

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32

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

File No. * SR 2024 - * 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"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
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 amend the Exchanges fees for connectivity and co-location services.

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 * Katie Last Name * Hopkins

Title * Associate General Counsel

E-mail * Katie.hopkins@nasdaq.com

Telephone * (301) 232-4067 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 03/01/2024

(Title *)

By John Zecca (Name *)

EVP and Chief Legal Officer

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: 2024.03.01 00:15:39 -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 EFFS website.

Form 19b-4 Information *

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SR-GEMX-2024-05 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-2024-05 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-2024-05 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 amend the Exchange’s fees for connectivity and co-location services, as described further below.

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:

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

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 purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services. Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco / inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees,³ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers

³ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17).

shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁴ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.⁵ Notwithstanding inflation, the Exchange historically has not increased its fees every year.⁶ The proposed fees represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. The proposed 5.5% increase is comparable to recent inflation rates for one-year periods. For example, in 2023, the inflation rate was 4.12% and in 2022, the inflation rate was 8%.⁷ The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁸

In offering connectivity and co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel. The Exchange's costs to offer such services have risen, in part because the

⁴ See Securities Exchange Act Release No. 34-81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

⁵ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁶ Unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

⁸ See, e.g., Securities Exchange Act Release No. 34-99550 (February 16, 2024), 89 FR 13763 (February 23, 2024) (SR-CboeBYX-2024-006).

Exchange is subject to annual escalation clauses that increase certain costs for the Exchange. The Exchange seeks to cover a portion of its increased costs by the proposed 5.5% increase in fees as described above. The Exchange does not seek to cover the full extent of its cost increases with this proposal. In addition, the Exchange continues to invest in improvements that enhance the value of its connectivity and co-location services, including by refreshing hardware and expanding the co-location facility to offer customers additional space and power.

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 Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹¹ Notwithstanding inflation, the Exchange historically has not increased its fees every year.¹² As noted above, the Exchange has not increased the fees in this proposal for over 6 years. Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. The proposed 5.5% increase is comparable to recent inflation rates for one-year periods. For example, in 2023, the inflation rate was 4.12% and in 2022, the inflation rate was 8%.¹³

Not only have real exchange fees fallen, but the Exchange's costs to provide connectivity and co-location services have increased. As stated above, in offering connectivity and co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel. The Exchange's costs to offer such services have risen, in part because the Exchange is subject to annual escalation clauses that increase certain costs for the Exchange. The Exchange seeks to cover a portion of its increased costs by the proposed 5.5% increase in fees as described above. The Exchange does not seek to cover the full extent of its cost increases with this proposal. In addition, the Exchange continues to invest in improvements that enhance the value of its connectivity and co-location services, including by refreshing hardware and expanding the co-location facility to offer

¹¹ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

¹² As noted above, unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹³ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

customers additional space and power.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange

¹⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ Id.

voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

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 burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

The proposal has similarities to a proposal filed with the Commission by Cboe affiliated exchanges.¹⁸

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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ See, e.g., Securities Exchange Act Release No. 34-99550 (February 16, 2024), 89 FR 13763 (February 23, 2024) (SR-CboeBYX-2024-006).

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-05)

March __, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fees for Connectivity and Co-location Services

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 1, 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 amend the Exchange’s fees for connectivity and co-location services, as described further below.

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 purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services. Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco / inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees,³ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New

³ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17).

Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁴ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.⁵ Notwithstanding inflation, the Exchange historically has not increased its fees every year.⁶ The proposed fees represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. The proposed 5.5% increase is comparable to recent inflation rates for one-year periods. For example, in 2023, the inflation rate was 4.12% and in 2022, the inflation rate was 8%.⁷ The Exchange notes that other exchanges have filed for

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⁵ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁶ Unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁸

In offering connectivity and co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel. The Exchange's costs to offer such services have risen, in part because the Exchange is subject to annual escalation clauses that increase certain costs for the Exchange. The Exchange seeks to cover a portion of its increased costs by the proposed 5.5% increase in fees as described above. The Exchange does not seek to cover the full extent of its cost increases with this proposal. In addition, the Exchange continues to invest in improvements that enhance the value of its connectivity and co-location services, including by refreshing hardware and expanding the co-location facility to offer customers additional space and power.

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 Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to

⁸ See, e.g., Securities Exchange Act Release No. 34-99550 (February 16, 2024), 89 FR 13763 (February 23, 2024) (SR-CboeBYX-2024-006).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹¹ Notwithstanding inflation, the Exchange historically has not increased its fees every year.¹² As noted above, the Exchange has not increased the fees in this proposal for over 6 years. Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. The proposed 5.5% increase is comparable to recent inflation rates for one-year periods. For example, in 2023, the inflation rate was 4.12% and in 2022, the inflation rate was 8%.¹³

Not only have real exchange fees fallen, but the Exchange's costs to provide connectivity and co-location services have increased. As stated above, in offering connectivity and co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment, and personnel. The Exchange's costs to offer such services have risen, in part because the Exchange is

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¹² As noted above, unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹³ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

subject to annual escalation clauses that increase certain costs for the Exchange. The Exchange seeks to cover a portion of its increased costs by the proposed 5.5% increase in fees as described above. The Exchange does not seek to cover the full extent of its cost increases with this proposal. In addition, the Exchange continues to invest in improvements that enhance the value of its connectivity and co-location services, including by refreshing hardware and expanding the co-location facility to offer customers additional space and power.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single

options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers

¹⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ Id.

have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

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 burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-05 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments:

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

All submissions should refer to file number SR-GEMX-2024-05. 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-2024-05 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.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ GEMX, LLC RULES

* * * * *

General Rules

* * * * *

General 8: Connectivity

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Section 1. Co-Location Services

The following charges are assessed for co-location services:¹

(a) Cabinets

Cabinet with Power		
Description	Installation Fee	Ongoing Monthly Fee
Super High Density Cabinet (>10kW - <=17.3kW)	\$(4,500) <u>4,748</u> ^{***}	\$(8,000) <u>8,440</u> ^{**}
High Density Cabinet (>7kW - <10kW)	\$(3,500) <u>3,693</u>	\$(4,500) <u>4,748</u> ^{**}
Medium-High Density Cabinet (>5kW - <=7kW)	\$(3,500) <u>3,693</u>	\$(3,500) <u>3,693</u> ^{**}
Medium Density Cabinet (>2.88kW - <=5kW)	\$(3,500) <u>3,693</u>	\$(2,500) <u>2,638</u> ^{**}
Low Density Cabinet (<=2.88kW)	\$(3,500) <u>3,693</u>	\$(2,000) <u>2,110</u> ^{**}
Half Cabinet*		\$(2,000) <u>2,110</u>

* Not available to new subscribers.

** Discount of 15% of fee available to users of 25 or more full cabinets who commit to a 3 year term; Discount of 10% of fee available to users of 25 or more full cabinets who commit to a 2 year term.

*** Includes larger cabinet (30" W x 48" D x 96" H). Standard installation fee of \$(~~3,500~~)3,693 would apply if smaller cabinet (24"W x 42"D x 84"H) is requested. Note:

Cabinet power cap is based on the available power at 80% of the breakeven capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit).

Shared Cabinet Space

Description	Installation Fee	Ongoing Monthly Fee
4U Block of Cabinet Space including up to 500W of power *	[\$150] <u>158</u> per hour	[\$600] <u>633</u>

* No more than 2 4U Blocks. Access restricted to Exchange personnel.

Specialty Cabinet Charge

Description	Ongoing Monthly Fee
Additional Charge per Cabinet for cabinet > 24"W for each 6"W increment greater than 24"W - 2x the ongoing cabinet fee if the cabinet is >=48"W	[\$500] <u>528</u> per 6" or 2x the Ongoing Cabinet fee

Multi-Firm Cabinet Charge

Description	Ongoing Monthly Fee
Additional Charge per Cabinet per firm for each cabinet that supports a firm other than the firm contracted to receive the cabinet by Nasdaq Technology Services	[\$500] <u>528</u>

(b) Connectivity

External Telco/Inter-Cabinet Connectivity

Description	Installation Fee	Ongoing Monthly Fee
Category 6 Cable patch	[\$300] <u>317</u>	[\$350] <u>369</u> *
DS-3 Connection	[\$500] <u>528</u>	[\$350] <u>369</u> *
Fiber	[\$500] <u>528</u>	[\$350] <u>369</u> *
POTS Line	\$0	[\$50] <u>53</u>

One-Time Telco Connectivity Expedite Fee	\$[1,400]1,477	\$0
Inter-Cabinet Telco connection outside Nasdaq space		\$[1,000]1,055
100MB Connectivity - Metro NY/NJ Area Destination	\$[1,165]1,229**	\$[1,650]1,741**
1G Connectivity - Metro NY/NJ Area Destination	\$[2,150]2,268**	\$[2,150]2,268**
10G Connectivity - Metro NY/NJ Area Destination	\$[5,000]5,275**	\$[5,000]5,275**
100MB Connectivity - Toronto Area Destination	\$[4,850]5,117**	\$[4,100]4,326**
1G Connectivity - Toronto Area Destination	\$[7,700]8,124**	\$[9,850]10,392**
10G Connectivity - Toronto Area Destination	\$[14,200]14,981**	\$[28,400]29,962**
100MB Connectivity - Chicago Area Destination	\$[3,500]3,693**	\$[7,350]7,754**
1G Connectivity - Chicago Area Destination	\$[4,900]5,170**	\$[12,800]13,504**
10G Connectivity - Chicago Area Destination	\$[10,650]11,236**	\$[26,900]28,380**

* Requesting party only. Not applicable to inter-cabinet connections among the same customer.

** Includes fiber telco cross connect within Nasdaq data center.

Connectivity to the Exchange

Description	Installation Fee	Ongoing Monthly Fee
Fiber Connection to the Exchange (10Gb)	\$[1,000]1,055	\$[10,000]10,550
Fiber Connection to the Exchange (10Gb Ultra)	\$[1,500]1,583	\$[15,000]15,825
Fiber Connection to the Exchange (40Gb)	\$[1,500]1,583	\$[20,000]21,100
Fiber Connection to the Exchange (1Gb Ultra)	\$[1,500]1,583	\$[2,500]2,638
Fiber Connection to the Exchange (1Gb)	\$[1,000]1,055	\$[2,500]2,638

1Gb Copper Connection to the Exchange	\$[1,000] <u>1,055</u>	\$[2,500] <u>2,638</u>
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Connectivity to Third Party Services

Description	Installation Fee	Ongoing Monthly Fee
Third Party Services Fiber Connection (10Gb Ultra)	\$[1,500] <u>1,583</u> *	\$[5,000] <u>5,275</u> *
Third Party Services Fiber Connection (1Gb Ultra)	\$[1,500] <u>1,583</u> *	\$[2,000] <u>2,110</u> *
Third Party Services Fiber Connection (1Gb Ultra or 10Gb Ultra for UTP only)	\$[100] <u>106</u> *	\$[100] <u>106</u> *

* Waived for two connections per client to UTP SIP feeds only (UQDF and UTDF).

Market Data Connectivity*

The following Market Data feeds are delivered to the Nasdaq Data Center via a fiber optic network:

Description	Installation Fee	Ongoing Monthly Fee
Nasdaq	\$[1,000] <u>1,055</u>	\$0
SIAC	\$[1,000] <u>1,055</u>	
CTS/CQS		\$[1,412] <u>1,490</u>
OpenBook Realtime		\$[2,500] <u>2,638</u>
OpenBook Ultra		\$[2,500] <u>2,638</u>
NYSE Alerts		\$[200] <u>211</u>
NYSE Trades		\$[100] <u>106</u>
Arca Trades		\$[100] <u>106</u>
ArcaBook Multicast		\$[1,500] <u>1,583</u>
Arca BBO		\$[125] <u>132</u>
AMEX-Ultra/Trades/Alerts/LRP		\$[100] <u>106</u>
OPRA		\$[6,000] <u>6,330</u>
CME	\$[1,000] <u>1,055</u>	\$[3,500] <u>3,693</u>
Access Fee per location device/user		\$[65] <u>69</u>

CBOE	\$[1,000]1,055
BZX Depth	\$[4,000]4,220
BYX Depth	\$[1,500]1,583
EDGA Depth	\$[2,500]2,638
EDGX Depth	\$[2,500]2,638
TSX/TSXV	\$[1,000]1,055
TSX and TSXV Level 1 Feed	\$[300]317
TSX and TSXV Level 2 Feed	\$[1,000]1,055
TSX Quantum Level 1 Feed	\$[100]106
TSX Quantum Level 2 Feed	\$[300]317

* Pricing is for connectivity only and is similar to connectivity fees imposed by other vendors. The fees are generally based on the amount of bandwidth needed to accommodate a particular feed and the Exchange is not the exclusive method to get market data connectivity. Market data fees are charged independently by the Exchange and other exchanges.

The following multicast Market Data feeds are delivered to the Nasdaq Data Center via a wireless network (microwave or millimeter wave):

Description	Installation Fee	Recurring Monthly Fee *
NYSE Equities (Arca Integrated)	\$[5,000]5,275	\$[10,000]10,550
NYSE Equities (NYSE Integrated)	\$[5,000]5,275	\$[10,000]10,550
BATS Multicast PITCH (BZX and BYX)	\$[2,500]2,638	\$[7,500]7,913
Direct EDGE Depth of Book (EDGA, EDGX)	\$[2,500]2,638	\$[7,500]7,913
CME Multicast Total	\$[5,000]5,275	\$[23,500]24,793
CME Equities Futures Data Only		\$[10,000]10,550
CME Fixed Income Futures Data Only		\$[10,000]10,550
CME Metals Futures Data Only		\$[3,500]3,693

* Subscribers with three to five microwave or millimeter wave wireless subscriptions under General 8, Section 1(b) (and/or any other provision of these Rules that provides for such subscriptions, as may exist, from time to time) receive a 5% discount on all such subscriptions; subscribers with six to ten microwave or millimeter wave wireless subscriptions under the Rules receive a 10% discount on all such subscriptions; subscribers with eleven to fourteen microwave or millimeter wave wireless subscriptions

under the Rules receive a 15% discount on all such subscriptions; and subscribers with fifteen or more microwave or millimeter wave wireless subscriptions under the Rules receive a 20% discount on all such subscriptions.

(c) Power

Cabinet Power

Description	Installation Fee	Ongoing Monthly Fee
2x20 amp 110 volt	\$[2,000] <u>2,110</u>	\$0
2x30 amp 110 volt	\$[2,000] <u>2,110</u>	\$0
2x20 amp 208 volt	\$[2,000] <u>2,110</u>	\$0
2x30 amp 208 volt	\$[2,000] <u>2,110</u>	\$0
Phase 3 2x 20 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
Phase 3 2x 30 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
2x60 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
Phase 3 2x 40 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
Phase 3 2x 50 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
Phase 3 2x 60 amp 208 volt	\$[3,000] <u>3,165</u>	\$0
2x30 amp 48 volt DC	\$[3,000] <u>3,165</u>	\$0

(d) Additional Charges/Services

Additional Items

Description	Installation Fee	Ongoing Monthly Fee
Cooling (Door) Fans	\$[1,500] <u>1,583</u>	\$0
Perforated Floor Tiles	\$[250] <u>264</u>	\$0
Cabinet Extension	\$[500] <u>528</u>	\$0
Super High Density Cabinet Kit	\$[4,500] <u>4,748</u>	\$0
Additional Cabinet Shelves	\$[200] <u>211</u>	\$0
Single Master Key Locks	\$[175] <u>185</u>	\$0
Cable Downspouts	\$[750] <u>791</u>	\$0
Cabinet Caging	Installation Specific	\$[3,000] <u>3,165</u>
Custom Installation	Installation	\$0

	Specific	
Cabinet Equipment Storage	\$0	\$[500]528
Copper Patch Cords	\$[4.50]4.75 +[\$0.50]0.53 per foot	\$0
Fiber Patch Cords - Multi-mode	\$[20]21.10 +[\$1.50]1.58 per meter	\$0
Fiber Patch Cords - Single-mode	\$[24]25.32 +[\$0.75]0.79 per meter	\$0
Twinax Patch Cords	\$[34]35.87 +[\$10]10.55 per meter	\$0
Power Cords - 5-15P to C13 - 2 to 4 feet	\$[5]5.28	\$0
Power Cords - C14 to C19 - 2 to 4 feet	\$[10]10.55	\$0
Equipment Storage	\$0	\$[100]106
Internet Bandwidth - 1Mb	\$0	\$[300]317
Internet Bandwidth - 2Mb	\$0	\$[500]528
Internet Bandwidth - 3Mb	\$0	\$[700]739
Internet Bandwidth - 4Mb	\$0	\$[900]950
Internet Bandwidth - 5Mb	\$0	\$[1,100]1,161
GPS Antenna - Shared	\$900	\$600
GPS Antenna - Dedicated	\$1,500	\$600
Cabinet Proximity Option Fee	\$0	\$[1,000]1,055 per medium or low density cabinet, or \$[1,500]1,583 per medium/high or high density cabinet

Services

Description	Rate
Power Consulting Service (billed in hourly increments)	\$[250]264/hr plus materials if necessary

Remote Hands Service	\$[150]158/hr
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¹Co-location services provided by Nasdaq Technology Services LLC.

Section 2. Connectivity

Direct Connectivity services are provided by Nasdaq Technology Services, LLC.

(a) Direct Circuit Connection to the Exchange

Description	Installation Fee	Ongoing Monthly Fee
Direct Circuit Connection to the Exchange (10Gb)	\$[1,500]1,583	\$[7,500]7,913
Direct Circuit Connection to the Exchange (supports up to 1Gb)	\$[1,500]1,583	\$[2,500]2,638
Direct Circuit Connection to the Exchange (1Gb Ultra)	\$[1,500]1,583	\$[2,500]2,638
Optional Cable Router	\$[925]976	
Per U of Cabinet Space*		\$[150]158

* Fees are based on a height unit of approximately 1.75 inches high, commonly called a "U" space and a maximum power of 125 Watts per U space.

(b) Direct Circuit Connection to Third Party Services

Description	Installation Fee	Ongoing Monthly Fee
Third Party Services Direct Connection (10Gb Ultra)	\$[1,500]1,583*	\$[5,000]5,275*
Third Party Services Direct Connection (1Gb Ultra)	\$[1,500]1,583*	\$[2,000]2,110*
Third Party Services Direct Connection (1Gb Ultra or 10Gb Ultra for UTP only)	\$[100]106*	\$[100]106*
Optional Cable Router	\$[925]976	
Per U of Cabinet Space**		\$[150]158

* Waived for two connections per client to UTP SIP feeds only (UQDF and UTDF).

** Fees are based on a height unit of approximately 1.75 inches high, commonly called a "U" space and a maximum power of 125 Watts per U space.

(c) Point of Presence (POP) Connectivity

Description	Installation Fee	Ongoing Monthly Fee
POP Connection to the Exchange (10Gb)	\$[1,500]1,583	\$[7,500]7,913
POP Connection to the Exchange (1Gb Ultra)	\$[1,500]1,583	\$[2,500]2,638

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Options Rules

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Options 7: Pricing Schedule

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Section 6. Connectivity Fees

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H. Exchange Testing Facilities

Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$[1,000]1,055 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$[1,000]1,055 per handoff.

* * * * *