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Page 1 of * 44

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

File No. * SR 2024 - * 33

Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A Proposal to Amend the Exchanges Fees for Connectivity and Co Location Services

Contact Information

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

First Name * Brett Last Name * Kitt

Title * Vice President and Deputy General Counsel

E-mail * brett.kitt@nasdaq.com

Telephone * (301) 978-8132 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 08/30/2024 (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.



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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-2024-33 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-2024-33 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-2024-33 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 the Exchange’s fees for connectivity and co-location services, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Brett Kitt
Vice President and Deputy General Counsel
Nasdaq, Inc.
301-978-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco / inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%, with the exception that for Remote Hands

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-GEMX-2024-05). On April 29, 2024, the Exchange withdrew that filing and submitted SR-GEMX-2024-09. On June 27, 2024, the Exchange withdrew SR-GEMX-2024-09 and submitted SR-GEMX-2024-15. The instant filing replaces SR-GEMX-2024-15, which was withdrawn on August 26, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100210 (May 22, 2024), 89 FR 46476 (May 29, 2024) (SR-GEMX-2024-11).

Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁶ However, since 2017, there has been notable inflation by various measures.

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

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

Between January 2017 and July 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 28.70%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.¹⁰ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange believes

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

⁹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

¹⁰ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output).” See *id.*

¹¹ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services,” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and

that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.¹²

Finally, yet another gauge of inflation – average hourly earnings (“AHE”) growth for Computing Infrastructure – increased 44% for non-managers and 38% for all employees from 2017 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.¹⁴ The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2017. In addition to being far below cumulative inflation rates

data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

¹² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated August 2, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated August 3, 2024).

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5%/1% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

¹⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁶ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012).

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities – for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future – a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

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

Between January 2017 and August 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,¹⁹ producing a cumulative price increase of 28.70%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.²¹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.²² The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other

¹⁹ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁰ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

²¹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

²² As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry’s output sold outside the industry (that is, its net output).” See *id.*

information technology infrastructure provisioning services.²³ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.²⁴

Finally, yet another gauge of inflation – average hourly earnings (“AHE”) growth for Computing Infrastructure – increased 44% for non-managers and 38% for all employees from 2017 to 2024.²⁵ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees

²³ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services,” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

²⁴ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

²⁵ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

every year.²⁶ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below inflation since 2017, however measured. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁷ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to

²⁶ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities – for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future – a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

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

the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁸ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."³⁰ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not

²⁸ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁰ Id.

only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

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

No Unfair Discrimination

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

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

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ 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.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

The proposal has similarities to a proposal filed with the Commission by Cboe affiliated exchanges.³²

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.

³² See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2024-33)

August __, 2024

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

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

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco / inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-GEMX-2024-05). On April 29, 2024, the Exchange withdrew that filing and submitted SR-GEMX-2024-09. On June 27, 2024, the Exchange withdrew SR-GEMX-2024-09 and submitted SR-GEMX-2024-15. The instant filing replaces SR-GEMX-2024-15, which was withdrawn on August 26, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the

its fees throughout General 8 by 5.5%, with the exception that for Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁶ However, since 2017, there has been notable inflation by various measures.

Exchange recently established such fee. See Securities Exchange Act Release No. 34-100210 (May 22, 2024), 89 FR 46476 (May 29, 2024) (SR-GEMX-2024-11).

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

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

Between January 2017 and July 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 28.70%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.¹⁰ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange believes

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

⁹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

¹⁰ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output).” See *id.*

¹¹ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services,” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and

that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.¹²

Finally, yet another gauge of inflation – average hourly earnings (“AHE”) growth for Computing Infrastructure – increased 44% for non-managers and 38% for all employees from 2017 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.¹⁴ The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2017. In addition to being far below cumulative inflation rates

data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

¹² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated August 2, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated August 3, 2024).

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5%/1% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

¹⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁶ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012).

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities – for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future – a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

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

Between January 2017 and August 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,¹⁹ producing a cumulative price increase of 28.70%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.²¹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.²² The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other

¹⁹ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁰ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

²¹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

²² As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry’s output sold outside the industry (that is, its net output).” See *id.*

information technology infrastructure provisioning services.²³ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.²⁴

Finally, yet another gauge of inflation – average hourly earnings (“AHE”) growth for Computing Infrastructure – increased 44% for non-managers and 38% for all employees from 2017 to 2024.²⁵ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees

²³ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services,” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

²⁴ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

²⁵ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

every year.²⁶ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below inflation since 2017, however measured. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁷ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to

²⁶ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities – for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future – a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

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

the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁸ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."³⁰ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not

²⁸ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁰ Id.

only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

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

No Unfair Discrimination

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

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

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³¹ 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

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-33 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-2024-33. 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-2024-33 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.³²

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ GEMX, LLC RULES

* * * * *

General Rules

* * * * *

General 8: Connectivity

* * * * *

Section 1. Co-Location Services

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

(a) Cabinets

Cabinet with Power

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

* Not available to new subscribers.

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

*** Includes larger cabinet (30" W x 48" D x 96" H). Standard installation fee of \$[3,500]3,693 would apply if smaller cabinet (24"W x 42"D x 84"H) is requested. Note: Cabinet power cap is based on the available power at 80% of the breaker capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit).

Shared Cabinet Space

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

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

Specialty Cabinet Charge

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

Multi-Firm Cabinet Charge

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

(b) Connectivity

External Telco/Inter-Cabinet Connectivity		
Description	Installation Fee	Ongoing Monthly Fee
Category 6 Cable patch	\$[300]317	\$[350]369*
DS-3 Connection	\$[500]528	\$[350]369*
Fiber	\$[500]528	\$[350]369*
POTS Line	\$0	\$[50]53
One-Time Telco Connectivity Expedite Fee	\$[1,400]1,477	\$0
Inter-Cabinet Telco connection outside Nasdaq space		\$[1,000]1,055
100MB Connectivity - Metro NY/NJ Area Destination	\$[1,165]1,229**	\$[1,650]1,741**
1G Connectivity - Metro NY/NJ Area Destination	\$[2,150]2,268**	\$[2,150] 2,268**
10G Connectivity - Metro NY/NJ Area Destination	\$[5,000]5,275**	\$[5,000]5,275**
100MB Connectivity - Toronto Area Destination	\$[4,850]5,117**	\$[4,100]4,326**
1G Connectivity - Toronto Area Destination	\$[7,700]8,124**	\$[9,850]10,392**
10G Connectivity - Toronto Area Destination	\$[14,200]14,981**	\$[28,400]29,962**
100MB Connectivity - Chicago Area Destination	\$[3,500]3,693**	\$[7,350]7,754**
1G Connectivity - Chicago Area Destination	\$[4,900]5,170**	\$[12,800]13,504**

10G Connectivity - Chicago Area Destination	\$[10,650]11,236**	\$[26,900]28,380**
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* Requesting party only. Not applicable to inter-cabinet connections among the same customer.

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

Connectivity to the Exchange

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

Connectivity to Third Party Services

Description	Installation Fee	Ongoing Monthly Fee
Third Party Services Fiber Connection (10Gb Ultra)	\$[1,500]1,583*	\$[5,000]5,275*
Third Party Services Fiber Connection (1Gb Ultra)	\$[1,500]1,583*	\$[2,000]2,110*

Third Party Services Fiber Connection \$[100]106* \$[100]106*
 (1Gb Ultra or 10Gb Ultra for UTP only)

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

Market Data Connectivity*

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

Description	Installation Fee	Ongoing Monthly Fee
Nasdaq	\$[1,000]1,055	\$0
SIAC	\$[1,000]1,055	
CTS/CQS		\$[1,412]1,490
OpenBook Realtime		\$[2,500]2,638
OpenBook Ultra		\$[2,500]2,638
NYSE Alerts		\$[200]211
NYSE Trades		\$[100]106
Arca Trades		\$[100]106
ArcaBook Multicast		\$[1,500]1,583
Arca BBO		\$[125]132
AMEX-Ultra/Trades/Alerts/LRP		\$[100]106
OPRA		\$[6,000]6,330
CME	\$[1,000]1,055	\$[3,500]3,693
Access Fee per location device/user		\$[65]69
CBOE	\$[1,000]1,055	
BZX Depth		\$[4,000]4,220
BYX Depth		\$[1,500]1,583

EDGA Depth		\$[2,500] <u>2,638</u>
EDGX Depth		\$[2,500] <u>2,638</u>
TSX/TSXV	\$[1,000]	<u>1,055</u>
TSX and TSXV Level 1 Feed		\$[300] <u>317</u>
TSX and TSXV Level 2 Feed		\$[1,000] <u>1,055</u>
TSX Quantum Level 1 Feed		\$[100] <u>106</u>
TSX Quantum Level 2 Feed		\$[300] <u>317</u>

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

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

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

* Subscribers with three to five microwave or millimeter wave wireless subscriptions under General 8, Section 1(b) (and/or any other provision of these Rules that provides for such subscriptions, as may exist, from time to time) receive a 5% discount on all such subscriptions; subscribers with six to ten microwave or millimeter wave wireless subscriptions under the Rules receive a 10% discount on all such subscriptions; subscribers with eleven to fourteen microwave or millimeter wave wireless subscriptions under the Rules receive a 15% discount on all such subscriptions; and subscribers with fifteen or more microwave or millimeter wave wireless subscriptions under the Rules receive a 20% discount on all such subscriptions.

(c) Power

Cabinet Power

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

(d) Additional Charges/Services

Additional Items

Description	Installation Fee	Ongoing Monthly Fee
Cooling (Door) Fans	\$[1,500] <u>1,583</u>	\$0
Perforated Floor Tiles	\$[250] <u>264</u>	\$0
Cabinet Extension	\$[500] <u>528</u>	\$0
Super High Density Cabinet Kit	\$[4,500] <u>4,748</u>	\$0
Additional Cabinet Shelves	\$[200] <u>211</u>	\$0
Single Master Key Locks	\$[175] <u>185</u>	\$0
Cable Downspouts	\$[750] <u>791</u>	\$0
Cabinet Caging	Installation Specific	\$[3,000] <u>3,165</u>
Custom Installation	Installation Specific	\$0
Cabinet Equipment Storage	\$0	\$[500] <u>528</u>
Copper Patch Cords	\$[4.50] <u>4.75</u> +\$[0.50] <u>0.53</u> per foot	\$0
Fiber Patch Cords - Multi-mode	\$[20] <u>21.10</u> +\$[1.50] <u>1.58</u> per meter	\$0
Fiber Patch Cords - Single-mode	\$[24] <u>25.32</u> +\$[0.75] <u>0.79</u> per meter	\$0
Twinax Patch Cords	\$[34] <u>35.87</u> +\$[10] <u>10.55</u> per meter	\$0
Power Cords - 5-15P to C13 - 2 to 4 feet	\$[5] <u>5.28</u>	\$0
Power Cords - C14 to C19 - 2 to 4 feet	\$[10] <u>10.55</u>	\$0
Equipment Storage	\$0	\$[100] <u>106</u>

Internet Bandwidth - 1Mb	\$0	\$[300] <u>317</u>
Internet Bandwidth - 2Mb	\$0	\$[500] <u>528</u>
Internet Bandwidth - 3Mb	\$0	\$[700] <u>739</u>
Internet Bandwidth - 4Mb	\$0	\$[900] <u>950</u>
Internet Bandwidth - 5Mb	\$0	\$[1,100] <u>1,161</u>
GPS Antenna - Shared	\$900	\$600
GPS Antenna - Dedicated	\$1,500	\$600
Cabinet Proximity Option Fee	\$0	\$[1,000] <u>1,055</u> per medium or low density cabinet, or \$[1,500] <u>1,583</u> per medium/high or high density cabinet or \$3,000 per cabinet with power density >10kW

Services

Description	Rate
Power Consulting Service (billed in hourly increments)	\$[250] <u>264</u> /hr plus materials if necessary
Remote Hands Service	\$[150] <u>151.50</u> /hr

¹Co-location services provided by Nasdaq Technology Services LLC.

Section 2. Connectivity

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

(a) Direct Circuit Connection to the Exchange

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

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

(b) Direct Circuit Connection to Third Party Services

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

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

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

(c) Point of Presence (POP) Connectivity

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

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Options Rules

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Options 7: Pricing Schedule

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Section 6. Connectivity Fees

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H. Exchange Testing Facilities

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

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