

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19

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

File No. * SR 2024 - * 04

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"/>
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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)

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 expand the Exchanges Cabinet Proximity Option program.

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * Fax


Signature

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

Date (Title *)

By
(Name *)

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: 2024.02.26
08:37:17 -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 EFFS website.

Form 19b-4 Information *

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SR-GEMX-2024-04 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-2024-04 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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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 expand the Exchange’s Cabinet Proximity Option program.

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

(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:

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

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

a. Purpose

Currently, the Exchange offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.³

Currently, the Exchange offers reservations for low, medium, medium/high, or high density cabinets under the Cabinet Proximity Option program.⁴ The purpose of the

³ See Securities Exchange Act Release No. 34-62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019). In 2017, the Exchange synchronized its options for connecting to the Exchange with that of its sister exchanges and adopted uniform colocation services, including the Cabinet Proximity Option program. See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

⁴ See General 8, Section 1(d). Low density cabinets are cabinets with power densities less than or equal to 2.88 kilowatts ("kW"). Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. See General 8, Section 1(a).

proposed rule change is to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW, in addition to those reservations currently offered under the program.⁵ Although the Exchange has offered the Cabinet Proximity Option program since 2017,⁶ the Exchange has yet to offer reservations under the Cabinet Proximity Option program for cabinets with power densities greater than 10 kW (despite offering cabinets with power densities greater than 10 kW). The Exchange now wishes to offer the Cabinet Proximity Option program for these higher power density cabinets. Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange LLC ("NYSE") offers "PNU cabinets," which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.⁷ NYSE's PNU cabinets are not limited to certain density cabinets and NYSE charges a fee per kW for PNU cabinets.⁸

The Exchange offers the Cabinet Proximity Option program as a convenience to customers. No firms are required to reserve cabinets via the Cabinet Proximity Option program and it is only for those customers that choose to collocate directly with the Exchange. Participants can avoid reserving cabinets under this program (and the related

⁵ Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. See General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

⁶ See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

⁷ Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. See Securities Exchange Act Release No. 34-90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). See also Securities Exchange Act Release No. 34-91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

⁸ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

fee) by (1) collocating but not reserving space in advance of needing it; (2) ordering cabinet space immediately and paying cabinet fees (without reserving in advance); (3) collocating indirectly through a vendor to defray costs; or (4) not collocating at all.

Implementation

The Exchange intends to submit a fee filing in the future to establish related fees in the existing Cabinet Proximity Option Fees, in General 8, Section 1(d).

Implementation of the proposal described herein to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW would coincide with the subsequent fee filing.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal would provide customers with the ability to obtain an option for future use on available, unused cabinet space in proximity to their existing equipment for those cabinets with power densities greater than 10 kW. Customers are currently able to obtain an option for future use on available, unused cabinet space in proximity to their existing equipment for smaller cabinets (e.g., for cabinets with power densities less than 10 kW). The proposal is consistent with the Act because it would clarify, in conjunction with a subsequent fee filing, that reservations under the Cabinet Proximity program are available for cabinets

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

with power densities greater than 10 kW. The Cabinet Proximity Option program is comparable to PNU cabinets offered by NYSE, which may be offered for cabinets of all power densities (when the unallocated cabinet inventory is more than 40 cabinets).¹¹ Furthermore, the proposal would benefit the public interest by providing customers more reservation options to choose from, thereby enhancing their ability to tailor their collocation operations to the requirements of their business operations.¹² As noted above, the Exchange offers the Cabinet Proximity Option program as a convenience, not a necessity, and it is only for those customers that choose to collocate directly with the Exchange. Participants can avoid reserving cabinets under this program (and the related fee) by (1) collocating but not reserving space in advance of needing it; (2) ordering cabinet space immediately and paying cabinet fees (without reserving in advance); (3) collocating indirectly through a vendor to defray costs; or (4) not collocating at all.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer collocation services as a means to facilitate the trading and other market activities of those market participants who believe that collocation enhances the

¹¹ Supra note 7.

¹² The Exchange believes that customer demand for power and cabinets will continue. The Exchange is currently working to expand the amount of power and number of cabinets available in collocation.

efficiency of their operations. The Cabinet Proximity Option program is comparable to PNU cabinets offered by NYSE, as discussed above.

Nothing in the Proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer and customers that wish to make reservations pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹³ of the Act and Rule 19b-4(f)(6) thereunder¹⁴ 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

The Exchange believes that the proposed rule change would not significantly affect the protection of investors or the public interest. The proposal would benefit the public interest by providing customers more reservation options to choose from under the existing Cabinet Proximity Option program, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations.

The Exchange further believes that the proposed change would not impose any significant burden on competition. All customers would have the option to participate in the Cabinet Proximity Option program, as is the case today. Customers that wish to make reservations pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis. In addition, as discussed above, the Cabinet Proximity Option program is comparable to PNU cabinets offered by NYSE.

Furthermore, Rule 19b-4(f)(6)(iii)¹⁵ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) because the Cabinet Proximity Option program currently exists, and the proposed rule change would merely expand the reservations under the Cabinet Proximity Option program to include cabinets with greater power densities. Although the Exchange's initial filing for the Cabinet Proximity Option program¹⁶ only included fees for cabinets of certain power densities, the Exchange did not intend to limit the program to such cabinets and the proposal herein is intended to make it clear that the Exchange proposes to offer reservations under the Cabinet Proximity Option program for cabinets with higher power densities (e.g., greater than 10 kW) once a fee is established.

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

The proposal is similar to SR-NASDAQ-2024-007.

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.

¹⁶ See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48). See also Securities Exchange Act Release No. 34-62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-04)

February __, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand its Cabinet Proximity Option Program

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 February 26, 2024, 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 expand the Exchange’s Cabinet Proximity Option program.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

Currently, the Exchange offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.³

³ See Securities Exchange Act Release No. 34-62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019). In 2017, the Exchange synchronized its options for connecting to the Exchange with that of its sister exchanges and adopted uniform colocation services, including the Cabinet Proximity Option program. See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

Currently, the Exchange offers reservations for low, medium, medium/high, or high density cabinets under the Cabinet Proximity Option program.⁴ The purpose of the proposed rule change is to offer the Exchange’s Cabinet Proximity Option program for cabinets with power densities greater than 10 kW, in addition to those reservations currently offered under the program.⁵ Although the Exchange has offered the Cabinet Proximity Option program since 2017,⁶ the Exchange has yet to offer reservations under the Cabinet Proximity Option program for cabinets with power densities greater than 10 kW (despite offering cabinets with power densities greater than 10 kW). The Exchange now wishes to offer the Cabinet Proximity Option program for these higher power density cabinets. Similar to the Exchange’s Cabinet Proximity Option program, the New York Stock Exchange LLC (“NYSE”) offers “PNU cabinets,” which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the

⁴ See General 8, Section 1(d). Low density cabinets are cabinets with power densities less than or equal to 2.88 kilowatts (“kW”). Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. See General 8, Section 1(a).

⁵ Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. See General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

⁶ See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

user requests.⁷ NYSE's PNU cabinets are not limited to certain density cabinets and NYSE charges a fee per kW for PNU cabinets.⁸

The Exchange offers the Cabinet Proximity Option program as a convenience to customers. No firms are required to reserve cabinets via the Cabinet Proximity Option program and it is only for those customers that choose to collocate directly with the Exchange. Participants can avoid reserving cabinets under this program (and the related fee) by (1) collocating but not reserving space in advance of needing it; (2) ordering cabinet space immediately and paying cabinet fees (without reserving in advance); (3) collocating indirectly through a vendor to defray costs; or (4) not collocating at all.

Implementation

The Exchange intends to submit a fee filing in the future to establish related fees in the existing Cabinet Proximity Option Fees, in General 8, Section 1(d).

Implementation of the proposal described herein to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW would coincide with the subsequent fee filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular,

⁷ Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. See Securities Exchange Act Release No. 34-90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). See also Securities Exchange Act Release No. 34-91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

⁸ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

⁹ 15 U.S.C. 78f(b).

in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal would provide customers with the ability to obtain an option for future use on available, unused cabinet space in proximity to their existing equipment for those cabinets with power densities greater than 10 kW. Customers are currently able to obtain an option for future use on available, unused cabinet space in proximity to their existing equipment for smaller cabinets (e.g., for cabinets with power densities less than 10 kW). The proposal is consistent with the Act because it would clarify, in conjunction with a subsequent fee filing, that reservations under the Cabinet Proximity program are available for cabinets with power densities greater than 10 kW. The Cabinet Proximity Option program is comparable to PNU cabinets offered by NYSE, which may be offered for cabinets of all power densities (when the unallocated cabinet inventory is more than 40 cabinets).¹¹ Furthermore, the proposal would benefit the public interest by providing customers more reservation options to choose from, thereby enhancing their ability to tailor their collocation operations to the requirements of their business operations.¹² As noted above, the Exchange offers the Cabinet Proximity Option program as a convenience, not a necessity, and it is only for those customers that choose to collocate directly with the Exchange. Participants can avoid reserving cabinets under this program (and the related fee) by (1) collocating but not reserving space in advance of needing it; (2) ordering

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Supra note 7.

¹² The Exchange believes that customer demand for power and cabinets will continue. The Exchange is currently working to expand the amount of power and number of cabinets available in collocation.

cabinet space immediately and paying cabinet fees (without reserving in advance); (3) collocating indirectly through a vendor to defray costs; or (4) not collocating at all.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Cabinet Proximity Option program is comparable to PNU cabinets offered by NYSE, as discussed above.

Nothing in the Proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer and customers that wish to make reservations pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

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 Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-04 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 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.

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-2024-04. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2024-04 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).