OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 119

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 02
Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to delete the Exchange membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC rules in the General 3 Rule 1000 Series, and other related changes.

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 * Brett Last Name * Kitt
Title * Principal Associate General Counsel
E-mail * Brett.kitt@nasdaq.com
Telephone * (301) 978-8132 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.

Date 04/13/2021

By John A. Zecca
(Name *)

(Title *)
EVP and Chief Legal Officer

john.zecca@nasdaq.com

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

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

☐

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC ("GEMX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to delete the Exchange's membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC's ("Nasdaq") rules in the General 3 Rule 1000 Series, and other related changes.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The Broker-Dealer Membership Application is attached as Exhibit 3A. The Exchange's Membership Agreement is attached as Exhibit 3B. 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 the Board of Directors of the Exchange on January 4, 2019. No other action is necessary for the filing of the rule change.

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

Brett Kitt
Principal Associate General Counsel
Nasdaq, Inc.
301-978-8132

or

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Alejandro Aguayo
Senior Surveillance Analyst
Nasdaq, Inc.
301-978-8417

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

a. Purpose

General 3 of the Exchange's General Rules and Nasdaq's General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on the Exchange and Nasdaq. The Exchange proposes to delete in their entirety the rules under its General 3 title, entitled "Membership and Access," and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the "Nasdaq Rule 1000 Series" or "Nasdaq Membership Rules") as described below.[3] The Exchange will also relocate the text under its rule under General 3, Section 4(b) and place it under new Exchange General 2, Section 11, as further described below.

This proposal is part of the Exchange's plan to harmonize its membership rules with the membership rules of the Nasdaq, Nasdaq BX, Inc. ("BX"), and Nasdaq ISE, LLC ("ISE") exchanges.[4] The Exchange notes that Nasdaq MRX, LLC, and Nasdaq Phlx, LLC ("Phlx") (together with Nasdaq, BX, and ISE, the "Affiliated Exchanges")

---

3 The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

4 The BX membership rules were previously amended to incorporate by reference Nasdaq's membership rules. See Securities Exchange Act Release No. 34-86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR-BX-2019-022). ISE has also filed a proposal to incorporate by reference Nasdaq's membership rules. See Securities Exchange Act Release No. 90903 (January 12, 2021), 86 FR 5284 18892 (January 19, 2021) (SR-ISE-2020-43).

each plan to propose similar rule changes that will render their membership rules substantially similar to those of Nasdaq, BX, and ISE. To account for any differences that may exist, the proposed introductory paragraphs list instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq GEMX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq GEMX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq GEMX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq GEMX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq GEMX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker (including a "Foreign Member," as defined under proposed GEMX General 3); the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "Exchange

Membership Department" or "Membership Department" shall be read to refer to the Nasdaq GEMX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq GEMX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to "General 1 and Equity 1" shall be read as references to Nasdaq GEMX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to "General 9, Section 20" shall be read as references to Nasdaq GEMX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to "General 9, Section 37" shall be read as references to Nasdaq GEMX Options 9, Section 21; and cross references to the "General 4, Rule 1200 Series" shall be read as references to Nasdaq GEMX General 4, Section 1.[5]

Finally, as explained below, the introductory paragraph will indicate that the Nasdaq Rule 1000 Series shall also apply to Nasdaq GEMX Members who meet the requirements of a "Foreign Member."

As compared to the Exchange's existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange's rulebook, the Exchange's membership rules will be organized in a more logical order. The incorporated rules will eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

---

[5] The Exchange notes that its General 4 title (entitled "Regulation") currently incorporates by reference the rules contained in Nasdaq's General 4 title. See Securities Exchange Act Release No. 85737 (April 26, 2019), 84 FR 18897 (May 2, 2019) (SR-GEMX-2019-05).

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000 Series rules have no analogue in the existing Exchange rules. Finally, as explained later, the Exchange will also relocate the text under General 3, Section 4(b) to new Exchange General 2, Section 11.

Rule 1001

Nasdaq Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Rule 1200 Series on behalf of Nasdaq.[6] Moreover, Nasdaq Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Nasdaq Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain

---

6 Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. See supra note 5.

FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

The Exchange is proposing to incorporate by reference Nasdaq Rule 1001, which currently has no analogue rule under its membership rules. The language of Nasdaq Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference to Nasdaq Rule 1001 is not a substantive amendment to the Exchange rules.

Rule 1002

Nasdaq Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of Nasdaq members and associated persons, the registration of branch offices, and the designation of a Member's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq Rule 1002 and delete those under current General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a Member (except for those excluded under Rule 1002(b)). Rule 1002(a) is similar to General 3, Section 1(a) of the Exchange's membership rules to the

extent that it describes that brokers or dealers may become Exchange members ("Members"), which in turn entitles them to conduct their business on the Exchange. General 3, Section 1(a) provides that the Exchange shall issue memberships conferring the ability to transact on the Exchange. Exchange General 3, Section 1(a) also provides that there is no limit on the number of memberships that may be issued by the Exchange and that, under the rule, the Exchange shall not act in a manner that does not comply with the provisions of Section 6(c)(4) of the Exchange Act. Similarly, the Nasdaq Rule 1000 Series does not establish a limit to the number of memberships issued and conducts its review of applications for membership pursuant to the Securities Exchange Act of 1934. Furthermore, General 3, Section 1(a) provides that a Member may be a corporation, partnership, or limited liability company, and must be a registered broker-dealer and meet the qualifications for Exchange membership. The Exchange believes that incorporating by reference Nasdaq Rule 1002(a) expands upon Exchange General 3, Section 1(a) by including an associated person of a Member ("Associated Person") under this threshold requirement.

The Exchange's General 3, Section 1(b) provides that a Member that does not maintain an office in the United States ("Foreign Member") that is responsible for preparing and maintaining financial and other reports required to be filed with the Commission and with the Exchange must prepare such reports in English and in U.S. dollars, reimburse the Exchange for any expense incurred in examining the Member to the extent that such expense is in excess of the cost associated with examining a Member located within the continental United States, and ensure the availability of an individual who is fluent in English and knowledgeable in securities and financial matters to assist

representatives of the Exchange during examinations. Nasdaq General 9, Section 50 is a Nasdaq rule substantially similar to the provisions in General 3, Section 1(b). In order to preserve the enumerated characteristics of a Foreign Member, which would otherwise be deleted from its Rulebook by incorporating by reference the Nasdaq Rule 1000 Series, the Exchange proposes to include the text of its General 3, Section 1(b) under the General 3's introductory paragraph and indicate that the Nasdaq Membership Rules will also apply to the members who meet the Foreign Member requirements.

Furthermore, General 3, Section 1(c) provides that every Member shall have as the principal purpose of being a Member the conduct of a securities business, and that purpose shall be deemed to exist if and so long as: (1) the Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and (2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder. The Exchange believes that the membership qualifications described in this section are consistent with the eligibility criteria described in Nasdaq Rule 1002 and the disclosures and information provided by Applicant pursuant to Nasdaq Rule 1013. To account for the Exchange rights referenced in Section 1(c) (Electronic Access Member, Primary Market Maker, or Competitive Market Maker), as defined under the Exchange's Options 1, Section 1 provisions, the Exchange will also indicate in the proposed General 3 introductory paragraph that the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker.

Nasdaq Rule 1002(b)(1) establishes that subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq rules, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as Nasdaq may prescribe. Nasdaq Rule 1002(b)(1) can be compared to the provision currently under Exchange's General 3, Section 2(b) that establishes that the Exchange may deny or condition the approval of a Member, or preclude or condition a person from becoming associated with a Member, for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act. Furthermore, the requirement to comply with Nasdaq rules under Section (b)(1), is also consistent with the provision under Exchange General 3, Section 4(c) that states that every Member shall pledge to abide by the by-laws and rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the Exchange's by-laws and rules.

Nasdaq Rule 1002(b)(2) establishes that, subject to such exceptions as may be explicitly provided elsewhere in Nasdaq rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no

Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under Nasdaq Membership Rules. Nasdaq Rule 1002(b)(2) is similar to the requirement that applies to Associated Persons under General 3, Section 3(a) of the Exchange rules. The Exchange's General 3, Section 3 rules enumerate conditions that apply to persons associated with Members of the Exchange. Exchange General 3, Section 3(a) provides that Associated Persons are bound by the Exchange's by-laws and rules and the rules of the Clearing Corporation and describes the circumstances concerning the barring of an Associated Person in such role. Exchange General 3, Sections 2(b), 3(a), and 4(c) are, substantially similar to the provisions of Nasdaq Rule 1002(b),[7] which the Exchange proposes be incorporated by reference into its membership rules. The Exchange notes that General 3, Section 3(b) requires that Members file and keep current a list of its associated persons who are its executive officers, directors, principals, shareholders, and general partners. A Member's obligation to maintain updated information for their registered representatives or principals is prescribed under Nasdaq's General 4 title which was previously incorporated by reference into the Exchange rules,[8] rendering Exchange General 3, Section 3(b) unnecessary.

Exchange General 3, Section 3(c) provides that a claim of any Associated Person described in the first sentence of General 3, Section 3(b) (i.e., a Member's executive

---

7 The Exchange notes that it will not relocate or carve-out this duplicative provision concerning The Options Clearing Corporation ("OCC"). Pursuant to the Exchange's Options 9, Section 2 ("Adherence to Law"), Members are required to abide by the Act, the Exchange's by-laws, the rules of the Exchange, and OCC rules.

8 See supra note 5.

officers, directors, principal shareholders, and general partners) against a Member shall be subordinate in right of payment of customers and other Members. This subordination rule was copied from ISE's then-current Rulebook at the time, but was never directly applicable to GEMX. The rule was originally approved as part of ISE's Form 1 filing on February 24, 2000.[9] At that time, ISE members had equity ownership interest in ISE through their memberships and the subordination language was relevant. ISE has since demutualized, with its members no longer having any equity ownership interest through their ISE memberships, and has deleted this language as obsolete.[10] Because GEMX members never had a similar ownership interest through their GEMX memberships, this rule did not apply to GEMX in the first place. As such, the Exchange proposes to delete this provision in its entirety.

Nasdaq Rule 1002(c) establishes, as a condition to maintaining Nasdaq membership, that Members shall at all times maintain membership in a registered securities association or another registered exchange. Furthermore, the rule prescribes that Members that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference. Because the Exchange does not act in the capacity of a designated examining authority ("DEA"), like the Nasdaq, BX, and ISE, it requires that all applicants for membership have an assigned DEA in place as a condition of its membership.

---

9 See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

10 See Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Order Approving Proposed Rule Change and Amendment No. 1 thereto by the International Securities Exchange LLC To Restructure From a Limited Liability Company to a Corporation).

Nasdaq Rule 1002(d) states that Nasdaq members are deemed to comply with Nasdaq's branch office registration requirements to the extent that they keep current a Uniform Branch Office Registration Form ("Form BR"), which contains the requisite information and which is accessible electronically to Nasdaq. Members that are not FINRA members shall continue to submit to Nasdaq a Branch Office Disclosure Form, as they have done previously. The Exchange proposes to incorporate by reference this rule, which is consistent with the provisions under the Exchange's Options 10, Section 5, entitled Branch Offices.[11] The Exchange proposes that the cross-reference in Nasdaq Rule 1002(d)(2) to General 9, Section 20 shall be read as a reference to Exchange Options 10, Section 5(c)(2).

Rule 1011

Nasdaq Rule 1011 contains definitions applicable to the Nasdaq Membership Rules. Nasdaq Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference the Nasdaq definitions under Rule 1011, the Exchange believes it will further harmonize its rules with respect to the membership rules of Nasdaq, BX, and ISE. The Exchange notes that the defined terms in Nasdaq Rule 1011, to be incorporated by reference into the Exchange's rules, are self-contained and have no impact on GEMX rules outside its membership rules. The terms "Applicant," "Department," "Director," "Interested Staff," "Securities business," "Exchange Board," "principal place of business," "registered broker or dealer," "Representative," "sales practice event," "Subcommittee," and "statutory disqualification" have not been defined

---

[11] ISE Options 10 is incorporated by reference into GEMX Options 10. See Securities Exchange Act Release No. 86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR-GEMX-2019-08).

in the Exchange's rulebook. The Exchange notes that the term "associated person" as defined in the Exchange's rulebook[12] is substantially similar to the definition in Nasdaq General 1(b)(2). Relatedly, the term "Proprietary Trading Firm" as defined in Nasdaq Rule 1011(o) is substantially similar with the definition of "proprietary trading" as defined in the Exchange's rulebook.[13] The Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1012

Nasdaq Rule 1012 ("General Application Provisions") provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership with Nasdaq. In contrast, the Exchange membership rules contain vague provisions describing the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that Nasdaq Rule 1012 provides a more detailed set of instructions for Applicants, Members, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating Rule 1012 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

---

12 Exchange General 1, Section 1(a)(1).

13 Exchange Options 1, Section 1(a)(40)

Nasdaq Rule 1012(a) provides that Applicants and Nasdaq Members may submit an application or other documents and information to Nasdaq by first-class mail, overnight courier, hand delivery, or by electronic means; this section also provides that Nasdaq shall serve a notice or decision issued under the Nasdaq Membership Rules by first-class mail or electronic means on the Applicant or Member or its counsel, unless a Nasdaq rule specifies a different method of service; finally, this section also details when service by Nasdaq or an Applicant shall be deemed complete. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Nasdaq Rule 1012(b) provides a definition of the term "calendar days" and describes the manner in which times under the Nasdaq Membership Rule shall be computed. The Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of times under its membership rules.

Nasdaq Rule 1012(c) describes a(n) Applicant's, Member's, and Associated Person's duty to ensure that the information they provide to Nasdaq at the time of the filing is accurate, complete, and current. Moreover, this provision requires that Applicant's, Member's, and Associated Person's shall ensure that membership applications and supporting materials filed with Nasdaq remain accurate, complete, and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, Members, and

Associated Persons promptly notify Nasdaq, in writing, of any material adverse change in their financial condition. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(c) by reference improves its membership rules by adopting provisions concerning a Member's duty to ensure the accuracy, completeness, and current nature of membership information.

Exchange General 3, Section 4(b) states that every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact System. Section 4(b) also requires Exchange Members to update their contact information promptly when necessary, but in no event later than 30 days following any change, and within 17 business days after the end of each calendar year; furthermore, it requires members to comply with any request for such information by the Exchange within 15 days or any longer period agreed upon with Exchange staff. The Exchange proposes the relocation of this provision, with minor lettering changes, to Exchange General 2 title ("Organization and Administration") under new Section 11, entitled Contact Information Requirements. Exchange General 3, Section 4(b) is substantially similar to the rule text in both Nasdaq's and BX's General 2, Section 11 and identical to the similarly numbered rule in the ISE rulebook.

As previously stated, the Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', Members', and Associated Persons' duty to ensure that the information filed with the Exchange is up to date.

Rule 1013

Nasdaq Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq Rule 1013 by reference under its General 3 title. The Exchange is adopting Nasdaq Rule 1013 as it expands upon and provides clarity to the procedure in the Exchange's General 3, Section 5. The Exchange believes that incorporating Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) ("Where to File; Contents"), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to Nasdaq electronically through the Central Registration Depository ("CRD"); (B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to Nasdaq through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in

charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act ("CEA") or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or

regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq; (M) if the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5; (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of Nasdaq's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, Nasdaq rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Nasdaq rules; (2) an

agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Nasdaq rules; and (U) such other reasonable information with respect to the Applicant as Nasdaq may require.

In contrast, current General 3, Section 2(a) states simply that to become a Member of the Exchange an Applicant must seek approval in the form and manner prescribed by the Exchange. Relatedly, General 3, Section 4(a) provides a short list of documents that Applicants and Members may submit with their application for membership with the Exchange. Section 4(a) states that Members and Applicants shall file with (and be subject to review by) the Exchange, at a minimum, their partnership agreements and any subsequent amendments, in the case of partnerships; articles of incorporation, by-laws and their amendments, in the case of corporations; the articles of organization and operating agreements and their respective amendments, in the case of limited liability companies. The paragraph further provides that no action or failure by the Exchange to act shall be construed to mean that the Exchange has in any way passed on the investment merits of or approved the submitted document. The Exchange believes that deleting General 3, Section 4(a) is appropriate because the Exchange's current rule is ambiguous while Nasdaq Rule 1013(a)(1), which will be incorporated by reference, lists in detail all of the supplementary application materials required for submission by an Applicant . Incorporating this provision by reference will further standardize the Exchange's membership application process.

The Exchange's General 3, Section 5(a) provides that ISE members in good standing are eligible for Exchange membership in the same category of membership previously approved for on ISE. General 3, Section 5(b) states that applicants for

Exchange membership who are not already ISE approved members must submit an application to the Exchange in accordance with Exchange procedures. The Exchange is proposing to delete General 3, Section 5(a) and (b) and to incorporate by reference Nasdaq Rule 1013 (b)(1) and (2), Special Application Procedures, which outlines the criteria for a waive-in application when seeking membership with the Exchange, as further discussed below.

The Exchange proposes to delete the language in General 3, Section 5(b) which provides non-ISE members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint market makers pursuant to Exchange Options 2, Section 3 in order to ensure non-ISE Members have a reasonable opportunity to participate in those processes. The allocation process currently governed by Exchange Options 2, Section 3 requires a member to be an approved market maker in order to be appointed as such in options classes. The Exchange has aligned its options allocations process with those of its Affiliated Exchanges and, therefore, proposes to delete the aforementioned text as it no longer applies to applicants for Membership.

Exchange General 3, Section 5(b)(i) provides that to become a Member of the Exchange an Applicant shall file an application, which must be accompanied by a nonrefundable application fee. The Exchange proposes to delete Section 5(b)(i) because the provisions in this section are already included in Nasdaq Rule 1013, New Member Application which is being incorporated by reference.

The Exchange also believes that the provision under General 3, Section 5(b)(iii) that indicates that an applicant must be approved by the Exchange to perform in at least

one of the recognized capacities of a Member as stated in General 3, Section 1(c) (discussed above when describing the incorporation by reference of Nasdaq Rule 1002) is substantially similar to the language contained in Nasdaq Rule 1013(a)(1)(D).

Nasdaq Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under Rule 1013. This rule also provides that Nasdaq will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. The Exchange's General 3, Section 5(b)(iv) contains a parallel, although brief, provision when describing the completion of the application process ("Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay").

Nasdaq Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, Nasdaq Rule 1013(a)(3)(A) ("Lapse of Applications that are not Substantially Complete") provides that if an application that was initiated under 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the

Applicant. If an Applicant still wishes to apply for membership on Nasdaq after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Nasdaq Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an Applicant has paid to the Nasdaq in connection with a lapsed application, in accordance with Nasdaq rules regarding fees, provided that the Nasdaq has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of Rule 1013(a)(3)(A), the Membership Department will deem an application to be not "substantially complete" if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Nasdaq Rule 1013(a)(3)(B) ("Rejection of Filed Applications that Remain or Become Incomplete After Filing") provides that if an application that was initiated under Rule 1013 is substantially complete and thus is deemed to be filed with Nasdaq under Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to Nasdaq the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the

Membership Department's determination and the reasons therefor. Nasdaq shall not refund the application fees that an Applicant has paid to Nasdaq in connection with an application that Nasdaq rejects. If the Applicant determines to continue to seek membership on Nasdaq, then the Applicant shall submit a new application and pay a new application fee in accordance with Nasdaq rules.

The Exchange currently contains a provision related to the lapsing of membership applications. Pursuant to General 3, Section 5(b)(vi), if the membership application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn. The Exchange plans to replace General 3, Section 5(b)(vi) by incorporating by reference Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Nasdaq Rule 1013(a)(4) ("Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties") establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in Nasdaq, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third

party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under the Nasdaq Rule 1013(a)(4) are similar to the Exchange's General 3, Section 4(a), to the extent that they describe the Exchange's authority to request additional documents or information from the Applicant or Member. Relatedly, General 3, Section (d) also provides the Exchange with authority to request Associated Persons to provide additional information or testimony. The Exchange believes that incorporating by reference Nasdaq Rule 1013(a)(4) into its membership rules will provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Nasdaq Rule 1013(b)(1) sets forth the procedure that allows an Applicant who is a FINRA member to "waive-in" to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term "waive-in"

to mean that the Membership Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in Nasdaq Rule 1014 to deny or condition approval of the application.

The second special application process, which is set forth in Nasdaq 1013(b)(2), permits Applicants for Nasdaq membership that are already approved members of one or more of the affiliated exchanges to waive-into Nasdaq. In this context, "waive-in" means that the Membership Department will rely substantially upon an affiliated exchange's prior determination to approve the Applicant for Nasdaq membership. The procedures in Nasdaq Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Nasdaq membership. Applicants who meet the criteria for this waive-in review process have already demonstrated their ability to meet membership standards on one or more of the affiliated exchanges which eliminates the need for a full review.

Nasdaq Rule 1013(b) ("Special Application Procedures") was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the affiliated exchanges. The Special Application Procedures also include updated provisions requiring compliance with Nasdaq's anti-

money laundering rules.[14] The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, BX, and ISE the option to apply for membership on the Exchange through an expedited membership application process.

Current Exchange rules do not allow this expedited process. However, today, this concept does exist in both the Exchange's and MRX General 3, Section 5. Both the Exchange and MRX rules afford an ISE Exchange member in good standing the ability to become an Exchange or MRX member of the same category without application. The Exchange believes that incorporating by reference Nasdaq's waive-in provisions will further the Exchange's objective to provide uniformity and clarity to its rules by aligning its membership application process with the Nasdaq, BX, and ISE exchanges. The current Exchange rule limits waive-in treatment to ISE members in good standing. Incorporating the substantially similar Nasdaq rule extends this same treatment equally across the Affiliated Exchanges by allowing waive-in treatment on the Exchange for not only ISE members but also for members of FINRA, Nasdaq, BX, and Phlx.[15]

The Exchange also proposes to delete current General 3, Section 5(d), as its placement under the membership rules is unnecessary. Exchange General 3, Section 5(d) contains declarative statements concerning the payments of fees and charges that Members are currently required to pay pursuant to the Exchange's General 2, Section 2 rule ("Fees, Dues and Other Charges") and the Options 7 title ("Pricing Schedule").

---

14 See Securities Exchange Act Release No. 34-85513 (April 4, 2019), 84 FR 14429 (April 10, 2019) (SR-NASDAQ-2019-022).

15 Currently Exchange members cannot waive-in to Phlx. Phlx will submit a separate proposal to amend its membership application rules to extend reciprocal waive-in treatment for Exchange members.

Similarly, the Exchange proposes to delete current General 3, Section 5(e). This rule provides that Exchange Members shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Exchange rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1. This provision is duplicative as it is substantially similar to existing Exchange General 5, Section 1 ("Disciplinary Jurisdiction").

Rule 1014

Nasdaq Rule 1014 ("Department Decision") describes the Membership Department's process for the issuance of a decision. The Exchange proposes to incorporate by reference Nasdaq Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in General 3, Section 2 (in addition to the grounds for approval or disapproval referenced in General 3, Section 5(b)(iv) and (b)(v)). Incorporating Nasdaq Rule 1014 by reference in the Exchange's rules will improve the membership application and decision making process by better defining the Membership Department's authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants. Nasdaq Rule 1014(a) describes the Membership Department's authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an affiliated exchange.

Nasdaq Rule 1014(b), entitled "Bases for Approval, Conditional Approval, or Denial," provides that the Membership Department will approve, grant conditional

approval, or deny a membership application filed under Nasdaq Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Nasdaq Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer's registration; this Nasdaq Rule parallels existing General 3, Section 2(b), which describes the Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Nasdaq Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under its General 3, Section 2(c)(1), regarding an Applicant who has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action), is parallel to Nasdaq Rule 1014(b)(2)(D). Similarly, the Exchange's basis for denial under General 3, Section 2(c)(2), regarding an Applicant unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures, is parallel to Nasdaq Rule 1014(b)(2)(A). Finally, the provision under General 3, Section 2(c)(3), regarding an Applicant unable satisfactorily to demonstrate reasonably adequate systems capability and capacity, is parallel to Nasdaq Rule 1014(b)(2)(H).

Furthermore, the Exchange believes that the provisions under Nasdaq Rule 1014(b)(2)(A), (B), and (C), which describe the basis for a decision regarding the Applicant's inability to satisfy the Exchange and securities rules, previous violative conduct, and past or potential conduct inconsistent with just and equitable principles of trade, provide the Exchange with greater authority than the one described under General 3, Section 2(d), which provides that when an Applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.

The Exchange notes that current General 3, Section 2(e) and (f), which refer to the basis for membership denial as it relates to statutory disqualification, are substantially similar to Nasdaq Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility of

certain persons for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate Nasdaq Rule 1002 in its entirety.

Nasdaq Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. This rule also provides that an Applicant that will transact business with the public must be a member of FINRA. This requirement exists in the Exchange's rulebook in Options 10, Section 1 ("Exchange Approval"); however, to maintain harmonization of the rules, the Exchange proposes to incorporate by reference this same parallel rule. There are no proposed changes to rule text found in Exchange Options 10, Section 1 at this time.

The Exchange proposes to incorporate by reference Nasdaq Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Exchange General 3, Section 5(b)(iv)), broadly prescribes that the Exchange will consider approval of the membership application, "unless there is just cause for delay." Nasdaq Rule 1014(c) outlines this process in greater detail. The Nasdaq rule requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application. Additionally, the rule allows the Membership Department and the Applicant the ability to agree to further extensions of the decision deadlines. Nasdaq Rule 1014(c) also provides that the decision will detail the reason(s)

for the denial of membership or the approval of the application subject to restrictions. This provision is similar to General 3, Section 5(b)(v), which currently establishes that the Exchange will inform the Applicant of the grounds for disapproval of a membership application. Moreover, if the Membership Department fails to timely issue a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to issue a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision.

Nasdaq Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to Nasdaq Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Exchange General 3, Section 5(b)(v) prescribes that a notice of the Exchange's decision shall be provided to the Applicant but does not specify the manner of such notification. In addition, Exchange General 3, Section 5(b)(vii) indicates that once an Applicant's membership becomes effective, the Exchange will promptly notify the Applicant of such decision. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Nasdaq Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Rule 1014(f) establishes that a restriction imposed under Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under Nasdaq Rules 1015, 1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Rule 1014(g) provides that unless the Applicant files a written request for a review under Rule 1015, the Membership Department's decision shall constitute final action by Nasdaq.

Rule 1015

The Exchange proposes to incorporate by reference Nasdaq Rule 1015 in its entirety under its General 3 title. Nasdaq Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in Exchange General 3, Section 2(g).[16]

Current Exchange General 3, Section 2(g) (formerly Exchange Rule 302(g)) was amended in 2019[17] to base the Exchange's procedures on those set forth in Nasdaq and BX Rules 1015 and 1016 (which were identical to Nasdaq's and now incorporate by

---

16 The Exchange notes that, recently, Nasdaq adopted Rule 1015(f)(5) which provides for the Exchange Review Council to conduct its hearings via video conferencing. See Securities Exchange Act Release No. 34-90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (SR-NASDAQ-2020-076). The Exchange has adopted an identical provision under General 3, Section 2(g)(6)(E). See Securities Exchange Act Release No. 34-90755 (December 21, 2020), 85 FR 85819 (December 29, 2020) (SR-GEMX-2020-21).

17 See Securities Exchange Act Release No. 34-86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR-GEMX-2019-08).

reference the Nasdaq Membership rules[18]). The Exchange believes that incorporating by reference Nasdaq Rule 1015 it will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

The Exchange proposes also to incorporate by reference Nasdaq Rule 1015(k) and (l) (respectively, "Ex Parte Communications" and "Recusal or Disqualification"). Both paragraphs (k) and (l) were, respectively, previously located under Nasdaq Rule 1012(c) and (d) but were moved to their current location in the Nasdaq rulebook as the two provisions logically fit within the section of the membership rules that govern appeals of membership decisions.[19] Nasdaq Rule 1015(k) prohibits ex parte communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Nasdaq Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Exchange has no parallel provisions in its rulebook to Nasdaq Rule 1015(k) and (l). The Exchange believes that incorporating Rule 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq, BX, and ISE exchanges.

---

18 See supra note 4.

19 See supra note 14.

Rule 1016

Aside from their respective internal cross-references, the text in Nasdaq Rule 1016 and Exchange General 3, Section 2(h) (both entitled "Discretionary Review by the Exchange Board") are identical. The Exchange proposes to incorporate by reference Nasdaq Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1017

Nasdaq Rule 1017, "Application for Approval of Change in Ownership, Control, or Material Business Operations," has no analogue rule in the Exchange's current General 3 title. Incorporating Nasdaq Rule 1017 by reference in its entirety in the Exchange's rules will enhance the Exchange's ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved Member to file an application with the Exchange. As stated below, Nasdaq Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing Electronic Access Member of the Exchange is seeking market maker status for the first time, the current Exchange process is to require that the Member submit an amended Exchange application along with relevant supplementary material. The Exchange believes that incorporating Nasdaq Rule 1017 by reference and harmonizing its process with that of Nasdaq, BX, and ISE will improve its current practice by further streamlining its current practices. As stated previously, the objective is to eventually harmonize membership rules across all

Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Nasdaq Rule 1017(a) prescribes the events that require Members to file applications with the Exchange. Paragraph (a) provides that a Member shall file an application for approval prior to effecting the following changes: (1) a merger of the Member with another Member; (2) a direct or indirect acquisition by the Member of another Member; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which consist of (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

Nasdaq Rule 1017(b), governs the filing and content of applications filed under Nasdaq Rule 1017. This Rule provides that the application should be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the Member's business operations, the application should (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures

reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

Furthermore, Nasdaq Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Nasdaq Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Nasdaq Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the Member may not effect such change until the conclusion of the proceeding, unless the Membership Department and the Member otherwise agree.

Nasdaq Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Nasdaq Rule 1017(e) indicates that, pursuant to Nasdaq Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Nasdaq Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with Nasdaq Rule 1013(a)(4).

Nasdaq Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with Nasdaq Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) the applicable bases for denial or standards for approval set forth in Nasdaq Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule

provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with Nasdaq Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a Member requires such Member to become a member of FINRA, the Membership Department shall not be required to serve a written decision under this Rule until 10 business days after the Member becomes a FINRA member.

Nasdaq Rule 1017(h) provides that service of the decision on the Applicant in accordance with Nasdaq Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Nasdaq Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to Nasdaq Rule 1015, the rule further clarifies that the procedures set forth in Nasdaq Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Nasdaq Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by Nasdaq.

Nasdaq Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the

Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph Rule 1017(a).

Rule 1018

Nasdaq Rule 1018, "Resignation, Reinstatement, Termination, and Transfer of Membership," has no analogue rule in the Exchange's current General 3 title, with the exception of Exchange General 3, Section 5(c). The Exchange proposes to incorporate the rule by reference under its General 3 title. Nasdaq Rule 1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Nasdaq Rule 1018(a) provides that membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from Nasdaq at any time. Such resignation shall not take effect until all indebtedness due to Nasdaq from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.

Nasdaq Rule 1018(b) indicates that no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. The Exchange proposes to incorporate Nasdaq Rule 1018(b) by reference and

to delete Exchange General 3, Section 5(c), which is substantially similar to this provision. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Nasdaq Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however,

that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

Rule 1019

Nasdaq Rule 1019 ("Application to Commission for Review") has no analogue rule in the Exchange's current General 3 title. Nasdaq Rule 1019 allows Applicants to request the Commission to review an Exchange final action, as provided under the Nasdaq Rule 1010 Series. Incorporating Nasdaq Rule 1019 by reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Nasdaq Rule 1019 provides that a person aggrieved by a Nasdaq's final action under Nasdaq Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Revised Membership Application

As part of the harmonization of its membership rules and procedures with those of Nasdaq, BX, and ISE, the Exchange is adopting a standardized Broker-Dealer Membership Application ("Membership Application"). The Membership Application is submitted as Exhibit 3A of this proposed rule change with underlined changes concerning the GEMX market. Each Exchange Membership Application will be accompanied by a "Membership Agreement" (submitted as Exhibit 3B of the attached), which should be signed by all applicants to membership with the Exchange.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq, BX, and ISE, and ultimately, with

the other Affiliated Exchanges, which will eventually provide a uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq, BX, ISE, and the Exchange – and hopefully, in time, across all of the Affiliated Exchanges – so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the

Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq and BX applied the same process described above to govern its transition to its amended membership rules.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) and of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to

---

20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(5).

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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.[22]

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a "roadmap" paragraph as shown in Nasdaq Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (e.g., Nasdaq Rule 1014(b));

---

22 15 U.S.C. 78f(b)(7).

- Grouping logically-related provisions together in the rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership) and recusals and disqualifications;
- Clarifying when the Membership Department will deem an application to be filed (when the application is "substantially complete," as set forth in Nasdaq Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may "waive-in" to Exchange membership (as set forth in Nasdaq Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by, for example, doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms where the Membership Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (Nasdaq Rule 1012(a)(1);
- Allowing payment of application fees by means other than paper check (Nasdaq Rule 1013(a)(1)(C));
- Harmonizing disparate procedures under Nasdaq Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes;

- Detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the affiliated exchanges and defining procedures for processing and responding to waive-in applications (Nasdaq Rule 1013(b));

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act[23] because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules

---

[23] 15 U.S.C. 78f(b)(7).

will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and BX implemented during its transition to new membership rules.

4. 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. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, the Exchange's membership process will be less burdensome for Applicants and Members and the Exchange will improve its competitive standing relative to other 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)

In this case, the proposed rule change will not significantly affect the protection of investors or the public interest because it is intended, primarily, to update and reorganize the Exchange's existing membership rules and processes. To the extent that the Exchange proposes to amend the substance of the membership rules and processes, these changes are intended to streamline and clarify those rules and processes, and to eliminate unused and outdated provisions, so that the membership process will be easier for Applicants, Members, and Associated Persons to comprehend and less burdensome to follow. At the same time, these changes will not adversely impact the Exchange's membership program or the ability of its Membership Department to appropriately scrutinize prospective and existing Members and Associated Persons. Likewise, the changes will not limit the due process rights of Applicants or of Members or Associated Persons. The proposed changes will not substantively change the Exchange's existing system of adjudicating appeals of adverse membership decisions.

Additionally, the Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership.

Furthermore, Rule 19b-4(f)(6)(iii) requires an SRO 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 proposal is based upon SR-NASDAQ-2019-022, SR-BX-2019-022, and SR-ISE-2020-43.

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.

3A. Broker-Dealer Membership Application Form (with underlined text for the GEMX exchange).

3B. The Exchange's Membership Agreement.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-GEMX-2021-02)

April __, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete the Exchange Membership Rules and Incorporate by Reference the Membership Rules of The Nasdaq Stock Market LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 13, 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 delete the Exchange's membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC's ("Nasdaq") rules in the General 3 Rule 1000 Series, and other related changes.

The text of the proposed rule change is available on the Exchange's Website at https://listingcenter.nasdaq.com/rulebook/gemx/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

General 3 of the Exchange's General Rules and Nasdaq's General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on the Exchange and Nasdaq. The Exchange proposes to delete in their entirety the rules under its General 3 title, entitled "Membership and Access," and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the "Nasdaq Rule 1000 Series" or "Nasdaq Membership Rules") as described below.[3] The Exchange will also relocate the text under its rule under General 3, Section 4(b) and place it under new Exchange General 2, Section 11, as further described below.

This proposal is part of the Exchange's plan to harmonize its membership rules with the membership rules of the Nasdaq, Nasdaq BX, Inc. ("BX"), and Nasdaq ISE,

---

[3] The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

LLC ("ISE") exchanges.[4] The Exchange notes that Nasdaq MRX, LLC, and Nasdaq Phlx, LLC ("Phlx") (together with Nasdaq, BX, and ISE, the "Affiliated Exchanges") each plan to propose similar rule changes that will render their membership rules substantially similar to those of Nasdaq, BX, and ISE. To account for any differences that may exist, the proposed introductory paragraphs list instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq GEMX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq GEMX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq GEMX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq GEMX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq GEMX;

---

4 The BX membership rules were previously amended to incorporate by reference Nasdaq's membership rules. See Securities Exchange Act Release No. 34-86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR-BX-2019-022). ISE has also filed a proposal to incorporate by reference Nasdaq's membership rules. See Securities Exchange Act Release No. 90903 (January 12, 2021), 86 FR 5284 18892 (January 19, 2021) (SR-ISE-2020-43).

the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker (including a "Foreign Member," as defined under proposed GEMX General 3); the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "Exchange Membership Department" or "Membership Department" shall be read to refer to the Nasdaq GEMX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq GEMX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to "General 1 and Equity 1" shall be read as references to Nasdaq GEMX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to "General 9, Section 20" shall be read as references to Nasdaq GEMX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to "General 9, Section 37" shall be read as references to Nasdaq GEMX Options 9, Section 21; and cross references to the "General 4, Rule 1200 Series" shall be read as references to Nasdaq GEMX General 4, Section 1.[5]

Finally, as explained below, the introductory paragraph will indicate that the Nasdaq Rule 1000 Series shall also apply to Nasdaq GEMX Members who meet the requirements of a "Foreign Member."

As compared to the Exchange's existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange's rulebook, the Exchange's membership rules will be organized in a more logical order. The incorporated rules will

---

[5] The Exchange notes that its General 4 title (entitled "Regulation") currently incorporates by reference the rules contained in Nasdaq's General 4 title. See Securities Exchange Act Release No. 85737 (April 26, 2019), 84 FR 18897 (May 2, 2019) (SR-GEMX-2019-05).

eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000 Series rules have no analogue in the existing Exchange rules. Finally, as explained later, the Exchange will also relocate the text under General 3, Section 4(b) to new Exchange General 2, Section 11.

Rule 1001

Nasdaq Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority ("FINRA") are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Rule 1200 Series on behalf of Nasdaq.[6] Moreover, Nasdaq Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

---

6 Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. See supra note 5.

Nasdaq Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

The Exchange is proposing to incorporate by reference Nasdaq Rule 1001, which currently has no analogue rule under its membership rules. The language of Nasdaq Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference to Nasdaq Rule 1001 is not a substantive amendment to the Exchange rules.

Rule 1002

Nasdaq Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of Nasdaq members and associated persons, the registration of branch offices, and the designation of a Member's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq Rule 1002 and delete those under current General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a Member (except for those excluded under Rule 1002(b)). Rule 1002(a) is similar to General 3, Section 1(a) of the Exchange's membership rules to the extent that it describes that brokers or dealers may become Exchange members ("Members"), which in turn entitles them to conduct their business on the Exchange. General 3, Section 1(a) provides that the Exchange shall issue memberships conferring the ability to transact on the Exchange. Exchange General 3, Section 1(a) also provides that there is no limit on the number of memberships that may be issued by the Exchange and that, under the rule, the Exchange shall not act in a manner that does not comply with the provisions of Section 6(c)(4) of the Exchange Act. Similarly, the Nasdaq Rule 1000 Series does not establish a limit to the number of memberships issued and conducts its review of applications for membership pursuant to the Securities Exchange Act of 1934. Furthermore, General 3, Section 1(a) provides that a Member may be a corporation, partnership, or limited liability company, and must be a registered broker-dealer and meet the qualifications for Exchange membership. The Exchange believes that incorporating by reference Nasdaq Rule 1002(a) expands upon Exchange General 3, Section 1(a) by including an associated person of a Member ("Associated Person") under this threshold requirement.

The Exchange's General 3, Section 1(b) provides that a Member that does not maintain an office in the United States ("Foreign Member") that is responsible for preparing and maintaining financial and other reports required to be filed with the

Commission and with the Exchange must prepare such reports in English and in U.S. dollars, reimburse the Exchange for any expense incurred in examining the Member to the extent that such expense is in excess of the cost associated with examining a Member located within the continental United States, and ensure the availability of an individual who is fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations. Nasdaq General 9, Section 50 is a Nasdaq rule substantially similar to the provisions in General 3, Section 1(b). In order to preserve the enumerated characteristics of a Foreign Member, which would otherwise be deleted from its Rulebook by incorporating by reference the Nasdaq Rule 1000 Series, the Exchange proposes to include the text of its General 3, Section 1(b) under the General 3's introductory paragraph and indicate that the Nasdaq Membership Rules will also apply to the members who meet the Foreign Member requirements.

Furthermore, General 3, Section 1(c) provides that every Member shall have as the principal purpose of being a Member the conduct of a securities business, and that purpose shall be deemed to exist if and so long as: (1) the Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and (2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder. The Exchange believes that the membership qualifications described in this section are consistent with the eligibility criteria described in Nasdaq Rule 1002 and the disclosures and information provided by Applicant pursuant to Nasdaq Rule 1013. To account for the Exchange rights referenced in Section 1(c) (Electronic Access Member, Primary

Market Maker, or Competitive Market Maker), as defined under the Exchange's Options 1, Section 1 provisions, the Exchange will also indicate in the proposed General 3 introductory paragraph that the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker.

Nasdaq Rule 1002(b)(1) establishes that subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq rules, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as Nasdaq may prescribe. Nasdaq Rule 1002(b)(1) can be compared to the provision currently under Exchange's General 3, Section 2(b) that establishes that the Exchange may deny or condition the approval of a Member, or preclude or condition a person from becoming associated with a Member, for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act. Furthermore, the requirement to comply with Nasdaq rules under Section (b)(1), is also consistent with the provision under Exchange General 3, Section 4(c) that states that every Member shall pledge to abide by the by-laws and rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the Exchange's by-laws and rules.

Nasdaq Rule 1002(b)(2) establishes that, subject to such exceptions as may be explicitly provided elsewhere in Nasdaq rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under Nasdaq Membership Rules. Nasdaq Rule 1002(b)(2) is similar to the requirement that applies to Associated Persons under General 3, Section 3(a) of the Exchange rules. The Exchange's General 3, Section 3 rules enumerate conditions that apply to persons associated with Members of the Exchange. Exchange General 3, Section 3(a) provides that Associated Persons are bound by the Exchange's by-laws and rules and the rules of the Clearing Corporation and describes the circumstances concerning the barring of an Associated Person in such role. Exchange General 3, Sections 2(b), 3(a), and 4(c) are, substantially similar to the provisions of Nasdaq Rule 1002(b),[7] which the Exchange proposes be incorporated by reference into its membership rules. The Exchange notes that General 3, Section 3(b) requires that Members file and keep current a list of its associated persons who are its executive officers, directors, principals, shareholders, and general partners. A Member's obligation to maintain updated information for their registered representatives or principals is

---

7 The Exchange notes that it will not relocate or carve-out this duplicative provision concerning The Options Clearing Corporation ("OCC"). Pursuant to the Exchange's Options 9, Section 2 ("Adherence to Law"), Members are required to abide by the Act, the Exchange's by-laws, the rules of the Exchange, and OCC rules.

prescribed under Nasdaq's General 4 title which was previously incorporated by reference into the Exchange rules,[8] rendering Exchange General 3, Section 3(b) unnecessary.

Exchange General 3, Section 3(c) provides that a claim of any Associated Person described in the first sentence of General 3, Section 3(b) (i.e., a Member's executive officers, directors, principal shareholders, and general partners) against a Member shall be subordinate in right of payment of customers and other Members. This subordination rule was copied from ISE's then-current Rulebook at the time, but was never directly applicable to GEMX. The rule was originally approved as part of ISE's Form 1 filing on February 24, 2000.[9] At that time, ISE members had equity ownership interest in ISE through their memberships and the subordination language was relevant. ISE has since demutualized, with its members no longer having any equity ownership interest through their ISE memberships, and has deleted this language as obsolete.[10] Because GEMX members never had a similar ownership interest through their GEMX memberships, this rule did not apply to GEMX in the first place. As such, the Exchange proposes to delete this provision in its entirety.

Nasdaq Rule 1002(c) establishes, as a condition to maintaining Nasdaq membership, that Members shall at all times maintain membership in a registered

---

8 See supra note 5.

9 See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

10 See Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Order Approving Proposed Rule Change and Amendment No. 1 thereto by the International Securities Exchange LLC To Restructure From a Limited Liability Company to a Corporation).

securities association or another registered exchange. Furthermore, the rule prescribes that Members that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference. Because the Exchange does not act in the capacity of a designated examining authority ("DEA"), like the Nasdaq, BX, and ISE, it requires that all applicants for membership have an assigned DEA in place as a condition of its membership.

Nasdaq Rule 1002(d) states that Nasdaq members are deemed to comply with Nasdaq's branch office registration requirements to the extent that they keep current a Uniform Branch Office Registration Form ("Form BR"), which contains the requisite information and which is accessible electronically to Nasdaq. Members that are not FINRA members shall continue to submit to Nasdaq a Branch Office Disclosure Form, as they have done previously. The Exchange proposes to incorporate by reference this rule, which is consistent with the provisions under the Exchange's Options 10, Section 5, entitled Branch Offices.[11] The Exchange proposes that the cross-reference in Nasdaq Rule 1002(d)(2) to General 9, Section 20 shall be read as a reference to Exchange Options 10, Section 5(c)(2).

Rule 1011

Nasdaq Rule 1011 contains definitions applicable to the Nasdaq Membership Rules. Nasdaq Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference the Nasdaq definitions under Rule 1011, the Exchange believes it will further harmonize its rules with respect to the membership rules of

---

11 ISE Options 10 is incorporated by reference into GEMX Options 10. See Securities Exchange Act Release No. 86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR-GEMX-2019-08).

Nasdaq, BX, and ISE. The Exchange notes that the defined terms in Nasdaq Rule 1011, to be incorporated by reference into the Exchange's rules, are self-contained and have no impact on GEMX rules outside its membership rules. The terms "Applicant," "Department," "Director," "Interested Staff," "Securities business," "Exchange Board," "principal place of business," "registered broker or dealer," "Representative," "sales practice event," "Subcommittee," and "statutory disqualification" have not been defined in the Exchange's rulebook. The Exchange notes that the term "associated person" as defined in the Exchange's rulebook[12] is substantially similar to the definition in Nasdaq General 1(b)(2). Relatedly, the term "Proprietary Trading Firm" as defined in Nasdaq Rule 1011(o) is substantially similar with the definition of "proprietary trading" as defined in the Exchange's rulebook.[13] The Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1012

Nasdaq Rule 1012 ("General Application Provisions") provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership with Nasdaq. In contrast, the Exchange membership rules contain vague provisions describing the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that Nasdaq Rule 1012 provides a

---

12 Exchange General 1, Section 1(a)(1).

13 Exchange Options 1, Section 1(a)(40)

more detailed set of instructions for Applicants, Members, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating Rule 1012 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1012(a) provides that Applicants and Nasdaq Members may submit an application or other documents and information to Nasdaq by first-class mail, overnight courier, hand delivery, or by electronic means; this section also provides that Nasdaq shall serve a notice or decision issued under the Nasdaq Membership Rules by first-class mail or electronic means on the Applicant or Member or its counsel, unless a Nasdaq rule specifies a different method of service; finally, this section also details when service by Nasdaq or an Applicant shall be deemed complete. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Nasdaq Rule 1012(b) provides a definition of the term "calendar days" and describes the manner in which times under the Nasdaq Membership Rule shall be computed. The Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of times under its membership rules.

Nasdaq Rule 1012(c) describes a(n) Applicant's, Member's, and Associated Person's duty to ensure that the information they provide to Nasdaq at the time of the filing is accurate, complete, and current. Moreover, this provision requires that

Applicant's, Member's, and Associated Person's shall ensure that membership applications and supporting materials filed with Nasdaq remain accurate, complete, and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, Members, and Associated Persons promptly notify Nasdaq, in writing, of any material adverse change in their financial condition. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(c) by reference improves its membership rules by adopting provisions concerning a Member's duty to ensure the accuracy, completeness, and current nature of membership information.

Exchange General 3, Section 4(b) states that every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact System. Section 4(b) also requires Exchange Members to update their contact information promptly when necessary, but in no event later than 30 days following any change, and within 17 business days after the end of each calendar year; furthermore, it requires members to comply with any request for such information by the Exchange within 15 days or any longer period agreed upon with Exchange staff. The Exchange proposes the relocation of this provision, with minor lettering changes, to Exchange General 2 title ("Organization and Administration") under new Section 11, entitled Contact Information Requirements. Exchange General 3, Section 4(b) is substantially similar to the rule text in both Nasdaq's and BX's General 2, Section 11 and identical to the similarly numbered rule in the ISE rulebook.

As previously stated, the Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', Members', and Associated Persons' duty to ensure that the information filed with the Exchange is up to date.

Rule 1013

Nasdaq Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq Rule 1013 by reference under its General 3 title. The Exchange is adopting Nasdaq Rule 1013 as it expands upon and provides clarity to the procedure in the Exchange's General 3, Section 5. The Exchange believes that incorporating Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) ("Where to File; Contents"), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to Nasdaq electronically through the Central Registration Depository ("CRD"); (B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to Nasdaq through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the

Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act ("CEA") or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any

sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq; (M) if the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5; (S) all examination reports and corresponding responses

regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of Nasdaq's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, Nasdaq rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Nasdaq rules; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Nasdaq rules; and (U) such other reasonable information with respect to the Applicant as Nasdaq may require.

In contrast, current General 3, Section 2(a) states simply that to become a Member of the Exchange an Applicant must seek approval in the form and manner prescribed by the Exchange. Relatedly, General 3, Section 4(a) provides a short list of documents that Applicants and Members may submit with their application for membership with the Exchange. Section 4(a) states that Members and Applicants shall file with (and be subject to review by) the Exchange, at a minimum, their partnership agreements and any subsequent amendments, in the case of partnerships; articles of incorporation, by-laws and their amendments, in the case of corporations; the articles of organization and operating agreements and their respective amendments, in the case of limited liability companies. The paragraph further provides that no action or failure by the Exchange to act shall be construed to mean that the Exchange has in any way passed on the investment merits of or approved the submitted document. The Exchange believes that deleting General 3, Section 4(a) is appropriate because the Exchange's current rule is ambiguous while Nasdaq Rule 1013(a)(1), which will be incorporated by reference, lists in detail all of the supplementary application materials required for submission by an

Applicant . Incorporating this provision by reference will further standardize the Exchange's membership application process.

The Exchange's General 3, Section 5(a) provides that ISE members in good standing are eligible for Exchange membership in the same category of membership previously approved for on ISE. General 3, Section 5(b) states that applicants for Exchange membership who are not already ISE approved members must submit an application to the Exchange in accordance with Exchange procedures. The Exchange is proposing to delete General 3, Section 5(a) and (b) and to incorporate by reference Nasdaq Rule 1013 (b)(1) and (2), Special Application Procedures, which outlines the criteria for a waive-in application when seeking membership with the Exchange, as further discussed below.

The Exchange proposes to delete the language in General 3, Section 5(b) which provides non-ISE members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint market makers pursuant to Exchange Options 2, Section 3 in order to ensure non-ISE Members have a reasonable opportunity to participate in those processes. The allocation process currently governed by Exchange Options 2, Section 3 requires a member to be an approved market maker in order to be appointed as such in options classes. The Exchange has aligned its options allocations process with those of its Affiliated Exchanges and, therefore, proposes to delete the aforementioned text as it no longer applies to applicants for Membership.

Exchange General 3, Section 5(b)(i) provides that to become a Member of the Exchange an Applicant shall file an application, which must be accompanied by a

nonrefundable application fee. The Exchange proposes to delete Section 5(b)(i) because the provisions in this section are already included in Nasdaq Rule 1013, New Member Application which is being incorporated by reference.

The Exchange also believes that the provision under General 3, Section 5(b)(iii) that indicates that an applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in General 3, Section 1(c) (discussed above when describing the incorporation by reference of Nasdaq Rule 1002) is substantially similar to the language contained in Nasdaq Rule 1013(a)(1)(D).

Nasdaq Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under Rule 1013. This rule also provides that Nasdaq will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. The Exchange's General 3, Section 5(b)(iv) contains a parallel, although brief, provision when describing the completion of the application process ("Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay").

Nasdaq Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, Nasdaq Rule 1013(a)(3)(A) ("Lapse of Applications that are not Substantially Complete") provides that if an application that was initiated under 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an

Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on Nasdaq after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Nasdaq Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an Applicant has paid to the Nasdaq in connection with a lapsed application, in accordance with Nasdaq rules regarding fees, provided that the Nasdaq has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of Rule 1013(a)(3)(A), the Membership Department will deem an application to be not "substantially complete" if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Nasdaq Rule 1013(a)(3)(B) ("Rejection of Filed Applications that Remain or Become Incomplete After Filing") provides that if an application that was initiated under Rule 1013 is substantially complete and thus is deemed to be filed with Nasdaq under Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to

Nasdaq the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the Membership Department's determination and the reasons therefor. Nasdaq shall not refund the application fees that an Applicant has paid to Nasdaq in connection with an application that Nasdaq rejects. If the Applicant determines to continue to seek membership on Nasdaq, then the Applicant shall submit a new application and pay a new application fee in accordance with Nasdaq rules.

The Exchange currently contains a provision related to the lapsing of membership applications. Pursuant to General 3, Section 5(b)(vi), if the membership application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn. The Exchange plans to replace General 3, Section 5(b)(vi) by incorporating by reference Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Nasdaq Rule 1013(a)(4) ("Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties") establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in Nasdaq, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the

Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under the Nasdaq Rule 1013(a)(4) are similar to the Exchange's General 3, Section 4(a), to the extent that they describe the Exchange's authority to request additional documents or information from the Applicant or Member. Relatedly, General 3, Section (d) also provides the Exchange with authority to request Associated Persons to provide additional information or testimony. The Exchange believes that incorporating by reference Nasdaq Rule 1013(a)(4) into its membership rules will

provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Nasdaq Rule 1013(b)(1) sets forth the procedure that allows an Applicant who is a FINRA member to "waive-in" to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term "waive-in" to mean that the Membership Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in Nasdaq Rule 1014 to deny or condition approval of the application.

The second special application process, which is set forth in Nasdaq 1013(b)(2), permits Applicants for Nasdaq membership that are already approved members of one or more of the affiliated exchanges to waive-into Nasdaq. In this context, "waive-in" means that the Membership Department will rely substantially upon an affiliated exchange's prior determination to approve the Applicant for Nasdaq membership. The procedures in Nasdaq Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Nasdaq membership. Applicants who meet the criteria for this waive-in

review process have already demonstrated their ability to meet membership standards on one or more of the affiliated exchanges which eliminates the need for a full review.

Nasdaq Rule 1013(b) ("Special Application Procedures") was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the affiliated exchanges. The Special Application Procedures also include updated provisions requiring compliance with Nasdaq's anti-money laundering rules.[14] The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, BX, and ISE the option to apply for membership on the Exchange through an expedited membership application process.

Current Exchange rules do not allow this expedited process. However, today, this concept does exist in both the Exchange's and MRX General 3, Section 5. Both the Exchange and MRX rules afford an ISE Exchange member in good standing the ability to become an Exchange or MRX member of the same category without application. The Exchange believes that incorporating by reference Nasdaq's waive-in provisions will further the Exchange's objective to provide uniformity and clarity to its rules by aligning its membership application process with the Nasdaq, BX, and ISE exchanges. The current Exchange rule limits waive-in treatment to ISE members in good standing. Incorporating the substantially similar Nasdaq rule extends this same treatment equally

---

14 See Securities Exchange Act Release No. 34-85513 (April 4, 2019), 84 FR 14429 (April 10, 2019) (SR-NASDAQ-2019-022).

across the Affiliated Exchanges by allowing waive-in treatment on the Exchange for not only ISE members but also for members of FINRA, Nasdaq, BX, and Phlx.[15]

The Exchange also proposes to delete current General 3, Section 5(d), as its placement under the membership rules is unnecessary. Exchange General 3, Section 5(d) contains declarative statements concerning the payments of fees and charges that Members are currently required to pay pursuant to the Exchange's General 2, Section 2 rule ("Fees, Dues and Other Charges") and the Options 7 title ("Pricing Schedule").

Similarly, the Exchange proposes to delete current General 3, Section 5(e). This rule provides that Exchange Members shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Exchange rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1. This provision is duplicative as it is substantially similar to existing Exchange General 5, Section 1 ("Disciplinary Jurisdiction").

Rule 1014

Nasdaq Rule 1014 ("Department Decision") describes the Membership Department's process for the issuance of a decision. The Exchange proposes to incorporate by reference Nasdaq Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in General 3, Section 2 (in addition to the grounds for approval or disapproval referenced in General 3, Section 5(b)(iv) and (b)(v)). Incorporating Nasdaq Rule 1014 by reference in the Exchange's rules will improve the membership application and decision making process

---

15 Currently Exchange members cannot waive-in to Phlx. Phlx will submit a separate proposal to amend its membership application rules to extend reciprocal waive-in treatment for Exchange members.

by better defining the Membership Department's authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants. Nasdaq Rule 1014(a) describes the Membership Department's authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an affiliated exchange.

Nasdaq Rule 1014(b), entitled "Bases for Approval, Conditional Approval, or Denial," provides that the Membership Department will approve, grant conditional approval, or deny a membership application filed under Nasdaq Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Nasdaq Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer's registration; this Nasdaq Rule parallels existing General 3, Section 2(b), which describes the Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Nasdaq Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies,

rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under its General 3, Section 2(c)(1), regarding an Applicant who has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action), is parallel to Nasdaq Rule 1014(b)(2)(D). Similarly, the Exchange's basis for denial under General 3, Section 2(c)(2), regarding an Applicant unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures, is parallel to Nasdaq Rule 1014(b)(2)(A). Finally, the provision under General 3, Section 2(c)(3), regarding an Applicant unable satisfactorily to demonstrate reasonably adequate systems capability and capacity, is parallel to Nasdaq Rule 1014(b)(2)(H).

Furthermore, the Exchange believes that the provisions under Nasdaq Rule 1014(b)(2)(A), (B), and (C), which describe the basis for a decision regarding the Applicant's inability to satisfy the Exchange and securities rules, previous violative conduct, and past or potential conduct inconsistent with just and equitable principles of trade, provide the Exchange with greater authority than the one described under General 3, Section 2(d), which provides that when an Applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.

The Exchange notes that current General 3, Section 2(e) and (f), which refer to the basis for membership denial as it relates to statutory disqualification, are substantially similar to Nasdaq Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility of certain persons for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate Nasdaq Rule 1002 in its entirety.

Nasdaq Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. This rule also provides that an Applicant that will transact business with the public must be a member of FINRA. This requirement exists in the Exchange's rulebook in Options 10, Section 1 ("Exchange Approval"); however, to maintain harmonization of the rules, the Exchange proposes to incorporate by reference this same parallel rule. There are no proposed changes to rule text found in Exchange Options 10, Section 1 at this time.

The Exchange proposes to incorporate by reference Nasdaq Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Exchange General 3, Section 5(b)(iv)), broadly prescribes that the Exchange will consider approval of the membership application, "unless there is just cause for delay." Nasdaq Rule 1014(c) outlines this process in greater detail. The Nasdaq rule requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application. Additionally, the rule allows the Membership Department and the Applicant the ability to agree to further extensions of the decision deadlines. Nasdaq Rule 1014(c) also provides that the decision will detail the reason(s) for the denial of membership or the approval of the application subject to restrictions. This provision is similar to General 3, Section 5(b)(v), which currently establishes that the Exchange will inform the Applicant of the grounds for disapproval of a membership application. Moreover, if the Membership Department fails to timely issue a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to issue a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision.

Nasdaq Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to Nasdaq Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Exchange General 3, Section 5(b)(v) prescribes that a notice of the Exchange's decision shall be provided to the Applicant but does not specify the manner of such notification. In addition, Exchange General 3, Section 5(b)(vii) indicates that once an Applicant's membership becomes effective, the Exchange will promptly notify the Applicant of such decision. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Nasdaq Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Rule 1014(f) establishes that a restriction imposed under Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under Nasdaq Rules 1015, 1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Rule 1014(g) provides that unless the Applicant files a written request for a review under Rule 1015, the Membership Department's decision shall constitute final action by Nasdaq.

Rule 1015

The Exchange proposes to incorporate by reference Nasdaq Rule 1015 in its entirety under its General 3 title. Nasdaq Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in Exchange General 3, Section 2(g).[16]

Current Exchange General 3, Section 2(g) (formerly Exchange Rule 302(g)) was amended in 2019[17] to base the Exchange's procedures on those set forth in Nasdaq and BX Rules 1015 and 1016 (which were identical to Nasdaq's and now incorporate by reference the Nasdaq Membership rules[18]). The Exchange believes that incorporating by reference Nasdaq Rule 1015 it will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

The Exchange proposes also to incorporate by reference Nasdaq Rule 1015(k) and (l) (respectively, "Ex Parte Communications" and "Recusal or Disqualification"). Both paragraphs (k) and (l) were, respectively, previously located under Nasdaq Rule 1012(c) and (d) but were moved to their current location in the Nasdaq rulebook as the two provisions logically fit within the section of the membership rules that govern appeals of

---

16 The Exchange notes that, recently, Nasdaq adopted Rule 1015(f)(5) which provides for the Exchange Review Council to conduct its hearings via video conferencing. See Securities Exchange Act Release No. 34-90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (SR-NASDAQ-2020-076). The Exchange has adopted an identical provision under General 3, Section 2(g)(6)(E). See Securities Exchange Act Release No. 34-90755 (December 21, 2020), 85 FR 85819 (December 29, 2020) (SR-GEMX-2020-21).

17 See Securities Exchange Act Release No. 34-86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR-GEMX-2019-08).

18 See supra note 4.

membership decisions.[19] Nasdaq Rule 1015(k) prohibits ex parte communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Nasdaq Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Exchange has no parallel provisions in its rulebook to Nasdaq Rule 1015(k) and (l). The Exchange believes that incorporating Rule 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq, BX, and ISE exchanges.

Rule 1016

Aside from their respective internal cross-references, the text in Nasdaq Rule 1016 and Exchange General 3, Section 2(h) (both entitled "Discretionary Review by the Exchange Board") are identical. The Exchange proposes to incorporate by reference Nasdaq Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1017

Nasdaq Rule 1017, "Application for Approval of Change in Ownership, Control, or Material Business Operations," has no analogue rule in the Exchange's current General 3 title. Incorporating Nasdaq Rule 1017 by reference in its entirety in the

---

[19] See supra note 14.

Exchange's rules will enhance the Exchange's ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved Member to file an application with the Exchange. As stated below, Nasdaq Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing Electronic Access Member of the Exchange is seeking market maker status for the first time, the current Exchange process is to require that the Member submit an amended Exchange application along with relevant supplementary material. The Exchange believes that incorporating Nasdaq Rule 1017 by reference and harmonizing its process with that of Nasdaq, BX, and ISE will improve its current practice by further streamlining its current practices. As stated previously, the objective is to eventually harmonize membership rules across all Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Nasdaq Rule 1017(a) prescribes the events that require Members to file applications with the Exchange. Paragraph (a) provides that a Member shall file an application for approval prior to effecting the following changes: (1) a merger of the Member with another Member; (2) a direct or indirect acquisition by the Member of another Member; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or

controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which consist of (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

Nasdaq Rule 1017(b), governs the filing and content of applications filed under Nasdaq Rule 1017. This Rule provides that the application should be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the Member's business operations, the application should (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

Furthermore, Nasdaq Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Nasdaq Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in

Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Nasdaq Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the Member may not effect such change until the conclusion of the proceeding, unless the Membership Department and the Member otherwise agree.

Nasdaq Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Nasdaq Rule 1017(e) indicates that, pursuant to Nasdaq Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Nasdaq Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with Nasdaq Rule 1013(a)(4).

Nasdaq Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with Nasdaq Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) the applicable bases for denial or standards for approval set forth in Nasdaq Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with Nasdaq Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a Member requires such Member to become a member of FINRA, the Membership Department shall not be required to serve a written decision under this Rule until 10 business days after the Member becomes a FINRA member.

Nasdaq Rule 1017(h) provides that service of the decision on the Applicant in accordance with Nasdaq Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rules

1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Nasdaq Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to Nasdaq Rule 1015, the rule further clarifies that the procedures set forth in Nasdaq Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Nasdaq Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by Nasdaq.

Nasdaq Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph Rule 1017(a).

Rule 1018

Nasdaq Rule 1018, "Resignation, Reinstatement, Termination, and Transfer of Membership," has no analogue rule in the Exchange's current General 3 title, with the exception of Exchange General 3, Section 5(c). The Exchange proposes to incorporate the rule by reference under its General 3 title. Nasdaq Rule 1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Nasdaq Rule 1018(a) provides that membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from Nasdaq at any time. Such resignation shall not take effect until all indebtedness due to Nasdaq from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.

Nasdaq Rule 1018(b) indicates that no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. The Exchange proposes to incorporate Nasdaq Rule 1018(b) by reference and to delete Exchange General 3, Section 5(c), which is substantially similar to this provision. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that

the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Nasdaq Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

Rule 1019

Nasdaq Rule 1019 ("Application to Commission for Review") has no analogue rule in the Exchange's current General 3 title. Nasdaq Rule 1019 allows Applicants to request the Commission to review an Exchange final action, as provided under the Nasdaq Rule 1010 Series. Incorporating Nasdaq Rule 1019 by reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Nasdaq Rule 1019 provides that a person aggrieved by a Nasdaq's final action under Nasdaq Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the

effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Revised Membership Application

As part of the harmonization of its membership rules and procedures with those of Nasdaq, BX, and ISE, the Exchange is adopting a standardized Broker-Dealer Membership Application ("Membership Application"). The Membership Application is submitted as Exhibit 3A of this proposed rule change with underlined changes concerning the GEMX market. Each Exchange Membership Application will be accompanied by a "Membership Agreement" (submitted as Exhibit 3B of the attached), which should be signed by all applicants to membership with the Exchange.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq, BX, and ISE, and ultimately, with the other Affiliated Exchanges, which will eventually provide a uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq, BX, ISE, and the Exchange – and hopefully, in time, across all of the Affiliated Exchanges – so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission.

This transitional rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq and BX applied the same process described above to govern its transition to its amended membership rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) and of the Act,[21] 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.[22]

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other

---

20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(5).

22 15 U.S.C. 78f(b)(7).

related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a "roadmap" paragraph as shown in Nasdaq Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (e.g., Nasdaq Rule 1014(b));
- Grouping logically-related provisions together in the rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership) and recusals and disqualifications;
- Clarifying when the Membership Department will deem an application to be filed (when the application is "substantially complete," as set forth in Nasdaq Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may "waive-in" to Exchange membership (as set forth in Nasdaq Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by, for example, doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms where the Membership Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (Nasdaq Rule 1012(a)(1);
- Allowing payment of application fees by means other than paper check (Nasdaq Rule 1013(a)(1)(C));
- Harmonizing disparate procedures under Nasdaq Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes;
- Detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the affiliated exchanges and defining procedures for processing and responding to waive-in applications (Nasdaq Rule 1013(b));

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act[23] because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and BX implemented during its transition to new membership rules.

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. The Exchange does not expect that its proposed changes to the membership rules

---

23 15 U.S.C. 78f(b)(7).

will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, the Exchange's membership process will be less burdensome for Applicants and Members and the Exchange will improve its competitive standing relative to other 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 Act[24] and subparagraph (f)(6) of Rule 19b-4 thereunder.[25]

---

24 15 U.S.C. 78s(b)(3)(A)(iii).

25 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.

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2021-02 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-2021-02. 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-2021-02 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.[26]

J. Matthew DeLesDernier
Assistant Secretary

---

[26] 17 CFR 200.30-3(a)(12).

Exhibit 3A

BROKER-DEALER MEMBERSHIP APPLICATION
The Nasdaq Stock Market ("NQX"), Nasdaq BX ("BX"), Nasdaq PHLX ("PHLX"), Nasdaq ISE ("ISE"), Nasdaq GEMX ("GEMX")
(Collectively "Nasdaq")

A. **Applicant Profile**		
Full legal name of Applicant Organization (must be a registered broker dealer with the Securities and Exchange Commission):		
Date:	CRD No.	SEC No. 8-
Main office address:		
Main phone:	Type of Organization Corporation Partnership LLC	
Name of individual completing application:		
Email Address:	Phone:	

Application Type	
Initial Nasdaq Application	**Amendment (*adding SRO or trading platform)***
Full Membership - *Applicant is seeking membership to a Nasdaq SRO for the first time. Refer to required supplemental material in Section **M***	**Waive-In Membership** - *Applicant must be approved on at least one Nasdaq SRO or FINRA* ***NOTE:** FINRA members applying to Nasdaq for the first time are eligible to waive-in on NQX, BX, ISE and GEMX. **Approved members of NQX, BX, PHLX, ISE or GEMX may be eligible for waive-in on additional Nasdaq affiliated exchanges.***

Indicate which Nasdaq SRO(s) Applicant is seeking membership on (check all that apply):

The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options	ISE GEMX

Indicate Nasdaq SRO(s) on which Applicant is an **approved** member, if applicable:

The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options	ISE GEMX MRX

If Applicant is applying to PHLX, will PHLX be the Designated Examining Authority ("DEA")?
Yes ~ Must provide **ALL** required supplemental material with this application as outlined in Sections **M** and **N**
No ~ Provide the SRO assigned as DEA for Applicant Organization _____

B. Nature of Intended Activity (Check all that apply)

OPTIONS		EQUITY
On-Floor Participants (PHLX Only) Specialist Registered Options Trader ("ROT") Streaming Quote Trader ("SQT") Floor Broker	**Off-Floor Participants** Order Entry/EAM Market Maker Remote Specialist (PHLX only)	**Equity Trading** Market Maker Order Entry

C. Supervision

Provide the name and CRD number of the associated person who will be responsible for the proposed trading activity on Nasdaq.

Name:	CRD No.

D. Clearing Information

National Securities Clearing Corporation ("NSCC") Clearing	**The Options Clearing Corporation ("OCC") Clearing**
Nasdaq requires all Members to provide an NSCC account number for purposes of direct debit pursuant to exchange rules. Provide an NSCC account number which can be utilized for purposes of this requirement. Self-Clearing NSCC Account No.: _____ Agreement with clearing agent NSCC Account No.: _____ Name of broker dealer acting as clearing agent: _____	All options participants **must** provide an executed clearing letter of guarantee. (found in document library) Self-Clearing OCC Account No.: _____ Agreement with clearing agent OCC Account No.: _____ Name of broker dealer acting as clearing agent: _____

E. Executive Representative Designation

All Nasdaq members are required to designate an executive representative who will be the sole person entitled to exercise such member's voting and designation rights set forth in exchange rules. Therefore, Applicant organization certifies that the below-named individual is qualified to act as its executive representative.

Executive Representative:	Title:
Email:	Phone:

F. Compliance Officer

Provide the name of the individual within your organization that is responsible for compliance.

Compliance Officer:	Title:
Email:	Phone:

G. **Billing Information**	
Provide a billing contact to be designated for receipt of monthly invoices via email.	
Billing Contact:	Title:
Email:	Phone:

H. **Emergency Management**	
At least two individuals must be designated who would serve as 24/7 contacts in the event that an emergency arises outside of normal business hours. Please provide all information requested for both individuals.	
Primary Contact:	**Secondary** Contact:
Title:	Title:
Email:	Email:
Business Phone:	Business Phone:
Cell:	Cell:

I. Statutory Disqualification Disclosure

Pursuant to the Securities Exchange Act of 1934, Nasdaq may deny or condition trading privileges or bar an individual from becoming associated with a member, who is subject to a statutory disqualification. The term, statutory disqualification, is defined under section 3(a)(39)(F) of the Act.

The Applicant organization does **NOT** have any person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification.

The Applicant organization **DOES** have person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification. Attach the following information for each individual:

a. Name and individual CRD number
b. Description of responsibilities within the organization
c. All documents relating to the disqualification
d. Explanation of action taken or approval by another SRO regarding the individual

J. Affiliates

Does Applicant have any affiliates conducting securities transactions that are not registered with the Securities and Exchange Commission? Yes No

If yes, has this arrangement been reviewed in relation to a previously filed Nasdaq member application?

Yes No - Provide additional information with respect to unregistered affiliate

K. Qualifying Permit Holder Designation (PHLX Applicants Only See PHLX Rules 908 and 921)

PHLX applicants must designate a qualifying permit holder who must be an officer or partner associated with the organization. Applicant certifies that the below named individual will act as its qualifying permit holder. Please also provide a PHLX Individual Membership Application for the qualifying permit holder.

Qualifying Permit Holder:	Title:
Date of Birth:	Individual CRD No.
Phone:	Email:

L. Supplemental Material

All applicants (waive-in and full) must provide the following documents with this application:

Executed Nasdaq Exchange Membership Agreement

Fully-executed Nasdaq U.S. Services Agreement, unless previously provided (found in document library)

A copy of the Applicant's most recent FOCUS Report

If applicant is seeking **options** market maker status
- Information barrier procedures, if applicable
- List identifying all accounts to be used for market maker activity
- ISE and GEMX market makers must submit the DTR Authorization and Guarantee Form
- ISE market maker applicants must also provide a copy of a purchase and/or lease agreement confirming acquisition of required trading rights

Non-refundable application fee as follows:

PHLX $350 – Application fee **does not** apply to Applicants applying to PHLX for PSX only participation

NQX $2,000

BX $2,000 - Application fee **does not** apply to Applicants applying to BX for BX Options only participation

ISE PMM $7,500 CMM $5,500 EAM $3,500 (check all that apply)

GEMX PMM $3,000 CMM $2,000 EAM $1,500 (check all that apply)

WAIVE-IN ATTESTATION: An applicant that is an approved member of FINRA or one or more Nasdaq Affiliated Exchange(s) shall have the option to apply for membership through an expedited process pursuant to NQX and BX Rule 1013(a)(5) and PHLX Rule 910(f)(3). Applicants who are eligible for this expedited review must execute the below attestation and submit the relevant supplemental material requested in Section L above.

I hereby certify that _____ (Applicant) is operating as an approved member of FINRA NQX BX PHLX ISE GEMX MRX and that there have been no material changes of business since that application that have not been approved by the appropriate SRO and that the information provided remains complete and accurate with no substantial change to the business operations of Applicant.

Authorized Applicant Signature:	Date:
Print Name:	Title:

M. Required Supplemental Material

Applicants **not eligible** for the waive-in expedited review process pursuant to Nasdaq Rules must also include the following with this application:

A copy of Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository (CRD)

An original Exchange approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another SRO, if such fingerprints are not otherwise available electronically to the Exchange through CRD

Summary of Applicant's business plan addressing type of business intended to be conducted on Nasdaq

Evidence of established clearing arrangement

Most recent audited financial statement and a description of any material changes in the Applicant's financial condition since the date of the statement

Organizational chart identifying the Applicant's supervisory structure by associated person. This chart must identify **all** of Applicant's associated persons and should include names, titles, licenses/registrations and CRD numbers

Letters of attestation for any officer/director that will not be involved in the day to day management of the business and affairs of the firm
Branch Office Disclosure Form (Non-FINRA member applicants only) (found in document library)
If applicant shares office space, provide a description of business operations conducted, blueprints, identification of common areas, communication lines and information barriers specific to shared space
Applicant's Written Supervisory Procedures ("WSP") Manual including Anti-Money Laundering, Business Continuity Plan and Risk procedures pursuant to SEC 15c3-5
Completed WSP Checklist for NQX and BX full applicants only (found in document library)
Copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person
A statement indicating whether the Applicant or any person on Schedule A or B of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (the "Act") or any substantially equivalent foreign statute or regulation, a futures association registered under the Act or any equivalent foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant or any person on Schedule A or B of the Applicant's Form BD and activity that has not been reported to the CRD, together with all relevant details, including any sanctions imposed
A copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with Services regarding the execution or clearance and settlement of transactions effected on the Exchange
All examination reports and corresponding responses regarding the Applicant for the previous two years
A copy of the Exchange's Membership Agreement, duly executed by the Applicant
Certificate of Insurance (Rule 652) (PHLX Trading Floor Only)
Additionally, if application is seeking **market maker** status: A description of the source and amount of capital to support its market making activities and the source of any additional capital that may become necessary A list of persons conducting the Applicant's market making activities, a list of the persons responsible for supervising these persons along with CRD numbers ➢ ISE/GEMX - please use the Designated Trading Representative Authorization and Guarantee Form
Appropriate formation documents as follows: Corporation; include executed Corporate Exhibits Partnership; include an executed copy of the firm's Partnership Agreement Limited Liability Company; include Operating Agreement and Articles of Organization or Certificate of Formation
N. Additional Supplemental Material (PHLX DEA Applicants)
Applicants for which PHLX will be the **Designated Examining Authority** must also submit the following:
Designation of Accountant Form and Auditor Engagement Letter pursuant to SEC Rule 17a-5(f)
Confirmation of required funds into a verifiable account of the firm, or if an existing firm, a FOCUS Filing or net capital computation with supporting documents for Allowable Assets
Verification of error account, Floor Broker Error Account Notification Form, if applicable (Form available upon request
Evidence of Fidelity Bond coverage pursuant to PHLX Rule 705
Confirmation of U4 registrations for all off-floor traders, director / owner of the firm
If the firm has a Joint Back Office ("JBO") Arrangement with its clearing firm, provide a copy of the agreement. The firm must employ or have access to a qualified Series 27 Financial and Operations Principal ("FINOP")
Notification of Applicant's intent to use Electronic Storage Media ("ESM") for maintenance and archiving records pursuant to SEA Rule 17a-4(f), if applicable

O. Application Filing Instructions

Please be sure to include all relevant supplemental material with your application. Failure to include information may result in processing delays. Applications are deemed confidential and handled in a secure environment. Applicants should be prepared to provide such other reasonable information with respect to this application as Nasdaq may require. Questions may be directed to Nasdaq Membership at +1 215 496 5159 or +1 215 496 5322.

Applications and supplemental material should be submitted by email to: membership@nasdaq.com.

Exhibit 3B

Nasdaq[1] Membership Agreement

Broker Dealer		CRD Number:
Check all Nasdaq markets relevant to this Application:		
NQX	NOM	ISE
BX	BX Options	GEMX
PHLX	PSX	MRX

In connection with this Nasdaq membership application, and in the event that this application is approved, the Applicant hereby agrees to abide by the terms and conditions set forth below.

The Applicant undertakes to (1) engage only in those business activities permissible pursuant to its membership agreement(s) with FINRA, respecting a FINRA member, and the rules of Nasdaq and any other Self-Regulatory Organization of which the Applicant is a member; (2) obtain the prior approval of Nasdaq pursuant to Nasdaq Rules before removing or modifying any restrictions imposed on permissible business activities or before effecting any material change in business operations; and (3) file a written notice and application with Nasdaq for a change in the ownership or control of the Applicant in circumstances where required by Nasdaq Rules.

The Applicant also agrees:

1. To comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq By-Laws and Rules and all rulings, orders, directions and decisions issued and sanctions imposed under the Nasdaq Rules;
2. To pay such dues, assessments and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules;
3. That this Agreement has been executed on behalf of, and with the authority of, the above-named Applicant. The Undersigned and Applicant represent that the information and statements contained within the application and other information filed are current, true and complete.

The Undersigned and the Applicant further represent that to the extent that any information submitted is not amended, such information is currently accurate and complete and that all information contained in the Applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be kept current and accurate by proper amendment of the Form BD as changes occur. Applicant further represents that the registrations for Associated Persons registered with Nasdaq will be kept current by proper amendment of Form U4 & Form U5.

By:

Print name _____

Title _____

Signature _____

Date _____

[1] The Nasdaq Stock Market LLC ("NQX"), The Nasdaq Options Market ("NOM"), Nasdaq BX, Inc. ("BX"), BX Options Market ("BX Options"), Nasdaq PHLX LLC ("PHLX"), Nasdaq PSX ("PSX"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") are collectively referred to as Nasdaq for purposes of this Agreement.

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

Nasdaq GEMX, LLC Rules

* * * * *

General 2 ORGANIZATION AND ADMINISTRATION

* * * * *

Section 11. Organization and Administration

(a) Each Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact system.

(b) Each Member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each Member shall review and, if necessary, update its required contact information, via such means as the Exchange may specify, within 17 business days after the end of each calendar year.

(c) Each Member shall comply with any Exchange request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Exchange staff.

* * * * *

General 3 MEMBERSHIP AND ACCESS

Series 1000 of the Rules of The Nasdaq Stock Market, LLC ("Nasdaq"), as such rules may be in effect from time to time (the "Nasdaq Rule 1000 Series"), are hereby incorporated by reference into this Nasdaq GEMX General 3 (other than Nasdaq Rule 1031), and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the Nasdaq Rule 1000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. The defined terms "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq GEMX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq GEMX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq GEMX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series

shall be read to refer to the Nasdaq GEMX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq GEMX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq GEMX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker; the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "Exchange Membership Department" or "Membership Department" shall be read to refer to the Nasdaq GEMX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq GEMX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to "General 1 and Equity 1" shall be read as references to Nasdaq GEMX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to "General 9, Section 20" shall be read as references to Nasdaq GEMX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to "General 9, Section 37" shall be read as references to Nasdaq GEMX Options 9, Section 21; and cross references to the "General 4, Rule 1200 Series" shall be read as references to Nasdaq GEMX General 4, Section 1.

The Nasdaq Rule 1000 Series shall also apply to Nasdaq GEMX Members who meet the following requirements:

Foreign Members: A Member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange must:

(1) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;

(2) reimburse the Exchange for any expense incurred in connection with examinations of the Member to the extent that such expenses exceed the cost of examining a Member located within the continental United States; and

(3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

* * * * *

[**Section 1. Qualification of Members**

(a) The Exchange shall issue Memberships that confer the ability to transact on the Exchange. There is no limit on the number of Memberships that may be issued by the Exchange. In addition, in no event shall the Exchange act in a manner under this paragraph that does not comply with the provisions of Section 6(c)(4) of the Exchange

Act. A Member of the Exchange may be a corporation, partnership, or LLC. Each Member must:

(1) be a broker-dealer registered pursuant to Section 15 of the Exchange Act; and

(2) meet the qualifications for a Member in accordance with Exchange Rules applicable thereto.

(b) A Member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange must:

(1) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;

(2) reimburse the Exchange for any expense incurred in connection with examinations of the Member to the extent that such expenses exceed the cost of examining a Member located within the continental United States; and

(3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

(c) Every Member shall have as the principal purpose of being a Member the conduct of a securities business. Such a purpose shall be deemed to exist if and so long as:

(1) the Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and

(2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder.

Section 2. Denial of and Conditions to Becoming a Member

(a) An applicant to become a Member of the Exchange must seek approval in the form and manner prescribed by the Exchange.

(b) The Exchange may deny (or condition) approval of a Member, or may prevent a person from becoming associated (or condition an association) with a Member, for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Exchange Act.

(c) The Exchange also may deny (or condition) approval of a Member, or may prevent a person from becoming associated with (or condition an association) with a Member, when the applicant, directly or indirectly:

(1) has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action);

(2) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures; or

(3) is unable satisfactorily to demonstrate reasonably adequate systems capability and capacity.

(d) When an applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.

(e) The Exchange may determine not to permit a Member or person associated with a Member to continue as a Member or associated therewith, if the Member or associated person:

(1) fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof;

(2) fails to meet any condition placed by the Exchange on such Member or association with a Member;

(3) violates any agreement with the Exchange; or

(4) becomes subject to a statutory disqualification under the Exchange Act.

(f) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must submit an application to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification, as set forth in General 5, Section 3. Failure to timely file such an application is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (e) of this Rule.

(g) **Review by the Exchange Review Council**. Subject to the Rule 9000 Series, any applicant whose application to become a Member is denied or conditioned by the Exchange's Membership Department ("the Department"), or any person whose association with a Member is denied or conditioned by the Department pursuant to paragraph (b) or (c) of this Rule, and any Member or person associated with a Member who is not permitted by the Department pursuant to paragraph (e) of this Rule to continue as a Member or to be associated with a Member or which continuance as a Member or

association is conditioned by the Department, may appeal the Department's decision to the Exchange Review Council, as set forth below.

(1) *Initiation of Review by Applicant*. Within 25 days after service of a decision under this Rule, an applicant ("Applicant") may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in this Rule, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

(2) *Transmission of Documents*. Within ten days after the filing of a request for review, the Department shall:

(A) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(B) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(3) *Membership Application Docket*. The Department shall promptly record in the Exchange's membership application docket each request for review filed with the Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(4) *Appointment of Subcommittee*. The Exchange Review Council or the Review Subcommittee defined in General 5, Section 3 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(5) *Powers of Subcommittee*. If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(6) *Hearing*.

(A) *Notice*. If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(B) *Counsel*. The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(C) *Evidence*. Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the Exchange Review Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(D) *Transcript*. The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(E) *Video Conferencing Hearing*. Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(7) *Additional Information, Briefs*. At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(8) *Abandonment of Request for Review*. If an Applicant fails to specify the grounds for its request for review under General 3, Section 2(g)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Exchange. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(9) *Subcommittee Recommendation*. The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to subparagraph (g)(6), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(10) *Decision*.

(A) *Proposed Written Decision*. After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (g)(10)(B).

(B) *Contents*. The decision shall include:

(i) a description of the Department's decision, including its rationale;

(ii) a description of the principal issues raised in the review;

(iii) a summary of the evidence on each issue; and

(iv) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in General 3, Section 2.

(C) *Issuance of Decision After Expiration of Call for Review Periods*. The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the membership proceeding for review pursuant to General 3, Section 2(h). If the Exchange Board does not call the membership proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(D) *Failure to Issue Decision*. If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (g)(10)(C), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.

(h) Discretionary Review by the Exchange Board

(1) *Call for Review by Director*. A Director may call a membership proceeding for review by the Exchange Board if the call for review is made within the period prescribed in subparagraph (h)(2).

(2) *15 Day Period; Waiver*. A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(3) *Review At Next Meeting*. If a Director calls a membership proceeding for review within the time prescribed in subparagraph (h)(2), the Exchange Board shall review the membership proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) *Decision of the Exchange Board, Including Remand*. After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the membership proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in General 3, Section 2(g)(10)(B).

(5) *Issuance of Decision*. The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the membership proceeding.

Section 3. Persons Associated with Members

(a) Persons associated with Members shall be bound by the By-Laws and Rules of the Exchange and the Rules of the Clearing Corporation. The Exchange may bar a person from becoming or continuing to be associated with a Member if such person does not agree in writing, on a form prescribed by the Exchange, to furnish the Exchange with information with respect to such person's relationship and dealings with the Member, and information reasonably related to such person's other securities business, as may be required by the Exchange, and to permit the examination of its books and records by the Exchange to verify the accuracy of any information so supplied.

(b) Each Member shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Member(s) who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file

with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U-4).

(c) A claim of any person associated with a Member described in the first sentence of paragraph (b) of this Rule against such organization shall be subordinate in right of payment of customers and other Members.

Section 4. Documents Required of Applicants and Members

(a) Although the Exchange may request additional information, at a minimum, the partnership agreement and all amendments thereto, in the case of a partnership, the articles of incorporation, by-laws and all amendments thereto, in the case of a corporation, and in the case of a limited liability company, the articles of organization and operating agreement and all amendments thereto shall be filed with, and shall be subject to review by, the Exchange; however, no action or failure to act by the Exchange shall be construed to mean that the Exchange has in any way passed on the investment merits of or given approval to any such document.

(b) Every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact system. Each Member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each Member shall review and, if necessary, update its required contact information, via such means as the Exchange may specify, within 17 business days after the end of each calendar year. Each Member shall comply with any Exchange request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Exchange staff.

(c) In a manner and form prescribed by the Exchange, every Member shall pledge to abide by the By-Laws and Rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the By-Laws and Rules.

Section 5. Member Application Procedures

(a) *Nasdaq ISE Members*. A Nasdaq ISE Member in good standing is eligible to become a Nasdaq GEMX Member of the same category (i.e., a Nasdaq ISE PMM Member is eligible to become a Nasdaq GEMX PMM Member, a Nasdaq ISE CMM Member is eligible to become a Nasdaq GEMX CMM Member and a Nasdaq ISE EAM Member is eligible to become a Nasdaq GEMX EAM Member). Nasdaq ISE Member applicants are not required to complete and submit an Exchange application. Instead, only Exchange forms concerning electing to trade on the Exchange, submitting to the Exchange's jurisdiction, and operational matters need to be completed and tendered.

(b) *Non-Nasdaq ISE Members*. All non-Nasdaq ISE Members seeking to become a Member of the Exchange must submit an application to the Exchange in accordance with such procedures as shall be established by the Exchange via Options Regulatory Alert

including submission deadlines and payment of any applicable application fees. The Exchange shall provide non-Nasdaq ISE Members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint Market Makers pursuant to Exchange Options 2, Section 3 in order to ensure non-Nasdaq ISE Members have a reasonable opportunity to participate in those processes. A market participant must have completed a membership application to be eligible to participate in the processes set forth in Options 2, Section 3. In addition, the following shall apply:

(i) Applications must be accompanied by a non-refundable application fee.

(ii) Within a reasonable time following receipt of an application, the name of the applicant shall be posted by the Exchange.

(iii) An applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in General 3, Section 1(c).

(iv) Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay. Persons associated with the applicant are subject to investigation by the Exchange and may be required to appear in person before the Exchange. The Exchange may also require any person associated with a Member who may possess information relevant to the applicant's suitability to be a Member to provide information or testimony.

(v) The Exchange will determine whether to approve an application. Written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefor, shall be provided to the applicant.

(vi) If the application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn.

(vii) With respect to each Membership that becomes effective in accordance with this Rule, the Exchange shall promptly notify all Members thereof.

(c) *Rights of Members*. No rights shall be conferred upon a Member except those set forth in the Rules as amended from time to time. A Membership shall not convey any ownership interest in the Exchange. Memberships may not be leased and are not transferable except in the event of a change in control or corporate reorganization involving a Member. In such case, Member status may be transferred to a qualified affiliate or successor upon written notice to the Exchange.

(d) *Fees and Charges for Members*. Members shall be subject to such fees and charges as are established by the Exchange from time to time pursuant to General 2, Section 2 and the Exchange's Pricing Schedule. The entire fee for a Member shall be due and payable in full on or before the first day on which the Membership is effective on a nonrefundable

basis. An organization holding a Membership in its name shall be responsible for paying all fees and charges for that Membership.

(e) *Exchange Jurisdiction over Members*. Every Member shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1 of the Rules.

Section 6. Dissolution and Liquidation of Members

Every Member shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution. Upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Rule 9558.]

* * * * *