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

File No. * SR 2024 - * 23

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 establish fees for its expanded 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 07/15/2024


(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: 2024.07.15 12:08:46 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-GEMX-2024-23 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-2024-23 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-2024-23 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 establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 15, 2024.

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 Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³ As described in that filing, the Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

³ See SR-GEMX-2024-21 (not yet published).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density

⁵ Supra note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”)¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11-4 Exchange access on October 21, 2024 and providing customers access in

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

advance of this date. The proposed fees are designated to be operative on August 15, 2024. However, customer orders will not be fee liable until customers are provided access to the space.¹⁵

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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 Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11-4, installation fees for power installation in NY11-4, and fees for power distribution unit options in NY11-4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11-4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693 – \$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11-4, including uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11-4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11-4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market

¹⁸ Supra note 10.

participant may connect to in lieu of the Exchange,¹⁹ 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. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11-4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11-4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11-4 are available to and

¹⁹ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. 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.

assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

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 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 because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 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,²⁰ 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

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.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-23)

July __, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees for its Expanded 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 July 15, 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 establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 15, 2024.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³ As described in that filing, the Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a

³ See SR-GEMX-2024-21 (not yet published).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440

⁵ Supra note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”)¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11-4 Exchange access on October 21, 2024 and providing customers access in advance of this date. The proposed fees are designated to be operative on August 15, 2024. However, customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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 Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11-4, installation fees for power installation in NY11-4, and fees for power distribution unit options in NY11-4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11-4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

\$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693 – \$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11-4, including uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11-4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11-4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as

¹⁸ Supra note 10.

a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange 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,¹⁹ 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. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11-4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11-4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a

¹⁹ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. 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.

convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11-4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

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 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 because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 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.²⁰ 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-2024-23 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-2024-23. This file number should be included on the subject line if email is used. To help the Commission

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-23 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ GEMX, LLC RULES

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General Rules

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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	NY11 Installation Fee	NY11-4 Installation Fee	Ongoing Monthly Fee
Super High Density Cabinet (>10kW - <=17.3kW) ****	\$4,748***	[TBD] <u>\$5,940</u> [†]	\$8,440**
Ultra High Density Cabinet (>10kW - <=15kW)	N/A	[TBD] <u>\$5,940</u> [†]	[TBD] <u>\$7,230</u>
High Density Cabinet (>7kW - <10kW)	\$3,693	[TBD] <u>\$5,940</u> [†]	\$4,748**
Medium-High Density Cabinet (>5kW - <=7kW)	\$3,693	[TBD] <u>\$5,940</u> [†]	\$3,693**
Medium Density Cabinet (>2.88kW - <=5kW)	\$3,693	[TBD] <u>\$5,940</u> [†]	\$2,638**

Low Density Cabinet (≤2.88kW)	\$3,693	N/A	\$2,110**
Half Cabinet*			\$2,110

*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 \$3,693 would apply if smaller cabinet (24"W x 42"D x 84"H) is requested.

****In NY11-4, the Super High Density Cabinet is >15 kW - ≤17.3 kW.

† Includes larger cabinet (32" W x 48" D x 91" H).

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

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(c) Power

Cabinet Power		
Description	Installation Fee	Ongoing Monthly Fee
2x20 amp 110 volt	\$2,110	\$0
2x30 amp 110 volt	\$2,110	\$0
2x20 amp 208 volt	\$2,110	\$0
2x30 amp 208 volt	\$2,110	\$0
Phase 3 2x 20 amp 208 volt	\$3,165	\$0
Phase 3 2x 30 amp 208 volt	\$3,165	\$0
2x60 amp 208 volt	\$3,165	\$0
Phase 3 2x 40 amp 208 volt	\$3,165	\$0
Phase 3 2x 50 amp 208 volt	\$3,165	\$0
Phase 3 2x 60 amp 208 volt	\$3,165	\$0

2x30 amp 48 volt DC	\$3,165	\$0
Phase 1 20 amp 240 volt*	[TBD] <u>\$3,600</u>	[TBD] <u>\$0</u>
Phase 1 32 amp 240 volt*	[TBD] <u>\$3,600</u>	[TBD] <u>\$0</u>
Phase 1 40 amp 240 volt*	[TBD] <u>\$3,600</u>	[TBD] <u>\$0</u>
Phase 3 20 amp 415 volt*	[TBD] <u>\$4,560</u>	[TBD] <u>\$0</u>
Phase 3 32 amp 415 volt*	[TBD] <u>\$4,560</u>	[TBD] <u>\$0</u>

**NY11-4 only. One of these options must be selected for Cabinets in NY11-4.*

(d) Additional Charges/Services

Additional Items

Description	Installation Fee	Ongoing Monthly Fee
* * * * *	* * * * *	* * * * *
Power Cords - C14 to C19 - 2 to 4 feet	\$10.55	\$0
PDU – Phase 1*	[TBD] <u>\$4,100</u>	[TBD] <u>\$0</u>
PDU – Phase 3*	[TBD] <u>\$5,260</u>	[TBD] <u>\$0</u>
Switch Monitored PDU Add On*	[TBD] <u>\$2,000</u>	[TBD] <u>\$0</u>
* * * * *	* * * * *	* * * * *

**NY11-4 only.*

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