

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 59	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 01 Amendment No. (req. for Amendments *)
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Filing by Nasdaq GEMX, LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

A proposal to amend various rules in Options 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 * Sun Last Name * Kim
 Title * Associate General Counsel
 E-mail * sun.kim@nasdaq.com
 Telephone * (646) 420-7816 Fax

Signature

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

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

(Title *)
 Date 03/12/2021
 By John Zecca (Name *)
 EVP and Chief Legal Counsel
 john.zecca@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend various rules in Options 3.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. 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:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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

a. Purpose

The purpose of the proposed rule change is to amend various rules in Options 3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today. Furthermore, the proposed changes are intended to harmonize the Exchange's rules where appropriate with the rules of the Exchange's affiliated options markets, including by using consistent language to describe identical functionality.³ As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) the Block Order Mechanism ("Block"),⁴ (2) the Facilitation Mechanism ("Facilitation"),⁵ (3) the Solicited Order Mechanism ("Solicitation"),⁶ (4) the Price Improvement Mechanism ("PIM"),⁷ and (5) Anti-Internalization.⁸

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among

³ The Exchange's affiliate, Nasdaq ISE, LLC ("ISE") recently filed a substantially similar rule change as part of this exercise. See Securities Exchange Act Release No. 91223 (February 26, 2021) (SR-ISE-2021-01).

⁴ See Options 3, Section 11(a).

⁵ See Options 3, Section 11(b).

⁶ See Options 3, Section 11(d).

⁷ See Options 3, Section 13.

⁸ See Options 3, Section 15(a)(3)(A).

other changes, to replace references to Professional interest with non-Priority Customer interest.⁹ The Exchange now proposes to make similar changes to replace all instances of “Professional” interest with “non-Priority Customer” interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR-GEMX-2019-10.¹⁰ While the term “Professional Orders” is defined within Options 1, Section 1(a)(38) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term “non-Priority Customer” is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules¹¹ to clearly delineate between orders and Responses¹² of the same capacity. For example, where the existing rule text currently states “Priority Customer bids (offers),” the Exchange proposes instead to state “Priority Customer Orders and Priority Customer Responses to buy (sell).” The Exchange notes that this is merely a

⁹ See Securities Exchange Act Release No. 86946 (September 12, 2019), 84 FR 49158 (September 18, 2019) (SR-GEMX-2019-10).

¹⁰ Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(ii), (b)(3)(i)-(iii) (renumbered to (b)(4)(i)-(iii) under this proposal), and (d)(2)(iii) (renumbered to (d)(3)(iii) under this proposal). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)-(3).

¹¹ Specifically in Options 3, Section 11, subsections (b)(3)(i)-(iii) (renumbered to (b)(4)(i)-(iii)), and (d)(2)(i) and (iii) (renumbered to (d)(3)(i) and (iii)) will be updated.

¹² A “Response” is an electronic message that is sent by Members in response to a broadcast message. See Options 3, Section 11.

non-substantive change as auction orders and Responses of the same capacity do not get treated differently for allocation purposes today. With the proposed changes, the Exchange is merely seeking to bring greater transparency around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options (“BX”) in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add “up to the size of the block order” at the end of subsection (a)(2)(i). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price up to the size of the block order. The Exchange is making this non-substantive change to align with BX’s Block rule,¹³ which will ensure rule consistency for identical functionality across affiliated markets. The language states that better priced interest gets executed in full only if there is sufficient size to execute against such interest, which is how block orders are executed and priced on the Exchange and BX today.

Second, the Exchange proposes a non-substantive change in the first sentence of subsection (a)(2)(ii) to replace “first and in time priority” with “first in price time

¹³ See BX Options 3, Section 11(a)(2)(A).

priority.” As amended, the rule will provide that at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in price time priority. This is not a change to the current Block allocation methodology, but rather a non-substantive change for better readability, and to align with BX’s Block rule¹⁴ in order to ensure rule consistency for identical functionality across affiliated markets. Block orders will continue to trade at a single execution price that allows the maximum number of contracts of the block order to be executed against both the Responses entered to trade against the order and unrelated interest on the Exchange’s order book.

Example 1

Block order is entered to buy 50 contracts @ 1.50

The following Responses are received:

Priority Customer Response 1 to sell 40 contracts @ 1.40

Priority Customer Response 2 to sell 10 contracts @ 1.40

Priority Customer Response 3 to sell 10 contracts @ 1.39

The block execution price would be \$1.40 (i.e., the price at which the maximum number of contracts could be executed) and would be executed as follows:

Block order trades 10 with Priority Customer Response 3 @ 1.40

Block order trades 40 with Priority Customer Response 1 @ 1.40

As shown above, Priority Customer Response 3 would be executed in full since it is priced better than the block execution price and there is sufficient size to execute Response 3 against the block order, while Priority Customer Responses 1 and 2, which are priced at the block execution price, would participate in price time priority – i.e., the

¹⁴ See BX Options 3, Section 11(a)(2)(B).

remaining 40 contracts would go to Response 1, which was received before Response 2.

Facilitation Mechanism

The Exchange proposes a number of changes to its Facilitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(b), the Exchange proposes to add new subsection (b)(1),¹⁵ which will provide that Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO¹⁶ on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Facilitation. The new subsection (b)(1) would simply provide additional detail about Facilitation's existing entry checks.

Example 2

Assume the following market:

Exchange BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05

¹⁵ As a result, current subsections (b)(1) - (3) will be renumbered as (b)(2) - (4). The Exchange will also renumber current subsection (b)(3)(iv) as subsection (b)(5).

¹⁶ The term "Away Best Bid or Offer" or "ABBO" means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. See Options 1, Section 1(a)(4).

No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

In renumbered subsection (b)(3), the Exchange proposes to replace the words “must not exceed” with “will only be considered up to.” This change more accurately describes current behavior in that the System will cap Responses to the size of the auction for purposes of allocation methodology.

In renumbered subsections (b)(4)(ii) and (b)(4)(iii), the Exchange proposes to amend the rule to provide that the facilitating Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order. If the Member requests a lower allocation percentage, the contra-side order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member’s request, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price.¹⁷

The Exchange also proposes to more accurately describe Facilitation’s auto-

¹⁷ Other options exchanges such as BX provide similar functionality that allows members using an auction mechanism to configure allocation priority. See, e.g., BX Options 3, Section 13, which provides a similar feature for the BX Options Price Improvement Auction (“PRISM”) called “Surrender.” ISE also recently amended its Facilitation rule in ISE Options 3, Section 11(b), which governs identical functionality on ISE as the Exchange’s Facilitation Mechanism, to make the same change as proposed herein. See supra note 3.

match functionality, which provides an enhanced price improvement opportunity for the agency order by permitting the contra-side order to further participate in the cross by auto-matching the price and size of competing interest providing price improvement from other market participants. The Exchange adopted Facilitation (and its auto-match functionality) as part of its application to be registered as a national securities exchange.¹⁸ In approving Facilitation, the Commission noted that it was largely based on similar functionality offered by ISE.¹⁹ The rule currently provides that upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed.²⁰ The Exchange proposes to state that if a Member elects to auto-match, the facilitating Electronic Access Member will be allocated the aggregate size of all competing quotes, orders, and

¹⁸ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209).

¹⁹ ISE adopted its auto-match functionality in 2010. See Securities Exchange Act Release No. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) (“Auto-Match Filing”). As discussed later in this filing, the Auto-Match Filing also introduced the auto-match feature on ISE’s PIM, which is functionally identical to the Exchange’s PIM. As such, the Exchange is proposing to make similar changes in PIM’s auto-match rule as proposed for Facilitation’s auto-match rule.

²⁰ See Options 3, Section 11(b)(3)(iii) (renumbered to Section 11(b)(4)(iii) under this proposal).

Responses (instead of “its full size”) at each price point, or at each price point up to the specified limit price (instead of “within its limit price”) if a limit is specified, until a price point is reached where the balance of the order can be fully executed. The Exchange believes that the modified language more accurately explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.²¹

Lastly, the Exchange proposes to add at the end of Supplementary Material .01 to Options 3, Section 11 that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.²² This language was included in the approval order to SR-ISE-2006-78 to allow solicited transactions in ISE’s Facilitation Mechanism. As discussed above, the Exchange’s Facilitation Mechanism is functionally identical to ISE’s Facilitation Mechanism. As such, the Exchange seeks to import the same prohibition into the Exchange’s rule text for greater transparency.

Solicited Order Mechanism

The Exchange proposes the below changes to its Solicitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(d), the Exchange proposes to add new subsection

²¹ The Auto-Match Filing describes the auto-match feature as allowing the initiating member to submit a contra-side order that will automatically match the price and size set forth by the competing interest from other market participants (i.e., auction responses, quotes, and orders) at any price level during the auction or up to a specified limit price if a limit is specified.

²² See Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007) (SR-ISE-2006-78) (Order Granting Approval of Proposed Rule Change Relating to Facilitation Mechanism).

(d)(1),²³ which will provide that orders must be must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Solicitation. The new subsection (d)(1) would simply provide additional detail about Solicitation's existing entry checks.

Example 3

Assume the following market:

Exchange BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Solicitation order is entered to buy 500 contracts @ 2.05

The Solicitation order is rejected upon entry for being crossed with the NBBO on the contra side. In contrast to Example 2 above for Facilitation, the Solicitation order in this instance is not able to begin crossed with the contra side Exchange BBO because of the all-or-none contingency of the Solicitation order.²⁴

Price Improvement Mechanism

The Exchange proposes a number of changes to the PIM rule, none of which will change the current operation of this technology offering. As noted above, many of these

²³ As a result, current paragraphs (d)(1) - (3) will be renumbered accordingly. The Exchange will also renumber current paragraph (d)(2)(iv) as paragraph (d)(4).

²⁴ See Options 3, Section 11(d) (requiring that each Solicitation order be designated as all-or-none).

modifications are similar to the changes proposed for Facilitation.

The Exchange proposes in Options 3, Section 13(b)(2) to delete “national best bid or offer” as NBBO is already defined in subsection (b)(1) above. The Exchange proposes in subsection (c)(2) to provide that responses in the PIM (i.e., “Improvement Orders”) will only be considered up to the size of the Agency Order. The proposed amendment will specify that the System will cap the size of the Improvement Orders to the auction size for purposes of the allocation methodology. This is similar to the change proposed above for Facilitation. The Exchange also proposes in subsection (c)(3) to amend the internal numbering from (1) and (2) to (i) and (ii) for greater numbering consistency within the PIM rule.

In subsection (d)(3), which describes how allocation and execution takes place in PIM, the Exchange proposes that the Counter-Side Order will be allocated the greater of one contract or 40% (or such lower percentage requested by the Member) of the initial size of the Agency Order. Similar to Facilitation as discussed above, the System currently permits Members entering orders into PIM to elect to receive a percentage allocation that is less than 40%, although the current rule is silent in this regard. If the Member requests a lower allocation percentage, the Counter-Side Order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member’s request, the Counter-Side Order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price.²⁵

²⁵ As noted above, BX has a similar feature called Surrender for its PRISM auction. See supra note 17.

The Exchange also proposes to more accurately describe PIM's auto-match functionality in a similar manner as Facilitation's auto-match functionality, as discussed above. In this instance, the Exchange proposes to amend the third sentence of subsection (d)(3) to provide: "If a Member elects to auto-match, the Counter-Side Order will be allocated the aggregate size of all competing quotes, orders, and Responses at each price point up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed." Similar to the proposed amendments to Facilitation's auto-match, the Exchange believes that the proposed language for PIM's auto-match more clearly explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.

The Exchange further proposes technical amendments in subsection (d)(3) to replace all instances of "Counter-Side order" as "Counter-Side Order" to use the correct terminology.

Anti-Internalization

The Exchange proposes to amend its anti-internalization ("AIQ") rule in Options 3, Section 15(a)(3)(A). Specifically, the Exchange proposes to add that AIQ does not apply during the opening process or reopening process following a trading halt pursuant to Options 3, Section 8 to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during the opening process are used to reopen an option series after a trading halt, and therefore proposes to specify that AIQ will not apply during an Opening Process (i.e., the opening and halt reopening process) in addition to an auction, as currently within the Rule. AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers exercise

over their quotes during this process. The proposed changes will align the Exchange's AIQ rule with BX's AIQ rule, which sets forth materially identical functionality.²⁶

Technical Amendments

The Exchange proposes two technical changes in the Supplementary Material to Options 3, Section 11. First, the Exchange proposes in Supplementary Material .03 to update an incorrect cross-cite from Options 3, Section 22(d) to Section 22(b), which limits principal transactions. Second, the Exchange proposes in Supplementary Material .05 to update the reference to "Block Mechanism" to "Block Order Mechanism" to use the correct terminology.

Lastly, the Exchange proposes to retitle General 4 (currently titled "Regulation") to "Registration Requirements" to harmonize its General Rule titles with that of its affiliates The Nasdaq Stock Market LLC and Nasdaq BX, Inc.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the protection of investors and public interest as all of the proposed changes will increase transparency

²⁶ See BX Options 3, Section 15(c)(1).

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

around how various existing Exchange mechanisms work today. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Furthermore, the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates.²⁹ The Exchange believes that these harmonizing changes would result in greater uniformity, and ultimately less burdensome and more efficient regulatory compliance by market participants. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that more consistent rules will increase the understanding of the Exchange's operations for Members that are also members on the Exchange's affiliates, thereby contributing to the protection of investors and the public interest.

Specifically, the Exchange believes that the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to

²⁹ See supra note 3.

Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Responses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms today. The Exchange is simply adding more granularity within its rules and specifying the capacity of such order or Response. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule are consistent with the protection of investors and the public interest as the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will specify that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange. As noted above, the Exchange is not proposing any changes to the current execution or allocation

methodology but believes that the changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.³⁰

Similarly, the Exchange believes that specifying the entry checks for Facilitation and Solicitation is consistent with the protection of investors and the public interest by bringing more transparency around how the entry checks operate today. The Exchange is not amending the current Facilitation and Solicitation entry checks; rather, the proposed changes are simply intended to add a more robust description of current System behavior in the Exchange's rules. The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The proposed changes to replace "must not exceed" with "will only be considered up to" in the Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the agency order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System.

³⁰ See supra notes 13-14, and accompanying text.

The Exchange believes that its proposal to specify in the Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% is consistent with the Act. This feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange notes that regardless of the Member's instruction, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the incoming order. The Exchange also notes that the configurable 40% allocation entitlement for Facilitation and PIM is consistent with the configurable allocation entitlements in place on its affiliated exchanges.³¹ Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality.

With respect to the proposed changes to the Facilitation and PIM auto-match feature, the Exchange is amending the current rule text so that it more accurately explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself; rather the proposed changes are intended to better align how this feature is

³¹ See supra note 17.

described in the Auto-Match Filing.³² Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class will better align the rule text with SR-ISE-2006-78. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in ISE's Facilitation Mechanism, which is identical to the Exchange's Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.³³

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process. Furthermore, the proposed AIQ changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.³⁴

The Exchange further believes that the technical changes it is proposing throughout Options 3 are non-substantive changes intended to enhance the accuracy of

³² See supra note 21.

³³ See supra note 22.

³⁴ See supra note 26.

the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating cross-cites and using correct terminology. Lastly, the Exchange believes that the harmonizing change to retitle General 4, as discussed above, will serve to further harmonize its Rule titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

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. As indicated above, no System changes to existing functionality are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates, and therefore promotes fair competition among the options exchanges. In particular, the proposed changes discussed above for Block and AIQ are based on BX rules governing identical functionality.³⁵ The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the proposed rule change will enhance

³⁵ See BX Options 3, Section 11(a) (Block) and Section 15(c)(1) (AIQ).

competition among the various markets for auction execution, potentially resulting in more active trading in auction mechanisms across all options exchanges.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)³⁶ of the Act and Rule 19b-4(f)(6) thereunder³⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed rule change does not significantly affect the protection of investors or the public interest or impose a significant burden on competition. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today, and conforming language within the Exchange's rules or to the rules of other exchanges for greater consistency. As indicated above, no System changes to existing functionality are

³⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁷ 17 CFR 240.19b-4(f)(6).

being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Specifically, the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules do not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the proposed changes will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Responses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms today. The Exchange is simply adding more granularity within its rules and specifying the capacity of such order or Response. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule do not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the Exchange is not proposing any changes to

the current execution or allocation methodology; rather, the proposed changes are intended to harmonize the Exchange's Block rule with BX's rule,³⁸ thereby promoting rule consistency among the affiliated markets for identical functionality. Furthermore, the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will make clear that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange.

Similarly, the Exchange believes that specifying the entry checks for Facilitation and Solicitation is consistent with the protection of investors and the public interest by bringing more transparency around how those entry checks operate today. The Exchange is not amending the current Facilitation and Solicitation entry checks; rather, the proposed changes are simply intended to add a more robust description of current System behavior in the Exchange's rules. The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange

³⁸ See supra notes 13-14, and accompanying text.

believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The proposed changes to replace “must not exceed” with “will only be considered up to” in the Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the Agency Order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System.

The Exchange believes that its proposal to specify in the Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% do not significantly affect the protection of investors or the public interest. The Exchange notes that the configurable 40% allocation entitlement for Facilitation and PIM is consistent with the configurable allocation entitlements in place on its affiliated exchanges.³⁹ Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality. In addition, the proposed language more accurately reflects how the Exchange currently grants allocation entitlements in these auction mechanisms to the initiating Member. The Exchange believes that this feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the

³⁹ See supra note 17.

full 40% entitlement. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the incoming order.

The proposed changes to the Facilitation and PIM auto-match feature described above do not significantly affect the protection of investors or the public interest or impose a significant burden on competition. The current rule text is being amended so that it more clearly explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself, rather the proposed changes are intended to better align how this feature is described in the Auto-Match Filing.⁴⁰ Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class will better align the rule text with SR-ISE-2006-78. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in ISE's Facilitation Mechanism, which is identical to the Exchange's Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.⁴¹

⁴⁰ See supra note 21.

⁴¹ See supra note 22.

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the proposed language is copied from BX's AIQ rule, which governs identical functionality on BX.⁴² Furthermore, the proposed changes will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process.

The Exchange further believes that the technical changes it is proposing throughout Options 3 do not significantly affect the protection of investors or the public interest or impose a significant burden on competition as they are non-substantive changes intended to enhance the accuracy of the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating cross-cites and using correct terminology. Lastly, the Exchange believes that the harmonizing change to retitle General 4, as discussed above, will serve to further harmonize its Rule titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

⁴² See supra note 26.

Furthermore, Rule 19b-4(f)(6)(iii)⁴³ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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

The proposed Block changes relating to the descriptions of the Block execution and allocation process in current Options 3, Section 11(a)(2)(i) and (ii) are identical to BX Options 3, Section 11(a)(2)(A) and (B); the proposed AIQ changes in current Options 3, Section 15(a)(3)(A) are identical to BX Options 3, Section 15(c)(1).

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.

⁴³ 17 CFR 240.19b-4(f)(6)(iii).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2021-01)

March __, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend various rules in Options 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 March 12, 2021, 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 various rules in Options 3.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend various rules in Options 3. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today. Furthermore, the proposed changes are intended to harmonize the Exchange’s rules where appropriate with the rules of the Exchange’s affiliated options markets, including by using consistent language to describe identical functionality.³ As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) the Block Order Mechanism (“Block”),⁴ (2) the Facilitation Mechanism (“Facilitation”),⁵ (3) the Solicited Order Mechanism (“Solicitation”),⁶ (4) the Price Improvement Mechanism (“PIM”),⁷ and (5) Anti-Internalization.⁸

³ The Exchange’s affiliate, Nasdaq ISE, LLC (“ISE”) recently filed a substantially similar rule change as part of this exercise. See Securities Exchange Act Release No. 91223 (February 26, 2021) (SR-ISE-2021-01).

⁴ See Options 3, Section 11(a).

⁵ See Options 3, Section 11(b).

⁶ See Options 3, Section 11(d).

⁷ See Options 3, Section 13.

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among other changes, to replace references to Professional interest with non-Priority Customer interest.⁹ The Exchange now proposes to make similar changes to replace all instances of “Professional” interest with “non-Priority Customer” interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR-GEMX-2019-10.¹⁰ While the term “Professional Orders” is defined within Options 1, Section 1(a)(38) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term “non-Priority Customer” is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules¹¹ to clearly delineate between orders and Responses¹² of the same

⁸ See Options 3, Section 15(a)(3)(A).

⁹ See Securities Exchange Act Release No. 86946 (September 12, 2019), 84 FR 49158 (September 18, 2019) (SR-GEMX-2019-10).

¹⁰ Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(ii), (b)(3)(i)-(iii) (renumbered to (b)(4)(i)-(iii) under this proposal), and (d)(2)(iii) (renumbered to (d)(3)(iii) under this proposal). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)-(3).

¹¹ Specifically in Options 3, Section 11, subsections (b)(3)(i)-(iii) (renumbered to (b)(4)(i)-(iii)), and (d)(2)(i) and (iii) (renumbered to (d)(3)(i) and (iii)) will be updated.

¹² A “Response” is an electronic message that is sent by Members in response to a broadcast message. See Options 3, Section 11.

capacity. For example, where the existing rule text currently states “Priority Customer bids (offers),” the Exchange proposes instead to state “Priority Customer Orders and Priority Customer Responses to buy (sell).” The Exchange notes that this is merely a non-substantive change as auction orders and Responses of the same capacity do not get treated differently for allocation purposes today. With the proposed changes, the Exchange is merely seeking to bring greater transparency around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options (“BX”) in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add “up to the size of the block order” at the end of subsection (a)(2)(i). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price up to the size of the block order. The Exchange is making this non-substantive change to align with BX’s Block rule,¹³ which will ensure rule consistency for identical functionality across affiliated markets. The language states that better priced interest gets executed in full only if there is sufficient size to execute against such interest, which is

¹³ See BX Options 3, Section 11(a)(2)(A).

how block orders are executed and priced on the Exchange and BX today.

Second, the Exchange proposes a non-substantive change in the first sentence of subsection (a)(2)(ii) to replace “first and in time priority” with “first in price time priority.” As amended, the rule will provide that at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in price time priority. This is not a change to the current Block allocation methodology, but rather a non-substantive change for better readability, and to align with BX’s Block rule¹⁴ in order to ensure rule consistency for identical functionality across affiliated markets. Block orders will continue to trade at a single execution price that allows the maximum number of contracts of the block order to be executed against both the Responses entered to trade against the order and unrelated interest on the Exchange’s order book.

Example 1

Block order is entered to buy 50 contracts @ 1.50

The following Responses are received:

Priority Customer Response 1 to sell 40 contracts @ 1.40

Priority Customer Response 2 to sell 10 contracts @ 1.40

Priority Customer Response 3 to sell 10 contracts @ 1.39

The block execution price would be \$1.40 (i.e., the price at which the maximum number of contracts could be executed) and would be executed as follows:

Block order trades 10 with Priority Customer Response 3 @ 1.40

Block order trades 40 with Priority Customer Response 1 @ 1.40

As shown above, Priority Customer Response 3 would be executed in full since it

¹⁴ See BX Options 3, Section 11(a)(2)(B).

is priced better than the block execution price and there is sufficient size to execute Response 3 against the block order, while Priority Customer Responses 1 and 2, which are priced at the block execution price, would participate in price time priority – i.e., the remaining 40 contracts would go to Response 1, which was received before Response 2.

Facilitation Mechanism

The Exchange proposes a number of changes to its Facilitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(b), the Exchange proposes to add new subsection (b)(1),¹⁵ which will provide that Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO¹⁶ on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Facilitation. The new subsection (b)(1) would simply provide additional detail about Facilitation's existing entry checks.

Example 2

Assume the following market:

¹⁵ As a result, current subsections (b)(1) - (3) will be renumbered as (b)(2) - (4). The Exchange will also renumber current subsection (b)(3)(iv) as subsection (b)(5).

¹⁶ The term "Away Best Bid or Offer" or "ABBO" means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. See Options 1, Section 1(a)(4).

Exchange BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05

No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

In renumbered subsection (b)(3), the Exchange proposes to replace the words “must not exceed” with “will only be considered up to.” This change more accurately describes current behavior in that the System will cap Responses to the size of the auction for purposes of allocation methodology.

In renumbered subsections (b)(4)(ii) and (b)(4)(iii), the Exchange proposes to amend the rule to provide that the facilitating Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order. If the Member requests a lower allocation percentage, the contra-side order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member’s request, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price.¹⁷

¹⁷ Other options exchanges such as BX provide similar functionality that allows members using an auction mechanism to configure allocation priority. See, e.g., BX Options 3, Section 13, which provides a similar feature for the BX Options Price Improvement Auction (“PRISM”) called “Surrender.” ISE also recently amended its Facilitation rule in ISE Options 3, Section 11(b), which governs

The Exchange also proposes to more accurately describe Facilitation’s auto-match functionality, which provides an enhanced price improvement opportunity for the agency order by permitting the contra-side order to further participate in the cross by auto-matching the price and size of competing interest providing price improvement from other market participants. The Exchange adopted Facilitation (and its auto-match functionality) as part of its application to be registered as a national securities exchange.¹⁸ In approving Facilitation, the Commission noted that it was largely based on similar functionality offered by ISE.¹⁹ The rule currently provides that upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed.²⁰ The Exchange proposes to state that if a Member elects to auto-match, the facilitating Electronic Access

identical functionality on ISE as the Exchange’s Facilitation Mechanism, to make the same change as proposed herein. See supra note 3.

¹⁸ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10-209).

¹⁹ ISE adopted its auto-match functionality in 2010. See Securities Exchange Act Release No. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) (“Auto-Match Filing”). As discussed later in this filing, the Auto-Match Filing also introduced the auto-match feature on ISE’s PIM, which is functionally identical to the Exchange’s PIM. As such, the Exchange is proposing to make similar changes in PIM’s auto-match rule as proposed for Facilitation’s auto-match rule.

²⁰ See Options 3, Section 11(b)(3)(iii) (renumbered to Section 11(b)(4)(iii) under this proposal).

Member will be allocated the aggregate size of all competing quotes, orders, and Responses (instead of “its full size”) at each price point, or at each price point up to the specified limit price (instead of “within its limit price”) if a limit is specified, until a price point is reached where the balance of the order can be fully executed. The Exchange believes that the modified language more accurately explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.²¹

Lastly, the Exchange proposes to add at the end of Supplementary Material .01 to Options 3, Section 11 that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.²² This language was included in the approval order to SR-ISE-2006-78 to allow solicited transactions in ISE’s Facilitation Mechanism. As discussed above, the Exchange’s Facilitation Mechanism is functionally identical to ISE’s Facilitation Mechanism. As such, the Exchange seeks to import the same prohibition into the Exchange’s rule text for greater transparency.

Solicited Order Mechanism

The Exchange proposes the below changes to its Solicitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(d), the Exchange proposes to add new subsection

²¹ The Auto-Match Filing describes the auto-match feature as allowing the initiating member to submit a contra-side order that will automatically match the price and size set forth by the competing interest from other market participants (i.e., auction responses, quotes, and orders) at any price level during the auction or up to a specified limit price if a limit is specified.

²² See Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007) (SR-ISE-2006-78) (Order Granting Approval of Proposed Rule Change Relating to Facilitation Mechanism).

(d)(1),²³ which will provide that orders must be must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Solicitation. The new subsection (d)(1) would simply provide additional detail about Solicitation's existing entry checks.

Example 3

Assume the following market:

Exchange BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Solicitation order is entered to buy 500 contracts @ 2.05

The Solicitation order is rejected upon entry for being crossed with the NBBO on the contra side. In contrast to Example 2 above for Facilitation, the Solicitation order in this instance is not able to begin crossed with the contra side Exchange BBO because of the all-or-none contingency of the Solicitation order.²⁴

Price Improvement Mechanism

The Exchange proposes a number of changes to the PIM rule, none of which will change the current operation of this technology offering. As noted above, many of these

²³ As a result, current paragraphs (d)(1) - (3) will be renumbered accordingly. The Exchange will also renumber current paragraph (d)(2)(iv) as paragraph (d)(4).

²⁴ See Options 3, Section 11(d) (requiring that each Solicitation order be designated as all-or-none).

modifications are similar to the changes proposed for Facilitation.

The Exchange proposes in Options 3, Section 13(b)(2) to delete “national best bid or offer” as NBBO is already defined in subsection (b)(1) above. The Exchange proposes in subsection (c)(2) to provide that responses in the PIM (i.e., “Improvement Orders”) will only be considered up to the size of the Agency Order. The proposed amendment will specify that the System will cap the size of the Improvement Orders to the auction size for purposes of the allocation methodology. This is similar to the change proposed above for Facilitation. The Exchange also proposes in subsection (c)(3) to amend the internal numbering from (1) and (2) to (i) and (ii) for greater numbering consistency within the PIM rule.

In subsection (d)(3), which describes how allocation and execution takes place in PIM, the Exchange proposes that the Counter-Side Order will be allocated the greater of one contract or 40% (or such lower percentage requested by the Member) of the initial size of the Agency Order. Similar to Facilitation as discussed above, the System currently permits Members entering orders into PIM to elect to receive a percentage allocation that is less than 40%, although the current rule is silent in this regard. If the Member requests a lower allocation percentage, the Counter-Side Order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member’s request, the Counter-Side Order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price.²⁵

The Exchange also proposes to more accurately describe PIM’s auto-match

²⁵ As noted above, BX has a similar feature called Surrender for its PRISM auction. See supra note 17.

functionality in a similar manner as Facilitation's auto-match functionality, as discussed above. In this instance, the Exchange proposes to amend the third sentence of subsection (d)(3) to provide: "If a Member elects to auto-match, the Counter-Side Order will be allocated the aggregate size of all competing quotes, orders, and Responses at each price point up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed." Similar to the proposed amendments to Facilitation's auto-match, the Exchange believes that the proposed language for PIM's auto-match more clearly explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.

The Exchange further proposes technical amendments in subsection (d)(3) to replace all instances of "Counter-Side order" as "Counter-Side Order" to use the correct terminology.

Anti-Internalization

The Exchange proposes to amend its anti-internalization ("AIQ") rule in Options 3, Section 15(a)(3)(A). Specifically, the Exchange proposes to add that AIQ does not apply during the opening process or reopening process following a trading halt pursuant to Options 3, Section 8 to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during the opening process are used to reopen an option series after a trading halt, and therefore proposes to specify that AIQ will not apply during an Opening Process (i.e., the opening and halt reopening process) in addition to an auction, as currently within the Rule. AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers exercise

over their quotes during this process. The proposed changes will align the Exchange's AIQ rule with BX's AIQ rule, which sets forth materially identical functionality.²⁶

Technical Amendments

The Exchange proposes two technical changes in the Supplementary Material to Options 3, Section 11. First, the Exchange proposes in Supplementary Material .03 to update an incorrect cross-cite from Options 3, Section 22(d) to Section 22(b), which limits principal transactions. Second, the Exchange proposes in Supplementary Material .05 to update the reference to "Block Mechanism" to "Block Order Mechanism" to use the correct terminology.

Lastly, the Exchange proposes to retitle General 4 (currently titled "Regulation") to "Registration Requirements" to harmonize its General Rule titles with that of its affiliates The Nasdaq Stock Market LLC and Nasdaq BX, Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the protection of investors and public interest as all of the proposed changes will increase transparency

²⁶ See BX Options 3, Section 15(c)(1).

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

around how various existing Exchange mechanisms work today. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Furthermore, the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates.²⁹ The Exchange believes that these harmonizing changes would result in greater uniformity, and ultimately less burdensome and more efficient regulatory compliance by market participants. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that more consistent rules will increase the understanding of the Exchange's operations for Members that are also members on the Exchange's affiliates, thereby contributing to the protection of investors and the public interest.

Specifically, the Exchange believes that the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to

²⁹ See supra note 3.

Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Responses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms today. The Exchange is simply adding more granularity within its rules and specifying the capacity of such order or Response. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule are consistent with the protection of investors and the public interest as the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will specify that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange. As noted above, the Exchange is not proposing any changes to the current execution or allocation

methodology but believes that the changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.³⁰

Similarly, the Exchange believes that specifying the entry checks for Facilitation and Solicitation is consistent with the protection of investors and the public interest by bringing more transparency around how the entry checks operate today. The Exchange is not amending the current Facilitation and Solicitation entry checks; rather, the proposed changes are simply intended to add a more robust description of current System behavior in the Exchange's rules. The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The proposed changes to replace "must not exceed" with "will only be considered up to" in the Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the agency order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System.

³⁰ See supra notes 13-14, and accompanying text.

The Exchange believes that its proposal to specify in the Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% is consistent with the Act. This feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange notes that regardless of the Member's instruction, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the incoming order. The Exchange also notes that the configurable 40% allocation entitlement for Facilitation and PIM is consistent with the configurable allocation entitlements in place on its affiliated exchanges.³¹ Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality.

With respect to the proposed changes to the Facilitation and PIM auto-match feature, the Exchange is amending the current rule text so that it more accurately explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself; rather the proposed changes are intended to better align how this feature is

³¹ See supra note 17.

described in the Auto-Match Filing.³² Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class will better align the rule text with SR-ISE-2006-78. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in ISE's Facilitation Mechanism, which is identical to the Exchange's Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.³³

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process. Furthermore, the proposed AIQ changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.³⁴

The Exchange further believes that the technical changes it is proposing throughout Options 3 are non-substantive changes intended to enhance the accuracy of

³² See supra note 21.

³³ See supra note 22.

³⁴ See supra note 26.

the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating cross-cites and using correct terminology. Lastly, the Exchange believes that the harmonizing change to retitle General 4, as discussed above, will serve to further harmonize its Rule titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

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. As indicated above, no System changes to existing functionality are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates, and therefore promotes fair competition among the options exchanges. In particular, the proposed changes discussed above for Block and AIQ are based on BX rules governing identical functionality.³⁵ The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the proposed rule change will enhance

³⁵ See BX Options 3, Section 11(a) (Block) and Section 15(c)(1) (AIQ).

competition among the various markets for auction execution, potentially resulting in more active trading in auction mechanisms across all options exchanges.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁷

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

³⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-2021-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2021-01. 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-2021-01 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.³⁸

J. Matthew DeLesDernier
Assistant Secretary

³⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX, LLC Rules

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General 4 [Regulation]Registration Requirements

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Options 3 Options Trading Rules

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Section 11. Auction Mechanisms

For purposes of this Rule, a "broadcast message" means an electronic message that is sent by the Exchange to all Members, and a "Response" means an electronic message that is sent by Members in response to a broadcast message. Also for purposes of this Rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via an Options Trader Alert, but no less than 100 milliseconds and no more than 1 second.

(a) **Block Order Mechanism.** The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. Block-size orders are orders for fifty (50) contracts or more.

(1) – (2) No change.

(i) Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the Member's instruction. Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price up to the size of the block order.

(ii) At the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first [and] in price time priority, and then quotes, [Professional]non-Priority Customer Orders, and [Professional]non-Priority Customer Responses will participate in the execution of the block-size order based upon the percentage of the total number of contracts available at the block execution price that is represented by the size of the quote, [Professional]non-Priority Customer Order, or [Professional]non-Priority Customer Response.

(3) No change.

(b) **Facilitation Mechanism.** The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism.

(1) Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected.

(2)[(1)] Upon the entry of an order into the Facilitation Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent and Members will be given an opportunity to enter Responses with the prices and sizes at which they want to participate in the facilitation of the order.

(3)[(2)] Responses may be priced at the price of the order to be facilitated or at a better price and [must not exceed]will only be considered up to the size of the order to be facilitated.

(4)[(3)] At the end of the period given for the entry of Responses, the facilitation order will be automatically executed.

(i) Unless there is sufficient size to execute the entire facilitation order at a better price, Priority Customer Orders and Priority Customer Responses to buy (sell)[bids (offers)] at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. [Professional]Non-Priority Customer Orders and non-Priority Customer Responses to buy (sell) and Market Maker quotes at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the order being facilitated a better price for the number of contracts associated with such higher bids (lower offers). The facilitation order will be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on Nasdaq GEMX.

(ii) The facilitating Electronic Access Member will [execute at least]be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. Thereafter, [Responses,] quotes, [and Professional]non-Priority Customer Orders,

and non-Priority Customer Responses at the facilitation price will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [Response, Professional Order or] quote, non-Priority Customer Order, or non-Priority Customer Response.

- (iii) Upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. [In this case] If a Member elects to auto-match, the facilitating Electronic Access Member will be allocated [its full size] the aggregate size of all competing quotes, orders, and Responses at each price point, or at each price point [within its limit price] up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the facilitating Member shall be allocated [at least] up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after Priority Customer Orders and Priority Customer Responses [interest] at such price point. Thereafter, all [other orders] non-Priority Customer Orders, non-Priority Customer Responses, and quotes at the price point will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [order] non-Priority Customer Order, non-Priority Customer Response or quote. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(5)[(iv)] If a trading halt is initiated after an order is entered into the Facilitation Mechanism, such auction will be automatically terminated without execution.

(c) Reserved.

(d) **Solicited Order Mechanism.** The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

(1) Orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected.

(2)[(1)] Upon entry of both orders into the Solicited Order Mechanism at a proposed execution price, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent and Members will be

given an opportunity to enter Responses with the prices and sizes at which they would be willing to participate in the execution of the Agency Order.

(3)[(2)] At the end of the period given Members to enter Responses, the Agency Order will be automatically executed in full or cancelled.

(i) If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: (A) the execution price is equal to or better than the best bid or offer on the Exchange, and (B) there are no Priority Customer Orders or Priority Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Priority Customer Orders or Priority Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. The aggregate size of all orders, quotes and Responses at the bid or offer will be used to determine whether the entire Agency Order can be executed. Both the solicited order and Agency Order will be cancelled if an execution would take place at a price that is inferior to the best bid or offer on the Exchange, or if there is a Priority Customer on the book at the proposed execution price but there is insufficient size on the Exchange to execute the entire Agency Order.

(ii) If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), subject to the condition in (i)(A), and the solicited order will be cancelled. The aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

(iii) When executing the Agency Order against the bid or offer in accordance with paragraph (i) above, or at an improved price in accordance with paragraph (ii) above, Priority Customer Orders and Priority Customer Responses will be executed first. [Professional]Non-Priority Customer Orders, non-Priority Customer Responses, and Market Maker quotes participate next in the execution of the Agency Order based upon the percentage of the total number of contracts available at the best price that is represented by the size of the [Professional]non-Priority Customer Order, non-Priority Customer Response, or Market Maker quote.

(4)[(iv)] If a trading halt is initiated after an order is entered into the Solicited Order Mechanism, such auction will be automatically terminated without execution.

(5)[(3)] Prior to entering Agency Orders into the Solicited Order Mechanism on behalf of a customer, EAMs must deliver to the customer a written notification informing

the customer that its order may be executed using the Exchange's Solicited Order Mechanism. Such written notification must disclose the terms and conditions contained in this Rule and must be in a form approved by the Exchange.

Supplementary Material to Options 3, Section 11

.01 It will be a violation of a Member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a Member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the time period given for the entry of Responses, if a Member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the Member did so to avoid execution of its customer order in whole or in part by other brokers at the better price. Additionally, any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.

.02 No change.

.03 Under paragraph (d) above, Members may enter contra orders that are solicited. The Solicited Order Mechanism provides a facility for Members that locate liquidity for their customer orders. Members may not use the Solicited Order Mechanism to circumvent Exchange Options 3, Section 22(b[d]) limiting principal transactions. This may include, but is not limited to, Members entering contra orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.

.04 No change.

.05 Penny Prices. Orders and Responses may be entered into the Block Order Mechanism and receive executions at penny increments. Orders and quotes in the market that receive the benefit of the block execution price under paragraph (a)(2)(i) may also receive executions at penny increments.

* * * * *

Section 13. Price Improvement Mechanism for Crossing Transactions

(a) The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the

Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a "Crossing Transaction").

(b) Crossing Transaction Entry. A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order"). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.

- (1) If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer ("NBBO") is \$0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq GEMX order book on the same side of the Agency Order.
- (2) If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the [national best bid or offer ("NBBO")] and better than the limit order or quote on the Nasdaq GEMX order book on the same side of the Agency Order.
- (3) The Crossing Transaction may be priced in one-cent increments.
- (4) The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

(c) Exposure Period. Upon entry of a Crossing Transaction into the Price Improvement Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. This broadcast message will not be included in the Exchange's disseminated best bid or offer and will not be disseminated through OPRA.

- (1) The Exchange will designate via an Options Trader Alert a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders").
- (2) Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and will only be considered [for any size] up to the size of the Agency Order.
- (3) During the exposure period, Improvement Orders may not be canceled, but may be modified to ([1]i) increase the size at the same price, or ([2]ii) improve the price of the Improvement Order for any size up to the size of the Agency Order.

(4) During the exposure period, responses (including the Counter-Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants.

(5) The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to Options 3, Section 13(c)(1) above, (ii) upon the receipt of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

(d) **Execution.** At the end of the exposure period the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market, Improvement Orders, and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price.

(1) At a given price, "Priority Customer Interest" (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before "[Professional]non-Priority Customer Interest" ([Professional]non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes).

(2) After Priority Customer Interest at a given price, [Professional]non-Priority Customer Interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of such interest.

(3) In the case where the Counter-Side Order is at the same price as [Professional]non-Priority Customer Interest in (d)(2), the Counter-Side [o]Order will be allocated the greater of one (1) contract or forty percent (40%) (or such lower percentage requested by the Member) of the initial size of the Agency Order before [Professional]non-Priority Customer Interest is executed. Upon entry of Counter-Side [o]Orders, Members can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. [In this case] If a Member elects to auto-match, the Counter-Side [o]Order will be allocated the aggregate size of all competing quotes, orders and Improvement Orders [its full size] at each price point, or at each price point [within its limit price] up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the Counter-Side [o]Order shall be allocated the greater of one contract or forty percent (40%) (or such lower percentage requested by the Member) of the original size of the Agency Order, but only after Priority Customer Interest at such price point are executed in full. Thereafter, all [Professional]non-Priority Customer Interest at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of

contracts available at the price that is represented by the size of the [Professional]non-Priority Customer Interest. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

- (4) When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the \$.01 increment that favors the Agency Order.
- (5) If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated without execution.

* * * * *

Section 15. Simple Order Risk Protections

(a) No change.

(1) – (2) No change.

(3) The following are Market Maker risk protections on GEMX:

(A) **Anti-Internalization.** Quotes and orders entered by Market Makers will not be executed against quotes and orders entered on the opposite side of the market by the same Market Maker using the same Market Maker identifiers, or alternatively, if selected by the Member, the same Exchange account number or Member firm identifier. In such a case, the System will cancel the resting quote or order back to the entering party prior to execution. This functionality shall not apply in any auction or during an Opening Process.

* * * * *