

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="53"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="18"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
--	--

Description

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

A proposal to amend Options 7, Section 3

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 * <input type="text" value="Angela"/>	Last Name * <input type="text" value="Dunn"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="angela.dunn@nasdaq.com"/>	
Telephone * <input type="text" value="(215) 496-5692"/>	Fax <input type="text"/>

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 <input type="text" value="07/13/2020"/>	EVP and Chief Legal Counsel
By <input type="text" value="John Zecca"/> <small>(Name *)</small>	<input type="text" value="john.zecca@nasdaq.com"/>

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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 Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions.

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, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions.

Each amendment is described below.

Options 7, Section 3

Penny Symbols

Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of \$0.50 per contract for all Non-Priority Customers,³ Tier 4 and 5 Taker Fees of \$0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of \$0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. Further, today, the Exchange assesses Penny Symbol Taker Fees for Priority Customers as follows: \$0.49 for Tier 1, \$0.48 for Tiers 2 and 3, \$0.43 for Tier 4 and \$0.42 for Tier 5. Current note 13 provides, with respect to Penny Symbol Tiers 1-5, that Non-Priority Customer orders will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer and Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer.

The Exchange proposes to amend note 13, with respect to Penny Symbol Tiers 1-5, to instead provide that Non-Priority Customers who execute less than 4.0% of

³ Non-Priority Customers consist of Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers.

Customer Total Consolidated Volume will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Also, Non-Priority Customers who execute 4.0%⁴ or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, 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.

Non-Priority Customers, would continue to be charged a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, provided they execute less than 4.0% of Customer Total Consolidated Volume. If a Non-Priority Customer executed 4.0% or greater of Customer Total Consolidated Volume, they will be charged a Taker Fee, in Tiers 1-5 in Penny Symbols, of \$0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, to be assessed a reduced \$0.47 per contract Taker Fee, in Tier 1-5 Penny Symbols, provided they meet the volume requirement.

Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract, in Tiers 1-5 Penny Symbols, for trades executed against a Priority Customer. The Exchange believes that this proposal will continue to attract additional volume to GEMX in order to obtain more favorable pricing.

⁴ The Exchange notes that 4.0% of Customer Total Consolidated Volume is equivalent to approximately 1,000,000 contracts.

Non-Penny Symbols

The Exchange proposes to increase the Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM⁵) from \$1.00 to \$1.10 per contract for all Members.

While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options).⁶ The Exchange proposes to pay a Market Maker a \$0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to pay a Priority Customer a \$1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate. These proposed Non-Penny Symbol Tier 5 Maker Rebates are the same as rebates paid, today, for Non-Penny Symbol Tier 4 Maker Rebates. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to add these new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make clear, within the Options 7, Section 3 regular order rebates, that

⁵ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

⁶ The index options fees apply only to NDX. These fees are assessed to all executions in NDX.

Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates today. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.⁷

The Exchange proposes to adopt new Tier 5 Taker Fees in Non-Penny Symbols. The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed an \$0.82 per contract Taker Fee in Non-Penny Symbols. As is the case with Tier 4 Taker Fees in Non-Penny Symbols, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees. The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of new Non-Penny Symbol Tier 5 Taker Fees will make clear, within the Options 7, Section 3 regular order fees, that Tier 5 qualifying volume would pay the same fees as the Non-Penny Symbol Tier 4 Taker Fees today. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members

⁷ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

with Tier 5 Non-Penny Symbol Taker Fees to refer to for qualifying Tier 5 Taker Fee volume in Non-Penny Symbols.⁸

Proposed note 8 within Options 7, Section 3 will be discussed below.

Options 7, Section 4

The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C. By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism (“PIM”), Block or Qualified Contingent Cross (“QCC”) order. The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C, similar to Nasdaq ISE, LLC’s crossing fee cap.⁹ Specifically, the Exchange proposes to adopt a Crossing Fee Cap of \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. All eligible volume from affiliated Members would be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders would not be included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 would not be included in the calculation of the monthly fee cap. A service fee of \$0.00 per side would apply to all order types that are eligible for the fee cap. The service fee would apply once a Member reached the fee cap level and would apply to every contract side above the fee cap. A Member who did not reach the monthly fee cap would not be

⁸ Id.

⁹ Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

charged the service fee. Once the fee cap is reached, the service fee would apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee would not be calculated to reach the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed. The Exchange believes that the Crossing Fee Cap will cause Members to execute a greater number of Crossing Orders on GEMX in order to arrive at the cap and transact orders at no fee.

The Exchange also proposes to add a new note 8 within Options 7, Section 3 to indicate that Firm Proprietary contracts traded are subject to the Crossing Fee Cap proposed within Options 7, Section 4C.

Finally, the Exchange proposes to remove the term “& SPY” from Options 7, Section 4, Route-Out Fees. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols. For this reason, the term “& SPY” is proposed to be removed from the Penny title.

Options 7, Section 1

The Exchange proposes an amendment to Options 7, Section 1, General Provisions. The Exchange proposes to replace the term “Penny Pilot Program” with “Penny Interval Program.” On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).¹⁰ The Exchange recently filed a proposal to amend GEMX Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing

¹⁰ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).¹¹ The Exchange’s proposal amended GEMX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. This proposed change to Options 7, Section 1 conforms the name of the program and removes a reference to a list of Penny Pilot Program symbols.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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.”¹⁴

¹¹ See Securities Exchange Act Release No. 89162 (June 26, 2020) (SR-GEMX-2020-16).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁵ (“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.¹⁶ 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.”¹⁷

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’”¹⁸ 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.

Options 7, Section 3

Penny Symbols

¹⁵ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See NetCoalition, at 534 - 535.

¹⁷ Id. at 537.

¹⁸ 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 note 13, within Options 7, Section 4,¹⁹ is reasonable because the proposal will continue to attract additional volume to GEMX in order that Members may obtain more favorable pricing. With this proposal, Non-Priority Customers, would continue to be charged a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer and execute less than 4.0% of Customer Total Consolidated Volume.²⁰ Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a reduced Taker Fee, in Tiers 1-5 in Penny Symbols, of \$0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, to be assessed a \$0.47 per contract Taker Fee, in Tier 1-5 Penny Symbols, provided they meet the volume requirement. With this proposal Non-Priority Customers would have the opportunity to lower Taker Fees. Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract, in Tiers 1-5 Penny Symbols, for trades executed against a Priority Customer.

¹⁹ The Exchange proposes to amend note 13 within Options 7, Section 4 to state, "Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, 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."

²⁰ Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of \$0.50 per contract for all Non-Priority Customers, Tier 4 and 5 Taker Fees of \$0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of \$0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. See Options 7, Section 3.

Attracting volume to GEMX is beneficial to all market participants who may interact with that order flow. The Exchange believes that Members benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered, today, to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate, in some cases, to assess a higher Taker Fee for trades executed against a Priority Customer with this proposal.

The Exchange's proposal to amend note 13, within Options 7, Section 4, is equitable and not unfairly discriminatory because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1-5 in Penny Symbols, to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. The Exchange's proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because 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 believes that it is equitable and not unfairly discriminatory to assess, in some cases, a higher Taker Fee to orders 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.

Non-Penny Symbols

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM²¹) from \$1.00 to \$1.10 per contract for all Members is reasonable. While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange. The Exchange notes that its Crossing Order Fees remain competitive as GEMX is proposing a Crossing Fee Cap herein.

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM²²) from \$1.00 to \$1.10 per contract for all Members is equitable and not unfairly discriminatory as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of \$1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is reasonable.²³ The Exchange proposes to add these new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make

²¹ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

²² This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

²³ The Exchange proposes to pay a Market Maker a \$0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to pay a Priority Customer a \$1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate.

clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4, today. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make clear, within Options 7, Section 3 rebates, that Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.²⁴ Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, 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.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is equitable and not unfairly discriminatory as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume. The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case,

²⁴ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. 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.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is reasonable.²⁶ The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of a new Non-Penny Symbol Tier 5 Taker Fee will make clear, within the Options 7, Section 3 fees, that Tier 5 qualifying volume would pay the same fees as the Non-Penny Symbol Tier 4 Taker Fees. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Taker Fee to refer to for qualifying Tier 5 Taker Fee volume in Non-

²⁵ See GEMX Options 2, Section 5.

²⁶ The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed a \$0.82 per contract Taker Fee in Non-Penny Symbols.

Penny Symbols.²⁷ Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, 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.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is equitable and not unfairly discriminatory, as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is reasonable.²⁸ The

²⁷ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

²⁸ As proposed within Options 7, Section 4C, Fees are capped at \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract

Crossing Fee Cap is intended to reward Members for executing a high volume of Firm Proprietary Crossing Orders on the Exchange. Specifically, the Crossing Fee Cap will continue to potentially lower transaction fees for Members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay transactional fees and will instead pay the service fee, thereby lowering their monthly fees. Charging a service fee is reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange believes that the Crossing Fee Cap will benefit all Members and investors that trade on the Exchange as it will provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market.

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is equitable and not unfairly discriminatory as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary

side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

transactions given that this practice is consistent with fee caps in place on ISE.²⁹ As a matter of practice, Members submitting Firm Proprietary orders are most likely to use the Crossing Fee Cap. Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term "& SPY" from Options 7, Section 4, Route-Out Fee, is reasonable, equitable and not unfairly discriminatory. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term "Penny Pilot Program" with "Penny Interval Program" and remove a reference to a list of Penny Pilot Program symbols is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

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.

²⁹ Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

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.

Options 7, Section 3

Penny Symbol

The Exchange's proposal to amend note 13, within Options 7, Section 4, does not impose an undue burden on competition because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1-5 in Penny Symbols, to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of

\$0.49 per contract for trades executed against a Priority Customer. The Exchange's proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because 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 believes that it does not impose an undue burden on competition to assess, in some cases, an increased Taker Fee to orders 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.

Non-Penny Symbol

The Exchange's proposal to increase the Non-Penny Symbol Fee for Responses to Crossing Orders (excluding PIM³⁰) from \$1.00 to \$1.10 per contract for all Members does not impose an undue burden on competition as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of \$1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) does not impose an undue burden on competition as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on

³⁰ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume. The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).³¹ 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 Taker Fees in Non-Penny Symbols does not impose an undue burden on competition as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

³¹ See GEMX Options 2, Section 5.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 does not impose an undue burden on competition as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with fee caps in place on ISE.³² Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term "& SPY" from Options 7, Section 4, Route-Out Fee, does not impose an undue burden on competition. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term "Penny Pilot Program" with "Penny Interval Program" and remove a reference to a list of Penny Pilot Program symbols does not impose an undue burden on competition. This

³² Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

amendment seeks to conform the name of the program which governs the listing of certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³³ 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.

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2020-18)

July __, 2020

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

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 July 13, 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 Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, 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, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions. Each amendment is described below.

Options 7, Section 3

Penny Symbols

Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of \$0.50 per contract for all Non-Priority Customers,³ Tier 4 and 5 Taker Fees of \$0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of \$0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. Further, today, the Exchange assesses Penny Symbol Taker Fees for Priority Customers as follows: \$0.49 for Tier 1, \$0.48 for Tiers 2 and 3, \$0.43

³ Non-Priority Customers consist of Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers.

for Tier 4 and \$0.42 for Tier 5. Current note 13 provides, with respect to Penny Symbol Tiers 1-5, that Non-Priority Customer orders will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer and Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer.

The Exchange proposes to amend note 13, with respect to Penny Symbol Tiers 1-5, to instead provide that Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Also, Non-Priority Customers who execute 4.0%⁴ or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, 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.

Non-Priority Customers, would continue to be charged a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, provided they execute less than 4.0% of Customer Total Consolidated Volume. If a Non-Priority Customer executed 4.0% or greater of Customer Total Consolidated Volume, they will be charged a Taker Fee, in Tiers 1-5 in Penny Symbols, of \$0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a \$0.50 per contract Taker Fee, in

⁴ The Exchange notes that 4.0% of Customer Total Consolidated Volume is equivalent to approximately 1,000,000 contracts.

Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, to be assessed a reduced \$0.47 per contract Taker Fee, in Tier 1-5 Penny Symbols, provided they meet the volume requirement.

Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract, in Tiers 1-5 Penny Symbols, for trades executed against a Priority Customer. The Exchange believes that this proposal will continue to attract additional volume to GEMX in order to obtain more favorable pricing.

Non-Penny Symbols

The Exchange proposes to increase the Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM⁵) from \$1.00 to \$1.10 per contract for all Members. While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options).⁶ The Exchange proposes to pay a Market Maker a \$0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to pay a Priority Customer a \$1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate. These proposed Non-Penny Symbol Tier 5 Maker Rebates are the same as rebates paid, today, for Non-Penny Symbol Tier 4 Maker Rebates. As is the case with

⁵ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

⁶ The index options fees apply only to NDX. These fees are assessed to all executions in NDX.

Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to add these new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make clear, within the Options 7, Section 3 regular order rebates, that Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates today. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.⁷

The Exchange proposes to adopt new Tier 5 Taker Fees in Non-Penny Symbols. The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed an \$0.82 per contract Taker Fee in Non-Penny Symbols. As is the case with Tier 4 Taker Fees in Non-Penny Symbols, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees. The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to

⁷ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of new Non-Penny Symbol Tier 5 Taker Fees will make clear, within the Options 7, Section 3 regular order fees, that Tier 5 qualifying volume would pay the same fees as the Non-Penny Symbol Tier 4 Taker Fees today. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members with Tier 5 Non-Penny Symbol Taker Fees to refer to for qualifying Tier 5 Taker Fee volume in Non-Penny Symbols.⁸

Proposed note 8 within Options 7, Section 3 will be discussed below.

Options 7, Section 4

The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C. By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism (“PIM”), Block or Qualified Contingent Cross (“QCC”) order. The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C, similar to Nasdaq ISE, LLC’s crossing fee cap.⁹

Specifically, the Exchange proposes to adopt a Crossing Fee Cap of \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. All eligible volume from affiliated Members would be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders would not be included

⁸ Id.

⁹ Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 would not be included in the calculation of the monthly fee cap. A service fee of \$0.00 per side would apply to all order types that are eligible for the fee cap. The service fee would apply once a Member reached the fee cap level and would apply to every contract side above the fee cap. A Member who did not reach the monthly fee cap would not be charged the service fee. Once the fee cap is reached, the service fee would apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee would not be calculated to reach the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed. The Exchange believes that the Crossing Fee Cap will cause Members to execute a greater number of Crossing Orders on GEMX in order to arrive at the cap and transact orders at no fee.

The Exchange also proposes to add a new note 8 within Options 7, Section 3 to indicate that Firm Proprietary contracts traded are subject to the Crossing Fee Cap proposed within Options 7, Section 4C.

Finally, the Exchange proposes to remove the term “& SPY” from Options 7, Section 4, Route-Out Fees. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols. For this reason, the term “& SPY” is proposed to be removed from the Penny title.

Options 7, Section 1

The Exchange proposes an amendment to Options 7, Section 1, General Provisions. The Exchange proposes to replace the term “Penny Pilot Program” with

“Penny Interval Program.” On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).¹⁰ The Exchange recently filed a proposal to amend GEMX Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).¹¹ The Exchange’s proposal amended GEMX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. This proposed change to Options 7, Section 1 conforms the name of the program and removes a reference to a list of Penny Pilot Program symbols.

2. Statutory Basis

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

¹⁰ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

¹¹ See Securities Exchange Act Release No. 89162 (June 26, 2020) (SR-GEMX-2020-16).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁴

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁵ (“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.¹⁶ 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.”¹⁷

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’ . . .”¹⁸ Although the court

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See NetCoalition, at 534 - 535.

¹⁷ Id. at 537.

¹⁸ 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)).

and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 3

Penny Symbols

The Exchange's proposal to amend note 13, within Options 7, Section 4,¹⁹ is reasonable because the proposal will continue to attract additional volume to GEMX in order that Members may obtain more favorable pricing. With this proposal, Non-Priority Customers, would continue to be charged a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer and execute less than 4.0% of Customer Total Consolidated Volume.²⁰ Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a reduced Taker Fee, in Tiers 1-5 in Penny Symbols, of \$0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a \$0.50 per contract Taker Fee, in Tiers 1-5 Penny Symbols, when they trade against a Priority Customer, to be assessed a \$0.47 per contract

¹⁹ The Exchange proposes to amend note 13 within Options 7, Section 4 to state, "Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, 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."

²⁰ Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of \$0.50 per contract for all Non-Priority Customers, Tier 4 and 5 Taker Fees of \$0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of \$0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. See Options 7, Section 3.

Taker Fee, in Tier 1-5 Penny Symbols, provided they meet the volume requirement. With this proposal Non-Priority Customers would have the opportunity to lower Taker Fees. Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract, in Tiers 1-5 Penny Symbols, for trades executed against a Priority Customer. Attracting volume to GEMX is beneficial to all market participants who may interact with that order flow. The Exchange believes that Members benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered, today, to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate, in some cases, to assess a higher Taker Fee for trades executed against a Priority Customer with this proposal.

The Exchange's proposal to amend note 13, within Options 7, Section 4, is equitable and not unfairly discriminatory because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1-5 in Penny Symbols, to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. The Exchange's proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because 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 believes that it is equitable and not unfairly discriminatory to assess, in some cases, a higher Taker Fee to orders 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.

Non-Penny Symbols

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM²¹) from \$1.00 to \$1.10 per contract for all Members is reasonable. While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange. The Exchange notes that its Crossing Order Fees remain competitive as GEMX is proposing a Crossing Fee Cap herein.

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM²²) from \$1.00 to \$1.10 per contract for all Members is equitable and not unfairly discriminatory as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of \$1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is reasonable.²³ The Exchange proposes to add these

²¹ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

²² This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

²³ The Exchange proposes to pay a Market Maker a \$0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/ Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes

new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4, today. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make clear, within Options 7, Section 3 rebates, that Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.²⁴ Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, 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.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is equitable and not unfairly discriminatory as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume.

to pay a Priority Customer a \$1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate.

²⁴ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. 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.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is reasonable.²⁶ The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of a new Non-Penny Symbol Tier 5 Taker Fee will make clear, within the Options 7, Section 3 fees, that Tier 5 qualifying volume would pay the same fees as the

²⁵ See GEMX Options 2, Section 5.

²⁶ The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/ Broker Dealer and a Professional Customer a \$0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed a \$0.82 per contract Taker Fee in Non-Penny Symbols.

Non-Penny Symbol Tier 4 Taker Fees. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Taker Fee to refer to for qualifying Tier 5 Taker Fee volume in Non-Penny Symbols.²⁷ Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, 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.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is equitable and not unfairly discriminatory, as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is reasonable.²⁸ The

²⁷ The Tier 5 Qualifying Tier Threshold, 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. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

²⁸ As proposed within Options 7, Section 4C, Fees are capped at \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the

Crossing Fee Cap is intended to reward Members for executing a high volume of Firm Proprietary Crossing Orders on the Exchange. Specifically, the Crossing Fee Cap will continue to potentially lower transaction fees for Members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay transactional fees and will instead pay the service fee, thereby lowering their monthly fees. Charging a service fee is reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange believes that the Crossing Fee Cap will benefit all Members and investors that trade on the Exchange as it will provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market.

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is equitable and not unfairly discriminatory as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is

Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with fee caps in place on ISE.²⁹ As a matter of practice, Members submitting Firm Proprietary orders are most likely to use the Crossing Fee Cap. Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term "& SPY" from Options 7, Section 4, Route-Out Fee, is reasonable, equitable and not unfairly discriminatory. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term "Penny Pilot Program" with "Penny Interval Program" and remove a reference to a list of Penny Pilot Program symbols is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

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.

²⁹ Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

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.

Options 7, Section 3

Penny Symbol

The Exchange's proposal to amend note 13, within Options 7, Section 4, does not impose an undue burden on competition because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1-5 in Penny Symbols, to \$0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. The Exchange's

proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because 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 believes that it does not impose an undue burden on competition to assess, in some cases, an increased Taker Fee to orders 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.

Non-Penny Symbol

The Exchange's proposal to increase the Non-Penny Symbol Fee for Responses to Crossing Orders (excluding PIM³⁰) from \$1.00 to \$1.10 per contract for all Members does not impose an undue burden on competition as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of \$1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) does not impose an undue burden on competition as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those

³⁰ This fee is \$0.05 per contract for all Responses to Crossing Orders executed in the PIM. See note 12 within Options 7, Section 4.

Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume. The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).³¹ 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 Taker Fees in Non-Penny Symbols does not impose an undue burden on competition as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

³¹ See GEMX Options 2, Section 5.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of \$85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 does not impose an undue burden on competition as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with fee caps in place on ISE.³² Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term "& SPY" from Options 7, Section 4, Route-Out Fee, does not impose an undue burden on competition. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term "Penny Pilot Program" with "Penny Interval Program" and remove a reference to a list of Penny Pilot Program symbols does not impose an undue burden on competition. This amendment seeks to conform the name of the program which governs the listing of

³² Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of \$90,000 per month, per Member.

certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

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.³³ 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-2020-18 on the subject line.

³³ 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-2020-18. 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-2020-18 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX, LLC Rules

* * * * *

Options 7 Pricing Schedule

* * * * *

Section 1. General Provisions

* * * * *

“**Penny Symbols**” are options overlying all symbols listed on Nasdaq GEMX that are in the Penny [Pilot]Interval Program. [The current list of Nasdaq GEMX-listed Penny Pilot Program symbols is available at http://www.ise.com/assets/files/products/pennies/penny_stocks.xls]

* * * * *

Section 3. Regular Order Fees and Rebates

Penny Symbols

Market Participant	Maker Rebate: Tier 1	Maker Rebate: Tier 2	Maker Rebate: Tier 3	Maker Rebate: Tier 4	Maker Rebate: Tier 5	Taker Fee:	Taker Fee:	Taker Fee:	Taker Fee:	Taker Fee:	Fee for Crossing Orders (excluding PIM) ⁽¹⁾ <u>(8)</u> (11)	Fee for Responses to Crossing Orders (excluding PIM) ⁽⁸⁾ <u>(12)</u>
						Tier 1 ⁽⁴⁾ (13)	Tier 2 ⁽⁴⁾ (13)	Tier 3 ⁽⁴⁾ (13)	Tier 4 ⁽⁴⁾ (13)	Tier 5 ⁽⁴⁾ (13)		
Market Maker ⁽²⁾⁽³⁾⁽⁵⁾	(\$0.20)	(\$0.25)	(\$0.30)	(\$0.41)	(\$0.45)	\$0.50	\$0.50	\$0.50	\$0.48	\$0.48	\$0.20	\$0.50
Non-Nasdaq GEMX	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.48	\$0.48	\$0.20	\$0.50

Market												
Maker												
(FarMM) ⁽³⁾												
Firm												
Proprietary /												
Broker-Dealer ⁽³⁾	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.49	\$0.49	\$0.20	\$0.50
Professional												
Customer ⁽³⁾	(\$0.20) ⁽⁷⁾	n/a	n/a	n/a	n/a	\$0.50	\$0.50	\$0.50	\$0.49	\$0.49	\$0.20	\$0.50
Priority												
Customer ⁽³⁾⁽⁵⁾	(\$0.25)	(\$0.40)	(\$0.48)	(\$0.53)	(\$0.53)	\$0.49	\$0.48	\$0.48	\$0.43	\$0.42	\$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	<u>Maker Rebate: Tier 5</u>	Taker Fee: Tier 1 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 2 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 3 ⁽⁴⁾⁽¹⁶⁾	Taker Fee: Tier 4 ⁽⁴⁾⁽¹⁶⁾	<u>Taker Fee: Tier 5</u> (4)(16)	Fee for Crossing Orders (excluding PIM) ⁽¹⁾⁽⁸⁾⁽¹¹⁾	Fee for Responses to Crossing Orders (excluding PIM) ⁽⁸⁾⁽¹²⁾
Market Maker ⁽²⁾⁽³⁾⁽⁵⁾	(\$0.40)	(\$0.42)	(\$0.45)	(\$0.75)	<u>(\$0.75)</u>	\$0.99	\$0.99	\$0.99	\$0.94	<u>\$0.94</u>	\$0.20	\$1.[00]10
Non-Nasdaq GEMX Market Maker (FarMM) ⁽³⁾	(\$0.25)	n/a	n/a	n/a	<u>n/a</u>	\$0.99	\$0.99	\$0.99	\$0.94	<u>\$0.94</u>	\$0.20	\$1.[00]10
Firm Proprietary /	(\$0.25)	n/a	n/a	n/a	<u>n/a</u>	\$0.99	\$0.99	\$0.99	\$0.94	<u>\$0.94</u>	\$0.20	\$1.[00]10

Broker-Dealer⁽³⁾

Professional Customer ⁽³⁾	(\$0.25)	n/a	n/a	n/a	<u>n/a</u>	\$0.99	\$0.99	\$0.99	\$0.94	<u>\$0.94</u>	\$0.20	\$1.[00]10
Priority Customer ⁽³⁾⁽⁵⁾	(\$0.75)	(\$0.80)	(\$0.85)	(\$1.05)	<u>(\$1.05)</u>	\$0.85	\$0.85	\$0.85	\$0.82	<u>\$0.82</u>	\$0.00	\$1.[00]10

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

* * * * *

8. [Reserved.] Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 4C.

* * * * *

13. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume [Non-Priority Customer orders] will be charged a Taker Fee of \$0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Taker Fee of \$0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of \$0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, 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.

* * * * *

Section 4. Other Options Fees and Rebates

A. Route-Out Fees¹

Market Participant	Penny [& SPY]	Non-Penny
Market Maker	\$0.55	\$1.09
Non-Nasdaq GEMX Market Maker (FarMM)	\$0.55	\$1.09
Firm Proprietary / Broker-Dealer	\$0.55	\$1.09
Professional Customer	\$0.55	\$1.09
Priority Customer	\$0.50	\$0.90

* * * * *

C. Crossing Fee Cap

Fees are capped at \$85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

* * * * *