

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

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

File No. * SR 2022 - * 05

Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		
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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 harmonize various processes and procedures under Options 3, Section 20 with those of its affiliated options exchanges.

Contact Information

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

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.Kim@Nasdaq.com

Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq GEMX, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/08/2022 (Title *)

By John A. Zecca (Name *) EVP And Chief Legal Counsel

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

 Date: 2022.03.08 13:46:39 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-GEMX-2022-05 19b-4.doc

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-GEMX-2022-05 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

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

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

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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-GEMX-2022-05 Exhibit 5.doc

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to harmonize various processes and procedures under Options 3, Section 20 with those of its affiliated options exchanges.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC ("Phlx") concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via e-mail or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Furthermore, if the Exchange Review Council panel votes to uphold the decision made under this Rule, the

Exchange will assess a fee (“Appeal Fee”) of \$5,000 against the Member(s) who initiated the request for appeal.

The Exchange proposes generally to maintain its current appeal process with certain adjustments to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.³ Similar to Phlx, the Exchange believes that this flexibility will be helpful for Members in submitting their appeal requests in a timely manner, particularly where notification of the Official’s decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k)(2).

Second, the Exchange proposes to amend its provisions for when the Exchange Review Council panel must render a decision on requests for appeal by harmonizing to Phlx’s process. Specifically, the Exchange proposes in Options 3, Section 20(k)(2) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.⁴ The proposed language modifies the current process by extending the current cutoff time from 3:00 to 3:30 p.m. Eastern Time for the Exchange Review

³ See Phlx Options 3, Section 20(l).

⁴ See Phlx Options 3, Section 20(l) for analogous language.

Council panel to render a decision on the next trading day, and by accommodating situations where parties properly bring an appeal request on the next trading day.

Third, the Exchange proposes to decrease the Appeal Fee from \$5,000 to \$500 to align to Phlx's Appeal Fee.⁵

Non-Substantive Changes

In Options 3, Section 20(b)(1), the Exchange proposes a non-substantive, clarifying change to replace the reference to "opening rotation" to "Opening Process," and specify that the Opening Process is defined in Options 3, Section 8. The Exchange will also correct a punctuation error in this section.

The Exchange also proposes non-substantive changes to replace references to "Market Control" with "Official"⁶ throughout Options 3, Section 20. At the time of adoption, the term Market Control referred to designated personnel in the Exchange's market control center that were responsible for administering the provisions of the Rule.⁷ The Exchange has since updated the terminology for such personnel as Officials,⁸ and

⁵ See Phlx Options 3, Section 20(l). The Nasdaq Options Market ("NOM") and BX Options ("BX") also have identical \$500 Appeal Fees. See NOM and BX Options 3, Section 20(k)(4).

⁶ For purposes of Options 3, Section 20, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. See Options 3, Section 20(a)(3).

⁷ The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated this provision. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013).

⁸ See Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR-ISEGemini-2015-11).

therefore proposes to update the old references accordingly.⁹ The Exchange notes that its affiliated options exchanges similarly reference Officials as the persons responsible for administering their obvious error rules.¹⁰

Lastly, the Exchange proposes non-substantive, conforming amendments to Options 3, Section 1 (Days and Hours of Business). The Exchange first proposes to amend the title from “Days and Hours of Business” to “Hours of Business.” The Exchange recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.¹¹ At this time, the Exchange also proposes to amend the first paragraph of Options 3, Section 1 which provides, “The Board shall determine the days the Exchange shall be open for business (referred to as “business days”) and the hours of such days during which transactions may be made on the Exchange.” The Exchange proposes to remove this sentence and instead provide as new paragraph (a):

“The Exchange shall be open for business as provided within General 3, Rule 1030.” This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the

⁹ In particular, the Exchange proposes to update the following subparagraphs in Options 3, Section 20: (c)(2), (d)(2), (g), (h), (i), (l)(1)(A), (l)(1)(B), (l)(1)(C), and (l)(2)(A). The Exchange also proposes to update Supplementary Material .03 to Options 3, Section 20.

¹⁰ See BX, NOM, and Phlx Options 3, Section 20.

¹¹ See Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR-NASDAQ-2021-69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). The Exchange’s General 3 rules incorporate by reference The Nasdaq Stock Market LLC’s General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange further believes that its proposal to amend the current appeal process to harmonize with Phlx's appeal process is consistent with the Act because it will continue to afford Members with due process in connection with decisions made by Officials under Options 3, Section 20 that the Member may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Members in submitting their appeal requests in a timely manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

is properly made the next trade day, and is designed to reduce administrative burden on the Exchange. As it relates to the Appeal Fee, the Exchange believes that the proposed reduction of the fee from \$5,000 to \$500 is reasonable, equitable and not unfairly discriminatory because it aligns to the Appeal Fee assessed by its affiliates¹⁴ and by other options exchanges,¹⁵ and will be applied uniformly to all Members.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames and the Appeal Fee with those of its affiliates in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange further believes that the proposed non-substantive changes in Options 3, Section 20 to replace all instances of Market Control with Official, and to replace opening rotation with Opening Process, will add clarity, transparency, and

¹⁴ See supra note 5.

¹⁵ See, e.g., Cboe BZX Exchange Rule 20.6(1)(5) and MIAX Options Exchange Rule 521(1)(2).

consistency to the Exchange's rules. Lastly, the Exchange's proposal to amend Options 3, Section 1 (Days and Hours of Business) as described above will bring greater clarity, and ensure that this Rule conforms to the changes made in the recent filing to establish General 3, Section 1030, which governs the days the Exchange will be open for business.¹⁶ The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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

The foregoing rule change has become effective pursuant to Section

¹⁶ See supra note 11.

19(b)(3)(A)(iii)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder¹⁸ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed changes to its processes under Options 3, Section 20(k) do not significantly affect the protection of investors or the public interest because the amendments are based on the rules of its affiliates,¹⁹ and will provide market participants that are members on multiple options exchanges owned by Nasdaq, Inc. greater uniformity with the establishment of consistent standards and requirements across the affiliated options exchanges.

Additionally, the Exchange believes that the proposal does not impose any significant burden on competition as the proposal is not a competitive filing and harmonizes the Exchange's obvious error rule and related processes related to appeals with that of other options exchanges.²⁰

Furthermore, Rule 19b-4(f)(6)(iii)²¹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ See supra notes 3 – 5.

²⁰ See supra notes 3 – 5, and 15.

²¹ 17 CFR 240.19b-4(f)(6)(iii).

subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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

The proposed changes to Options 3, Section 20(k) are based on Phlx's rules.²²

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

²² See supra notes 3 – 5.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2022-05)

March __, 2022

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize Various Processes Under Options 3, Section 20 Across the Affiliated Nasdaq Options Exchanges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 8, 2022, 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 Harmonize various processes under Options 3, Section 20 across the affiliated Nasdaq options exchanges.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to harmonize its existing processes with those of its affiliate Nasdaq Phlx LLC ("Phlx") concerning the review of decisions on appeal under Options 3, Section 20. The Exchange also proposes a number of non-substantive changes. Each change is discussed in detail below.

Appeal

Today, Options 3, Section 20(k) governs the appeal process for determinations by Exchange staff made under this Rule, including obvious error determinations. Specifically, if a Member affected by a determination under this Rule so requests within the permitted time period, an Exchange Review Council panel will review decisions made by the Official under Options 3, Section 20, including whether an obvious error occurred and whether the correct determination was made. A request for review on appeal must be made in writing via e-mail or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the

trading day following the date of the execution under review. Furthermore, if the Exchange Review Council panel votes to uphold the decision made under this Rule, the Exchange will assess a fee (“Appeal Fee”) of \$5,000 against the Member(s) who initiated the request for appeal.

The Exchange proposes generally to maintain its current appeal process with certain adjustments to harmonize its process with that of its affiliate, Phlx. First, while Phlx similarly requires the parties to submit a request for review within thirty (30) minutes of being notified of the determination being appealed, Phlx also provides parties with additional time to submit their request if the notification occurs later in the trading day. In particular, if the notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to submit a request for review.³ Similar to Phlx, the Exchange believes that this flexibility will be helpful for Members in submitting their appeal requests in a timely manner, particularly where notification of the Official’s decision was received later in the trading day, and therefore proposes to adopt this provision in Options 3, Section 20(k)(2).

Second, the Exchange proposes to amend its provisions for when the Exchange Review Council panel must render a decision on requests for appeal by harmonizing to Phlx’s process. Specifically, the Exchange proposes in Options 3, Section 20(k)(2) that the Exchange Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the

³ See Phlx Options 3, Section 20(l).

next trade day.⁴ The proposed language modifies the current process by extending the current cutoff time from 3:00 to 3:30 p.m. Eastern Time for the Exchange Review Council panel to render a decision on the next trading day, and by accommodating situations where parties properly bring an appeal request on the next trading day.

Third, the Exchange proposes to decrease the Appeal Fee from \$5,000 to \$500 to align to Phlx's Appeal Fee.⁵

Non-Substantive Changes

In Options 3, Section 20(b)(1), the Exchange proposes a non-substantive, clarifying change to replace the reference to "opening rotation" to "Opening Process," and specify that the Opening Process is defined in Options 3, Section 8. The Exchange will also correct a punctuation error in this section.

The Exchange also proposes non-substantive changes to replace references to "Market Control" with "Official"⁶ throughout Options 3, Section 20. At the time of adoption, the term Market Control referred to designated personnel in the Exchange's market control center that were responsible for administering the provisions of the Rule.⁷

⁴ See Phlx Options 3, Section 20(l) for analogous language.

⁵ See Phlx Options 3, Section 20(l). The Nasdaq Options Market ("NOM") and BX Options ("BX") also have identical \$500 Appeal Fees. See NOM and BX Options 3, Section 20(k)(4).

⁶ For purposes of Options 3, Section 20, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule. See Options 3, Section 20(a)(3).

⁷ The Exchange's application for registration as a national securities exchange, as approved by the Commission, incorporated this provision. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013).

The Exchange has since updated the terminology for such personnel as Officials,⁸ and therefore proposes to update the old references accordingly.⁹ The Exchange notes that its affiliated options exchanges similarly reference Officials as the persons responsible for administering their obvious error rules.¹⁰

Lastly, the Exchange proposes non-substantive, conforming amendments to Options 3, Section 1 (Days and Hours of Business). The Exchange first proposes to amend the title from “Days and Hours of Business” to “Hours of Business.” The Exchange recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.¹¹ At this time, the Exchange also proposes to amend the first paragraph of Options 3, Section 1 which provides, “The Board shall determine the days the Exchange shall be open for business (referred to as “business days”) and the hours of such days during which transactions may be made on the Exchange.” The Exchange proposes to remove this sentence and instead provide as new paragraph (a):

⁸ See Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR-ISEGemini-2015-11).

⁹ In particular, the Exchange proposes to update the following subparagraphs in Options 3, Section 20: (c)(2), (d)(2), (g), (h), (i), (l)(1)(A), (l)(1)(B), (l)(1)(C), and (l)(2)(A). The Exchange also proposes to update Supplementary Material .03 to Options 3, Section 20.

¹⁰ See BX, NOM, and Phlx Options 3, Section 20.

¹¹ See Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR-NASDAQ-2021-69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). The Exchange’s General 3 rules incorporate by reference The Nasdaq Stock Market LLC’s General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

“The Exchange shall be open for business as provided within General 3, Rule 1030.” This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange further believes that its proposal to amend the current appeal process to harmonize with Phlx’s appeal process is consistent with the Act because it will continue to afford Members with due process in connection with decisions made by Officials under Options 3, Section 20 that the Member may feel warrants review. As discussed above, the proposal would allow either party until 9:30 a.m. the next trading to submit a request for review if notification is made after 3:30 p.m., which the Exchange believes will be helpful for Members in submitting their appeal requests in a timely

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

manner. Furthermore, the proposal provides the Exchange Review Council panel additional time and flexibility to render decisions on requests for appeal in cases where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day, and is designed to reduce administrative burden on the Exchange. As it relates to the Appeal Fee, the Exchange believes that the proposed reduction of the fee from \$5,000 to \$500 is reasonable, equitable and not unfairly discriminatory because it aligns to the Appeal Fee assessed by its affiliates¹⁴ and by other options exchanges,¹⁵ and will be applied uniformly to all Members.

Ultimately, the proposed changes to the appeal process are intended to align certain time frames and the Appeal Fee with those of its affiliates in order to provide more consistent rules and procedures across the affiliated options exchanges owned by Nasdaq, Inc. Consistent rules and procedures, in turn, would simplify and streamline the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also members on the Exchange's affiliated options exchanges. Greater harmonization across the affiliated options exchanges will result in greater uniformity, rules that are easier to follow and understand, and more efficient regulatory compliance, thereby contributing to the protection of investors and the public interest. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

¹⁴ See supra note 5.

¹⁵ See, e.g., Cboe BZX Exchange Rule 20.6(1)(5) and MIAX Options Exchange Rule 521(1)(2).

The Exchange further believes that the proposed non-substantive changes in Options 3, Section 20 to replace all instances of Market Control with Official, and to replace opening rotation with Opening Process, will add clarity, transparency, and consistency to the Exchange's rules. Lastly, the Exchange's proposal to amend Options 3, Section 1 (Days and Hours of Business) as described above will bring greater clarity, and ensure that this Rule conforms to the changes made in the recent filing to establish General 3, Section 1030, which governs the days the Exchange will be open for business.¹⁶ The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion, and ensuring that market participants and investors can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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 changes are designed to provide greater harmonization among similar rules and processes across the Exchange's affiliated options exchanges, resulting in more efficient regulatory compliance for common members.

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.

¹⁶ See supra note 11.

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 Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

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:

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 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.

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-2022-05 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-2022-05. 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-2022-05 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq GEMX, LLC Rules

* * * * *

OPTIONS 3 OPTIONS TRADING RULES**Section 1. [Days and] Hours of Business**

[The Board shall determine the days the Exchange shall be open for business (referred to as "business days") and the hours of such days during which transactions may be made on the Exchange.]

(a) The Exchange shall be open for business as provided within General 3, Rule 1030.

[(a)b] Except for unusual conditions as may be determined by the Board, hours during which transactions in options on a narrow-based index, as defined in Options 4A, Section 2, and individual stocks may be made on the Exchange shall correspond to the normal business days and hours for business established by the markets currently trading the stocks underlying Exchange options.

[(b)c] Options on Exchange-Traded Fund Shares, as defined in Options 4, Section 3 may be traded on the Exchange until 4:15 p.m. each business day.

[(c)d] Options on a broad-based index, as defined in Options 4A, Section 2 may be traded on the Exchange until 4:15 p.m. each business day.

[(d)e] Options on Index-Linked Securities, as defined in Options 4, Section 3 may be traded on the Exchange until 4:15 p.m. each business day.

[(e) The Exchange shall not be open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.]

* * * * *

Section 20. Nullification and Adjustment of Options Transactions including Obvious Errors

* * * * *

(b) *Theoretical Price*. No change.

(1) *Transactions at the Open*.[,] For a transaction occurring during the [o]Opening Process[rotation] ([see]as defined in Options 3, Section 8) the Exchange will determine the Theoretical Price if there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBB and NBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart contained in sub-paragraph (b)(3) below. If the bid/ask differential is less than the Minimum Amount, the Theoretical Price is the NBB or NBO just prior to the erroneous transaction.

* * * * *

(c) *Obvious Errors*.

(1) *Definition*. No change.

(2) *Time Deadline*. A party that believes that it participated in a transaction that was the result of an Obvious Error must notify an Official[the Exchange's Market Control] in the manner specified from time to time by the Exchange in an Options Trader Alert distributed to Members. Such notification must be received by an Official[the Exchange's Market Control] within the timeframes specified below:

* * * * *

(d) *Catastrophic Errors*.

(1) *Definition*. No change.

(2) *Time Deadline*. A party that believes that it participated in a transaction that was the result of a Catastrophic Error must notify [the Exchange's Market Control]an Official in the manner specified from time to time by the Exchange in an Options Trader Alert distributed to Members. Such notification must be received by [the Exchange's Market Control]an Official by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify [the Exchange's Market Control]an Official within 45 minutes after the close of trading that same day.

* * * * *

(g) *Erroneous Print in Underlying*. A trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in sub-paragraph (c)(4) of this Rule, provided a party notifies [the Exchange's Market Control]an Official in a timely manner as set forth below. For purposes of this paragraph, a trade resulting from an erroneous print(s) shall mean any options trade executed during a period of time for which one or more

executions in the underlying security are nullified and for one second thereafter. If a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to this paragraph it must notify [the Exchange's Market Control] an Official within the timeframes set forth in sub-paragraph (c)(2) above, with the allowed notification timeframe commencing at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. If multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

(h) *Erroneous Quote in Underlying*. A trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in subparagraph (c)(4) this Rule, provided a party notifies [the Exchange's Market Control] an Official in a timely manner as set forth below. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this paragraph, the average quote width shall be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question). If a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) pursuant to this paragraph it must notify [the Exchange's Market Control] an Official in accordance with subparagraph (c)(2) above.

(i) *Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades*. Transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies [the Exchange's Market Control] an Official in a timely manner as set forth below. If a party believes that it participated in an erroneous transaction pursuant to this paragraph it must notify [the Exchange's Market Control] an Official within the timeframes set forth in subparagraph (c)(2) above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

* * * * *

(k) *Appeals*. No change.

* * * * *

(2) A request for review on appeal must be made in writing via e-mail or other electronic means specified from time to time by the Exchange in an Options Trader Alert distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. The Exchange

Review Council panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.[The Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.]

* * * * *

- (4) If the Exchange Review Council panel votes to uphold the decision made pursuant to paragraph (k) above, the Exchange will assess a \$[5,000]500.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

* * * * *

(1) Erroneous Trades due to System Disruptions and Malfunctions

(1) Verifiable Disruptions or Malfunctions of Exchange Systems.

(A) Transactions arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by an Official[Market Control]. Transactions that qualify for price adjustment will be adjusted in accordance with the guidelines contained in Options 3, Section 20(b)(2)(i)(A) and (B).

(B) Absent extraordinary circumstances, any such action by [Market Control]an Official pursuant to this Rule shall be initiated within sixty (60) minutes of the occurrence of the erroneous transaction that resulted from a verifiable disruption or malfunction. Each Member involved in the transaction shall be notified as soon as practicable.

(C) Any Member aggrieved by the action of [Market Control]an Official taken pursuant to paragraph (A) above may appeal such action in accordance with the provisions of subsection (2).

(2) Procedures for Review of Decisions Made Pursuant to Options 3, Section 20(l)(1).

(A) If a party to a ruling by [Market Control]an Official made pursuant to subsection (1) of this Rule requests within the time permitted below, an Exchange Review

Council panel will be utilized to review decisions made by [Market Control]the Official under this Rule.

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Supplementary Material to Options 3, Section 20

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.03 When [Market Control]an Official determines that an Error has occurred and action is warranted under paragraphs (c) or (d) above, the identity of the parties to the trade will be disclosed to each other in order to encourage conflict resolution.

* * * * *