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Page 1 of * 35

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

File No. * SR 2024 - * 17

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 *).

Amend Options 7, Section 6

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 * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 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 07/01/2024 (Title *)

By John Zecca EVP and Chief Legal Officer
(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: 2024.07.01
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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-2024-17 19b-4.docx

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-2024-17 Exhibit 1.docx

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-2024-17 Exhibit 5.docx

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 its Rules at Options 7, Section 6, C, Ports and Other Services.

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:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

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 amend Options 7, Section 6, C, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports³ and SQF Purge Ports.⁴

Today, GEMX assesses \$1,250 per port, per month for an SQF Port as well as an SQF Purge Port.⁵ Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of \$17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to increase the monthly maximum SQF Port and SQF Purge Port Fee Cap of \$17,500 for Market Makers based on the size of the Market Maker on GEMX. The Exchange is determining the size of the Market Maker

³ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively. See Supplementary Material .03(c) to Options 3, Section 7.

⁴ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

⁵ The Exchange proposes to add a comma between “per port” and “per month” in the Options 7, Section 6, C, SQF Port and SQF Purge Port Fee rule text. The Exchange also proposes to remove an extraneous period in Options 7, Section 6, C, in the second paragraph.

based on the amount of transactional volume executed on GEMX in a given month. The Exchange proposes to take each Market's Maker's electronic monthly transactional volume via SQF on GEMX and divide that number by the sum of all Market Maker electronic monthly transactional volume via SQF on GEMX ("Transactional Volume"). All SQF interest would be considered. Each Market Maker would then be classified on GEMX, for the purpose of the SQF Port Fee and SQF Purge Port Cap, as a "small," "medium," or "large" Market Maker based on their Transactional Volume on GEMX to determine the applicable cap in a given month. Market Makers that qualify as "small" would be subject to an increased SQF Port and SQF Purge Port monthly cap of \$22,500. Market Makers that qualify as "medium" would be subject to an increased monthly cap of \$25,000 for SQF Port and SQF Purge Port Fees. Finally, Market Makers that qualify as "large" would be subject to an increased monthly cap of \$27,500 for SQF Port and SQF Purge Port Fees.

As is the case today, the Exchange would not assess a Market Maker an SQF Port and SQF Purge Port Fee beyond the monthly cap once the Market Maker has exceeded the monthly cap for the respective month. Despite increasing the maximum SQF Port and SQF Purge Port Fee Cap for Market Makers that qualify as "small," "medium" and "large," the Exchange will continue to offer all Market Makers the opportunity to cap their SQF Port and SQF Purge Port Fees to limit their costs as they would not be assessed an SQF Port or SQF Purge Port Fee beyond the applicable cap each month.

A GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A

GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,⁶ only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.⁷

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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.

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “medium” from \$27,500 to \$25,000 per month, and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month, is reasonable because despite the increase in the maximum SQF Port

⁶ For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

⁷ GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

Fee and SQF Purge Port Fee Cap, the Exchange will continue to offer all Market Makers the opportunity to cap their SQF Port Fees each month to limit their cost as they would not be assessed an SQF Port or SQF Purge Port Fee Cap Fees beyond the cap.

A GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,¹⁰ only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.¹¹ Members may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Member's particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. GEMX must manage the security and message traffic, among other things, for each port. Utilizing the various caps based on the "size" of the Market Maker as determined by Transactional Volume, provides every Market Maker the ability to manage cost. Additionally, the Exchange would have the ability to manage the quantity of SQF Ports and SQF Purge Ports issued by the Exchange. The various SQF Port and

¹⁰ For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

¹¹ GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports.

SQF Purge Port Fee Caps were determined based on the level of Transactional Volume on GEMX in 2024 for Market Makers. The Exchange assessed each level of Market Maker an increased fee based on size, as reflected by Transactional Volume, to reflect the various sizes of Market Makers present on the Exchange at this time. By capping the SQF Ports and SQF Purge Ports at different levels based on “size,” the Exchange is considering the message traffic and message rates generated by the various “sizes” of Market Makers and the Exchange’s ability to process messages from all SQF Ports and SQF Purge Ports. The SQF Port and SQF Purge Port Fee Cap would allow the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (“Cboe”) limits usage on each port and assesses fees for incremental usage.¹²

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple SQF Ports and SQF Purge Ports, the Exchange is offering to cap their total port cost. GEMX believes the existence of a cap based on the “size” of the Market Maker will level the playing field. The Exchange believes that this approach enables various types of Market Makers to effectively limit costs based on their executed Transactional Volume on the Exchange. Further, the existence of an SQF Port and SQF Purge Port Fee Cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing various types of Market Makers that want to obtain a larger

¹² Each Cboe Binary Order Entry (“BOE”) or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of \$800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. See Cboe’s Fees Schedule.

number of ports to do so with the certainty of a fee cap. Without the SQF Port and SQF Purge Port Fee Cap, Market Makers may pay more to obtain multiple SQF Port and SQF Purge Ports on the Exchange. Other markets tier port fees. BOX Exchange LLC (“BOX”) assesses \$1,000 per month for all SAIL Ports for Market Making and \$500 per month per port up to 5 ports for order entry and \$150 per month for each additional port.¹³ Miami International Securities Exchange, LLC’s (“MIAX”) MIAX Express Interface (“MEI”) Fee levels are based on a tiered fee structure based on the Market Maker’s total monthly executed volume during the relevant month.¹⁴

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “medium” from \$27,500 to \$25,000 per month, and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month, is equitable and not unfairly discriminatory because the Exchange is offering different sizes of Market Makers, based on Transactional Volume executed on the Exchange, the ability to cap their costs at different levels and potentially obtain some SQF Ports and SQF Purge Ports at no cost. The proposal recognizes that some Market Makers may be deemed “small” and may not be able to achieve the same cap as other Market Makers. To this end, the Exchange proposes to increase SQF Port and SQF

¹³ See BOX’s Fee Schedule.

¹⁴ MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be \$14,500 instead of the fee otherwise applicable to such level. See MIAX’s Fee Schedule.

Purge Port Fee Cap from \$17,500 to \$22,500 per month for Market Makers that qualify as “small.” To the extent that a Market Maker qualifies in a given month as a “medium” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$25,000 per month. This fee presumes to place a Market Maker that qualifies as “medium” on equal footing with a Market Maker that qualifies as a “small” Market Maker in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume, these Market Makers that qualify as “medium” have a greater ability to obtain a greater amount of SQF Ports and SQF Purge Ports as compared to Market Makers that qualify as “small.” Finally, to the extent that a Market Maker qualifies in a given month as a “large” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$27,500 per month. This fee presumes to place a Market Maker that qualifies as “large” on equal footing with a Market Maker that qualifies as a “small” Market Maker, and a Market Maker that qualifies as “medium” in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “large” have the ability to obtain the largest amount of SQF Ports and SQF Purge Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports and SQF Purge Ports beyond the applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market

Maker's assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.¹⁵ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.¹⁶ Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,¹⁷ and CMM Trading Right Fees,¹⁸ in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting at a rate that reflects their "size" and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond the applicable cap enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

In 2022, NYSE Arca, Inc. ("NYSE Arca") proposed to restructure fees relating to

¹⁵ See Options 2, Sections 4 and 5.

¹⁶ See Options 3, Section 8.

¹⁷ See Options 7, Section 6, A.

¹⁸ See Options 7, Section 6, B.

OTPs for Market Makers.¹⁹ In that rule change,²⁰ NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,²¹

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

¹⁹ See Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

²⁰ Id. at 38788.

²¹ Id. at 38790.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge Port fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers, based on their transactional volume and presumed “size.” At the same time, the Exchange believes the proposed fees will incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port

Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “medium” from \$27,500 to \$25,000 per month and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month does not impose an undue burden on competition because the Exchange is offering different sizes of Market Makers, based on Transactional Volume executed on the Exchange, the ability to cap their costs at different levels and potentially obtain some SQF Ports and SQF Purge Ports at no cost. The proposal recognizes that some Market Makers may be deemed “small” and may not be able to achieve the same cap as other Market Makers. To this end, the Exchange proposes to increase SQF Port and SQF Purge Port Fee Cap from \$17,500 to \$22,500 per month for Market Makers that qualify as “small.” To the extent that a Market Maker qualifies in a given month as a “medium” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$25,000 per month. This fee presumes to place a Market Maker that qualifies as “medium” on equal footing with a Market Maker that qualifies as a “small” Market Maker in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “medium” have a greater ability to obtain a greater amount of SQF Ports and SQF Purge Ports as compared to Market Makers that qualify as “small.” Finally, to the extent that a Market Maker qualifies in a given month as a “large” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$27,500 per month. This fee presumes to place a Market Maker that qualifies as “large” on equal footing with a Market Maker that qualifies as a “small” Market Maker, and a Market Maker that qualifies as “medium” in terms of the cap by

setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “large” have the ability to obtain the largest amount of SQF Ports and SQF Purge Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports and SQF Purge Ports beyond the applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker’s assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.²² These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.²³ Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,²⁴ and CMM Trading Right Fees,²⁵ in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting at a rate that reflects their “size” and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond the applicable cap enables

²² See Options 2, Sections 4 and 5.

²³ See Options 3, Section 8.

²⁴ See Options 7, Section 6, A.

²⁵ See Options 7, Section 6, B.

these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

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,²⁶ 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

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-17)

July __, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 6

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 July 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 its Rules at Options 7, Section 6, C, Ports and Other Services.

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 amend Options 7, Section 6, C, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports³ and SQF Purge Ports.⁴

Today, GEMX assesses \$1,250 per port, per month for an SQF Port as well as an SQF Purge Port.⁵ Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of \$17,500, which cap is applicable to Market Makers.

³ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively. See Supplementary Material .03(c) to Options 3, Section 7.

⁴ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

⁵ The Exchange proposes to add a comma between “per port” and “per month” in the Options 7, Section 6, C, SQF Port and SQF Purge Port Fee rule text. The Exchange also proposes to remove an extraneous period in Options 7, Section 6, C, in the second paragraph.

At this time, the Exchange proposes to increase the monthly maximum SQF Port and SQF Purge Port Fee Cap of \$17,500 for Market Makers based on the size of the Market Maker on GEMX. The Exchange is determining the size of the Market Maker based on the amount of transactional volume executed on GEMX in a given month. The Exchange proposes to take each Market's Maker's electronic monthly transactional volume via SQF on GEMX and divide that number by the sum of all Market Maker electronic monthly transactional volume via SQF on GEMX ("Transactional Volume"). All SQF interest would be considered. Each Market Maker would then be classified on GEMX, for the purpose of the SQF Port Fee and SQF Purge Port Cap, as a "small," "medium," or "large" Market Maker based on their Transactional Volume on GEMX to determine the applicable cap in a given month. Market Makers that qualify as "small" would be subject to an increased SQF Port and SQF Purge Port monthly cap of \$22,500. Market Makers that qualify as "medium" would be subject to an increased monthly cap of \$25,000 for SQF Port and SQF Purge Port Fees. Finally, Market Makers that qualify as "large" would be subject to an increased monthly cap of \$27,500 for SQF Port and SQF Purge Port Fees.

As is the case today, the Exchange would not assess a Market Maker an SQF Port and SQF Purge Port Fee beyond the monthly cap once the Market Maker has exceeded the monthly cap for the respective month. Despite increasing the maximum SQF Port and SQF Purge Port Fee Cap for Market Makers that qualify as "small," "medium" and "large," the Exchange will continue to offer all Market Makers the opportunity to cap their SQF Port and SQF Purge Port Fees to limit their costs as they would not be assessed an SQF Port or SQF Purge Port Fee beyond the applicable cap each month.

A GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,⁶ only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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.

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as

⁶ For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

⁷ GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

“medium” from \$27,500 to \$25,000 per month, and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month, is reasonable because despite the increase in the maximum SQF Port Fee and SQF Purge Port Fee Cap, the Exchange will continue to offer all Market Makers the opportunity to cap their SQF Port Fees each month to limit their cost as they would not be assessed an SQF Port or SQF Purge Port Fee Cap Fees beyond the cap.

A GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,¹⁰ only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.¹¹ Members may choose a greater number of SQF Ports or SQF Purge Ports, beyond one port, depending on that Member’s particular business model. Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange’s match engine and for the Exchange to send messages related to those quotes to Market Makers. GEMX must manage the security and message traffic, among other things, for each port. Utilizing the various caps based on the “size” of the Market Maker

¹⁰ For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

¹¹ GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports.

as determined by Transactional Volume, provides every Market Maker the ability to manage cost. Additionally, the Exchange would have the ability to manage the quantity of SQF Ports and SQF Purge Ports issued by the Exchange. The various SQF Port and SQF Purge Port Fee Caps were determined based on the level of Transactional Volume on GEMX in 2024 for Market Makers. The Exchange assessed each level of Market Maker an increased fee based on size, as reflected by Transactional Volume, to reflect the various sizes of Market Makers present on the Exchange at this time. By capping the SQF Ports and SQF Purge Ports at different levels based on “size,” the Exchange is considering the message traffic and message rates generated by the various “sizes” of Market Makers and the Exchange’s ability to process messages from all SQF Ports and SQF Purge Ports. The SQF Port and SQF Purge Port Fee Cap would allow the Exchange to scale its needs with respect to processing messages in an efficient manner. The Exchange notes that Cboe Exchange, Inc. (“Cboe”) limits usage on each port and assesses fees for incremental usage.¹²

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple SQF Ports and SQF Purge Ports, the Exchange is offering to cap their total port cost. GEMX believes the existence of a cap based on the “size” of the Market Maker will level the playing field. The Exchange believes that this approach enables various types of Market Makers to effectively limit costs based on their executed Transactional Volume on the Exchange. Further, the

¹² Each Cboe Binary Order Entry (“BOE”) or FIX Logical Port incur the logical port fee indicated when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. For each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of \$800 per month. BOE or FIX Logical Ports provide users the ability to enter order/quotes. See Cboe’s Fees Schedule.

existence of an SQF Port and SQF Purge Port Fee Cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing various types of Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the SQF Port and SQF Purge Port Fee Cap, Market Makers may pay more to obtain multiple SQF Port and SQF Purge Ports on the Exchange. Other markets tier port fees. BOX Exchange LLC (“BOX”) assesses \$1,000 per month for all SAIL Ports for Market Making and \$500 per month per port up to 5 ports for order entry and \$150 per month for each additional port.¹³ Miami International Securities Exchange, LLC’s (“MIAX”) MIAX Express Interface (“MEI”) Fee levels are based on a tiered fee structure based on the Market Maker’s total monthly executed volume during the relevant month.¹⁴

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “medium” from \$27,500 to \$25,000 per month, and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month, is equitable and not unfairly discriminatory because the Exchange is offering different sizes of Market Makers, based on Transactional Volume executed on the Exchange, the ability to cap their costs at different levels and potentially obtain some

¹³ See BOX’s Fee Schedule.

¹⁴ MEI is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. MIAX caps its MEI Ports. For these Monthly MIAX MEI Fees levels, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be \$14,500 instead of the fee otherwise applicable to such level. See MIAX’s Fee Schedule.

SQF Ports and SQF Purge Ports at no cost. The proposal recognizes that some Market Makers may be deemed “small” and may not be able to achieve the same cap as other Market Makers. To this end, the Exchange proposes to increase SQF Port and SQF Purge Port Fee Cap from \$17,500 to \$22,500 per month for Market Makers that qualify as “small.” To the extent that a Market Maker qualifies in a given month as a “medium” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$25,000 per month. This fee presumes to place a Market Maker that qualifies as “medium” on equal footing with a Market Maker that qualifies as a “small” Market Maker in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume, these Market Makers that qualify as “medium” have a greater ability to obtain a greater amount of SQF Ports and SQF Purge Ports as compared to Market Makers that qualify as “small.” Finally, to the extent that a Market Maker qualifies in a given month as a “large” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$27,500 per month. This fee presumes to place a Market Maker that qualifies as “large” on equal footing with a Market Maker that qualifies as a “small” Market Maker, and a Market Maker that qualifies as “medium” in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “large” have the ability to obtain the largest amount of SQF Ports and SQF Purge Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports and SQF Purge Ports beyond the applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker's assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.¹⁵ These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.¹⁶ Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,¹⁷ and CMM Trading Right Fees,¹⁸ in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting at a rate that reflects their "size" and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond the applicable cap enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

¹⁵ See Options 2, Sections 4 and 5.

¹⁶ See Options 3, Section 8.

¹⁷ See Options 7, Section 6, A.

¹⁸ See Options 7, Section 6, B.

In 2022, NYSE Arca, Inc. (“NYSE Arca”) proposed to restructure fees relating to OTPs for Market Makers.¹⁹ In that rule change,²⁰ NYSE Arca argued that,

Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,²¹

The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.

There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to

¹⁹ See Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

²⁰ Id. at 38788.

²¹ Id. at 38790.

drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge Port fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers, based on their transactional volume and presumed “size.” At the same time, the Exchange believes the proposed fees will incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed pricing change to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “small,” from \$17,500 to \$22,500, to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “medium” from \$27,500 to \$25,000 per month and to increase the SQF Port Fee and SQF Purge Port Fee Cap for Market Makers that qualify as “large” from \$42,000 to \$50,000 per month does not impose an undue burden on competition because the Exchange is offering different sizes of Market Makers, based on Transactional Volume executed on the Exchange, the ability to cap their costs at different levels and potentially obtain some SQF Ports and SQF Purge Ports at no cost. The proposal recognizes that some Market Makers may be deemed “small” and may not be able to achieve the same cap as other Market Makers. To this end, the Exchange proposes to increase SQF Port and SQF Purge Port Fee Cap from \$17,500 to \$22,500 per month for Market Makers that qualify as “small.” To the extent that a Market Maker qualifies in a given month as a “medium” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$25,000 per month. This fee presumes to place a Market Maker that qualifies as “medium” on equal footing with a Market Maker that qualifies as a “small” Market Maker in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “medium” have a greater ability to obtain a greater amount of SQF Ports and SQF Purge Ports as compared to Market Makers that qualify as “small.” Finally, to the extent that a Market Maker qualifies in a given month as a “large” Market Maker the Exchange proposes to increase the cap from \$17,500 to \$27,500 per month. This fee presumes to place a Market Maker that qualifies as “large” on equal footing with a Market Maker that qualifies as a “small”

Market Maker, and a Market Maker that qualifies as “medium” in terms of the cap by setting different fee caps for each group. The proposal presumes that based on Transactional Volume these Market Makers that qualify as “large” have the ability to obtain the largest amount of SQF Ports and SQF Purge Ports. The Exchange would uniformly apply the appropriate Market Maker cap to each Market Maker group based on the same volume calculation. Also, Market Makers who exceed their applicable cap would uniformly not be assessed any fee for SQF Ports and SQF Purge Ports beyond the applicable maximum amount.

Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. SQF Ports and SQF Purge Ports are only utilized in the Market Maker’s assigned options series. Unlike other market participants, Market Makers are subject to market making and quoting obligations.²² These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.²³ Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,²⁴ and CMM Trading Right Fees,²⁵ in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting at a rate that reflects their “size” and enabling all Market Makers

²² See Options 2, Sections 4 and 5.

²³ See Options 3, Section 8.

²⁴ See Options 7, Section 6, A.

²⁵ See Options 7, Section 6, B.

to acquire SQF Ports and SQF Purge Ports at no cost beyond the applicable cap enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

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.²⁶ 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.

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-17 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-2024-17. 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-2024-17 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.²⁷

Sherry R. Haywood,

Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq GEMX, LLC Rules

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Options Rules

* * * * *

Options 7 Pricing Schedule

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Section 6. Connectivity Fees

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C. Ports and Other Services

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The below charges are assessed by GEMX for connectivity to GEMX.

A port is a logical connection or session that enables a market participant to send inbound messages and/or receive outbound messages from the Exchange using various communication protocols. Fees are prorated for the first month of service under this section. Upon cancellation, market participants are required to pay for service for the remainder of the month, regardless of whether it is the first month of service.[.]

(i) The following order and quote protocols are available on GEMX.

- (1) **FIX Port Fee**² \$650 per port, per month, per account number
- (2) **SQF Port Fee**¹ \$1,250 per port, per month
- (3) **SQF Purge Port Fee**¹ \$1,250 per port, per month
- (4) **OTTO Port Fee**² \$650 per port, per month, per account number

* * * * *

¹The SQF Port and the SQF Purge Port are subject to [a]the below monthly caps [of \$17,500,]. These [which]caps [is]are applicable to Market Makers.

<u>Transactional Volume</u>	<u>Size</u>	<u>Cap</u>
<u>Less than or equal to 5%</u>	<u>Small</u>	<u>\$22,500</u>
<u>Greater than 5% and less than 15%</u>	<u>Medium</u>	<u>\$25,000</u>
<u>Greater than 15%</u>	<u>Large</u>	<u>\$27,500</u>

Transactional Volume is calculated by taking a Market's Maker's electronic monthly transactional volume via SQF on GEMX and dividing that number by the sum of all Market Maker electronic monthly transactional volume via SQF on GEMX. All SQF interest would be considered.

² OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port are subject to a monthly cap of \$7,500.

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