer to "Opening Process" are non-substantive amendments.

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 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.

Maker Rebates

The Exchange's proposal to amend the Tier 1 Maker Rebates in Penny Symbols to pay all non-Priority Customers a \$0.20 per contract rebate and lower the Tier 2 Maker Rebate (from \$0.30 to \$0.25 per contract), the Tier 3 Maker Rebate (from \$0.35 to \$0.30 per contract) and the Tier 4 Maker Rebate (from \$0.45 to \$0.41 per contract) for Market Makers does not impose an undue burden on competition. The Tier 1 Maker Rebates will uniformly pay all non-Priority Customers a \$0.20 per contract rebate. Also, Priority Customers would receive the highest Tier 1 Maker Rebate with the proposal. While the Exchange is lowering the Tier 2, 3 and 4 Maker Rebates for Market Makers, the proposal will continue to pay Priority Customers the highest Tier 2, 3 and 4 Maker Rebates, respectively. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).²⁴ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

²⁴ See GEMX Options 2, Section 5.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Penny Symbols does not impose an undue burden on competition. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).²⁵ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Taker Fees

The Exchange's proposal to amend the Tier 1 - 4 Taker Fees for Priority Customers does not impose an undue burden on competition. The proposed amendments continue to provide Priority Customers with the lowest Tier 1 - 4 Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees does not impose an undue burden on competition. Market Makers and Non-Nasdaq GEMX Market Maker (FarMM) would be assessed lower fees as compared to other non-Priority Customer market participants. The Exchange does not believe that it is unfairly discriminatory to assess lower Tier 5 Taker Fees for Market Makers and Non-Nasdaq GEMX Market

²⁵ Id.

Makers (FarMM) as these market participants have obligations in the marketplace, which other market participants do not have, such as quoting. Also these market participants provide liquidity. With this proposal, Priority Customers would pay the lowest Tier 5 Taker Fees. The Tier 5 Taker Fees would be uniformly assessed to those participants that submit qualifying volume on GEMX. All market participants that submit qualifying volume are able to obtain lower fees with more qualifying volume.

The Exchange's proposal to apply current note 4 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. Assessing a "taker" fee for non-Priority Customers executed during the Opening Process avoids the negative economics associated with paying a rebate on both sides of each trade. In general, Priority Customers are provided higher rebates and lower fees than other market participants on the Exchange. Providing rebates to Priority Customers executed during the Opening Process, similar to the Tier 1 - 4 Taker Fees, will attract that order flow to GEMX and thereby create liquidity to the benefit of all market participants who trade on the Exchange.

The Exchange's proposal to apply current note 13 of GEMX Options 7, Section 3 to the Tier 5 Taker Fee does not impose an undue burden on competition. This proposed fee structure in note 13 is similar to the Tier 1 - 4 Taker Fees. The Exchange's pricing structure for Penny Symbols offers Priority Customers the highest rebates and lowest fees. The Exchange believes that it does not impose an undue burden on competition to increase the fee charged to non-Priority Customers that trade against a Priority Customer or a Priority Customer that trades against another Priority Customer as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers. The

Exchange believes that Members will benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate to assess a higher Taker Fee for trades executed against a Priority Customer. Finally, the Exchange will uniformly assess the higher Taker Fee to Non-Priority Customers and Priority Customers for trades executed against a Priority Customer.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds with respect to the Total Affiliated Member % of Customer Total Consolidated Volume, which currently requires that a member execute 2.5% or greater of Customer Total Consolidated Volume, to instead require that a member execute 2.5%, to less than 3.5% of Customer Total Consolidated Volume does not impose an undue burden on competition. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume, which currently requires that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume, to instead require that a member execute Priority Customer Maker volume of 1.20% to less than 2.75% of Customer Total Consolidated Volume does not impose an undue burden on competition. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

The Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold that for purposes of Total Affiliated Member % of Customer Total Consolidated Volume requires a member to execute 3.5% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Further, the Exchange's proposal to adopt a new Tier 5 Qualifying Tier Threshold with respect to Priority Customer Maker % of Customer Total Consolidated Volume that requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume does not impose an undue burden on competition. Members that meet the qualifications for these Tier 5 Qualifying Tier Thresholds would be eligible, uniformly, to receive the corresponding Tier 5 Maker Rebates and Tier 5 Taker Fees in Penny Symbols. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. More specifically, the Exchange's proposal amends the Tier 4 Taker Fee for Priority Customers from \$0.45 to \$0.43 per contract. The Exchange believes that this amendment, along with the potential to qualify for an even lower Tier 5 Taker Fee of \$0.42 per contract, will encourage Members to send order flow to GEMX.

Technical Correction

The Exchange's proposal to remove "and SPY" from the title "Penny Symbols and SPY" does not impose an undue burden on competition because the amendment will not cause a change in pricing to any market participant. All other technical amendments to capitalize terms and rename the "opening rotation" to refer to "Opening Process" are non-substantive amendments.

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.²⁶ 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:

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-2020-12 on the subject line.

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-12. 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-2020-12 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX Rules

* * * * *

Options 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

Penny Symbols [and SPY]

Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	Maker Rebate: Tier 5	Taker Fee: Tier 1 (4)(13)	Taker Fee: Tier 2 (4)(13)	Taker Fee: Tier 3 (4)(13)	Taker Fee: Tier 4 (4)(13)	Take Fee: Tier 5 (4)(13)	Fee for Crossing Orders (excluding PIM) (1)(11)	Fee for Responses to Crossing Orders (excluding PIM) (12)
Market Maker ⁽²⁾⁽³⁾⁽⁵⁾	(\$0. <u>[28]20</u>)	(\$0. <u>[30].25</u>)	(\$0. <u>[35]30</u>)	(\$0. <u>[45]41</u>)	<u>(\$0.45)</u>	\$0.50	\$0.50	\$0.50	\$0.48	<u>\$0.48</u>	\$0.20	\$0.50
Non-Nasdaq GEMX Market Maker (FarMM) ⁽³⁾	(\$0. <u>[25]20</u>)	n/a	n/a	n/a	<u>n/a</u>	\$0.50	\$0.50	\$0.50	\$0.48	<u>\$0.48</u>	\$0.20	\$0.50

Firm Proprietary / Broker-Dealer ⁽³⁾	(\$0.[25]20)	n/a	n/a	n/a	<u>n/a</u>	\$0.50	\$0.50	\$0.50	\$0.49	<u>\$0.49</u>	\$0.20	\$0.50
Professional Customer ⁽³⁾	(\$0.[25]20)	n/a	n/a	n/a	<u>n/a</u>	\$0.50	\$0.50	\$0.50	\$0.49	<u>\$0.49</u>	\$0.20	\$0.50
Priority Customer ⁽³⁾⁽⁵⁾	(\$0.25)	(\$0.40)	(\$0.48)	(\$0.53)	<u>(\$0.53)</u>	\$0.[48]4 <u>9</u>	\$0.[47]4 <u>8</u>	\$0.[47]4 <u>8</u>	\$0.[45]4 <u>3</u>	<u>\$0.42</u>	\$0.00	\$0.50

Non-Penny Symbols (Excluding Index Options)⁽⁶⁾

Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	Taker Fee: Tier 1 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 2 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 3 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 4 ⁽⁴⁾⁽¹⁶⁾	Fee for Crossing Orders (excluding PIM) ⁽¹⁾⁽¹¹⁾	Fee for Responses to Crossing Orders (excluding PIM) ⁽¹²⁾
Market Maker ⁽²⁾⁽³⁾⁽⁵⁾	(\$0.40)	(\$0.42)	(\$0.45)	(\$0.75)	\$0.99	\$0.99	\$0.99	\$0.94	\$0.20	\$1.00
Non-Nasdaq GEMX Market Maker (FarMM) ⁽³⁾	(\$0.25)	n/a	n/a	n/a	\$0.99	\$0.99	\$0.99	\$0.94	\$0.20	\$1.00
Firm Proprietary / Broker-Dealer ⁽³⁾	(\$0.25)	n/a	n/a	n/a	\$0.99	\$0.99	\$0.99	\$0.94	\$0.20	\$1.00
Professional Customer ⁽³⁾	(\$0.25)	n/a	n/a	n/a	\$0.99	\$0.99	\$0.99	\$0.94	\$0.20	\$1.00
Priority Customer ⁽³⁾⁽⁵⁾	(\$0.75)	(\$0.80)	(\$0.85)	(\$1.05)	\$0.85	\$0.85	\$0.85	\$0.82	\$0.00	\$1.00

Index Options⁽⁶⁾⁽⁹⁾

Market Participant	Fee⁽¹⁰⁾
Market Maker ⁽²⁾	\$0.75
Non-Nasdaq GEMX Market Maker (FarMM)	\$0.75
Firm Proprietary / Broker-Dealer	\$0.75
Professional Customer	\$0.75
Priority Customer	\$0.00

1. Fees apply to the originating and contra order.
2. This fee applies to Nasdaq GEMX Market Maker orders sent to the Exchange by Electronic Access Members.
3. All market participants are eligible for lower [t]Taker [f]Fees based on achieving volume thresholds in Table 1 below. Members who do not achieve a higher Tier under Table 1 will be charged Tier 1 [t]Taker [f]Fees.
4. Non-Priority Customer orders will be charged the [t]Taker [f]Fee for trades executed during the [o]Opening [rotation]Process. Priority Customer orders executed during the [o]Opening [rotation]Process will receive the applicable [m]Maker [r]Rebate based on the tier achieved.
5. Market Maker and Priority Customer orders are eligible for higher [m]Maker [r]Rebates based on achieving volume thresholds in Table 1 below. Members who do not achieve a higher Tier under Table 1 will receive Tier 1 [m]Maker [r]Rebates.
6. The index options fees apply only to NDX. These fees are assessed to all executions in NDX.
7. Reserved.
8. Reserved.
9. For transactions in NDX, a license surcharge of \$0.25 will be assessed to Non-Priority Customers. The license surcharge applies to all NDX executions, including executions of NDX orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.
10. This fee is not subject to tier discounts.

11. This fee is \$0.05 per contract for Priority Customer orders on the contra-side of a PIM auction and all non-Priority Customer orders executed in the PIM. There is no fee for Priority Customer orders on the agency side of a PIM auction.
12. This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM.
13. Non-Priority Customer orders will be charged a [t]Taker [f]Fee of \$0.50 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a [t]Taker [f]Fee of \$0.49 per contract for trades executed against a Priority Customer.
14. Reserved.
15. Reserved.
16. Non-Priority Customer orders will be charged a [t]Taker [f]Fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a [t]Taker [f]Fee of \$0.85 per contract for trades executed against a Priority Customer.

Qualifying Tier Thresholds

Table 1

Tier	Total Affiliated Member % of Customer Total Consolidated Volume	Priority Customer Maker % of Customer Total Consolidated Volume
Tier 1	Executes less than 0.65% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of less than 0.10% of Customer Total Consolidated Volume
Tier 2	Executes 0.65% to less than 1.5% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume
Tier 3	Executes 1.5% to less than 2.50% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1.20% of Customer Total

		Consolidated Volume
		Executes Priority Customer Maker volume of 1.20% [or greater] <u>to</u>
Tier 4	Executes 2.5% [or greater] <u>to less than 3.5%</u> of Customer Total Consolidated Volume	<u>less than 2.75%</u> of Customer Total Consolidated Volume
		<u>Executes Priority Customer Maker</u> <u>volume of 2.75% or greater of</u> <u>Customer Total Consolidated</u> <u>Volume</u>
Tier 5	<u>Executes 3.5% or greater of Customer Total</u> <u>Consolidated Volume</u>	

- 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.
- 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 % 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 % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

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