

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 27

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

File No. \* SR 2024 - \* 44

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"/>	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 increase the Exchange's port fees in Options 7, Section 6.C.

**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 \* Sun Last Name \* Kim

Title \* Senior Associate General Counsel

E-mail \* Sun.Kim@Nasdaq.com

Telephone \* (646) 420-7816 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 12/17/2024 (Title \*)

By John Zecca EVP & 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: 2024.12.17 12:09:04 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

SR-GEMX-2024-44 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 \***

Add Remove View

SR-GEMX-2024-44 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**

Add Remove View

SR-GEMX-2024-44 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to increase the Exchange’s port fees in Options 7, Section 6.C.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

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:

Sun Kim  
Senior Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 increase the Exchange's connectivity fees in Options 7, Section 6.C for the Specialized Quote Feed ("SQF") Ports<sup>3</sup> and SQF Purge Ports<sup>4</sup> by 9%. The Exchange initially filed the proposed pricing change on October 18, 2024 (SR-GEMX-2024-39). On December 3, 2024, the Exchange withdrew that filing and replaced it with SR-GEMX-2024-43. On December 17, 2024, the Exchange withdrew that filing and replaced it with this filing.

Options 7, Section 6.C(i) includes the Exchange's fees that relate to the SQF Ports and SQF Purge Ports that Market Makers<sup>5</sup> use to connect to the Exchange. Today, the Exchange assesses all Market Makers an SQF Port fee of \$1,250 per port per month and an SQF Purge Port Fee of \$1,250 per port per month. In addition, the SQF and the SQF Purge Ports are currently subject to a monthly cap ("SQF Fee Cap") of \$17,500, which is applicable to Market Makers. The Exchange now proposes to increase the foregoing pricing by 9%. As amended, the SQF Port and SQF Purge Port fees would each become

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

<sup>4</sup> The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. See Supplementary Material .03(c) to Options 3, Section 7.

<sup>5</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

\$1,365 per port per month. The amended SQF Fee Cap would likewise increase by 9% to \$19,075.

The proposed pricing increases would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for risk protections and capacity has increased. The Exchange continues to invest in maintaining, improving, and enhancing its protocols like SQF Ports and SQF Purge Ports for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware, upgrading risk protections and information security, and offering customers additional capacity. Nevertheless, the Exchange has not increased the fees for SQF Ports and SQF Purge Ports, or the SQF Fee Cap, since 2017<sup>6</sup> (where inflation has been roughly 9%, as measured using the metric described below). As such, the Exchange proposes to increase its SQF and SQF Purge Port fees by 9% to align to the inflation that has occurred since 2017. Further, the Exchange proposes to increase the SQF Fee Cap by 9% to align with the foregoing fee increases.

As discussed below, the Exchange proposes to adjust its pricing by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its pricing. Continuing to operate at pricing frozen at 2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

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<sup>6</sup> See Securities Exchange Act Release No. 80808 (May 30, 2017), 82 FR 25894 (June 5, 2017) (SR-GEMX-2017-20) (adopting the subject fees). The Exchange subsequently increased the monthly cap in October 2017. See Securities Exchange Act Release No. 81881 (October 16, 2017), 82 FR 48869 (October 20, 2017) (SR-GEMX-2017-44).

The pricing increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.<sup>7</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser’s perspective.<sup>8</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>9</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS - 518210 in the North American Industry Classification System.<sup>10</sup> According to the BLS “[t]he primary output

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<sup>7</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>8</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>9</sup> See *id.*

<sup>10</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

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. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>11</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed pricing changes because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. options securities on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services via its data center and proprietary matching engine software.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from May 2017 to October 2024 (when the subject pricing was first

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<sup>11</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

adopted), and from October 2017 to October 2024 (when the Exchange increased the fee cap). The Data PPI had a starting value of 106.7 in both May 2017 and October 2017, and an ending value of 115.902 in October 2024, around a 9% increase. This data indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 9% (during the period from May 2017 to October 2024). Based on that percentage change, the Exchange proposes to make a one-time fee increase of 9%, which reflects an increase covering roughly the entire period since the last price adjustments were made to the SQF Port fee, the SQF Purge Port fee, and the related SQF Fee Cap.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>12</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed pricing increases.<sup>13</sup>

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<sup>12</sup> See <https://www.usinflationcalculator.com/>.

<sup>13</sup> See *supra* discussion of SQF Port and SQF Purge Port enhancements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See,



b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>15</sup> 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 two factors. First, the current pricing does not properly reflect the quality of the SQF and SQF Purge Ports, as fees for these offerings have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the risk protections and capacity of SQF and SQF Purge Ports has increased the performance of these offerings.

**The Proposed Rule Change Is Reasonable**

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its SQF Ports and SQF Purge Ports, enhancing the quality of its services, as measured by, among other things, increased capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.66% per year, on average, producing a cumulative inflation

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e.g., Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79); and 34-101519 (November 5, 2024), 89 FR 89071 (November 12, 2024) (SR-CboeBYX-2024-039).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4) and (5).

rate of 28.63%.<sup>16</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was roughly 9%. The Exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for seven years for the SQF and SQF Purge Ports, or the corresponding SQF Fee Cap. The proposed pricing changes represent a modest increase from the current fees and related cap. The Exchange believes the proposed fee increases are reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its port products – for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing several aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of the enhancements discussed above, among other things, is to provide more modern connectivity to the match engine. Accordingly, the Exchange continues to expend resources to innovate and modernize its technology so that it may benefit its members in offering SQF and SQF Purge Ports.

#### **The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory**

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges because Exchange pricing has fallen in real terms during the relevant period. The Exchange also believes that the proposed pricing increases are equitably allocated and not unfairly discriminatory because they would

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<sup>16</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

apply uniformly to all Market Makers that subscribe to SQF and SQF Purge Ports to quote on the Exchange. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange.<sup>17</sup> These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to the Exchange on a continuous basis. SQF Ports and SQF Purge Ports are only utilized in a Market Maker's assigned options series.

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

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

**Intra-market Competition**

The Exchange believes that the proposed pricing does not put any market participants at a relative disadvantage compared to other market participants. As noted above, the Exchange would apply the proposed 9% increase to the SQF Port and SQF Purge Port fees (and related SQF Fee Cap) to all Market Makers uniformly. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange. These liquidity providers are critical market participants in that they are the only market participants that provide

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<sup>17</sup> Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

liquidity to the Exchange on a continuous basis. SQF Ports and SQF Purge Ports are only utilized in a Market Maker's assigned options series.

### **Intermarket Competition**

The Exchange believes that the proposed pricing does not impose an undue burden on intermarket competition or on other SROs that is not necessary or appropriate. In determining the proposed pricing, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its port offerings such as the SQF and SQF Purge Ports. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase the fees for the SQF Port and SQF Purge Port (and the related SQF Fee Cap) to recoup the Exchange's investment in maintaining and enhancing such offerings would not impose a burden on intermarket competition.

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,<sup>18</sup> 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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

The proposal has similarities to a proposal filed with the Commission by NYSE Arca.<sup>19</sup>

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.

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<sup>19</sup> See Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-GEMX-2024-44)

December \_\_, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Exchange's Port Fees in Options 7, Section 6.C

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 17, 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 increase the Exchange's port fees in Options 7, Section 6.C. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of the proposed rule change is to increase the Exchange's connectivity fees in Options 7, Section 6.C for the Specialized Quote Feed ("SQF") Ports<sup>3</sup> and SQF Purge Ports<sup>4</sup> by 9%. The Exchange initially filed the proposed pricing change on October 18, 2024 (SR-GEMX-2024-39). On December 3, 2024, the Exchange withdrew that filing and replaced it with SR-GEMX-2024-43. On December 17, 2024, the Exchange withdrew that filing and replaced it with this filing.

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

<sup>4</sup> The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. See Supplementary Material .03(c) to Options 3, Section 7.

Options 7, Section 6.C(i) includes the Exchange's fees that relate to the SQF Ports and SQF Purge Ports that Market Makers<sup>5</sup> use to connect to the Exchange. Today, the Exchange assesses all Market Makers an SQF Port fee of \$1,250 per port per month and an SQF Purge Port Fee of \$1,250 per port per month. In addition, the SQF and the SQF Purge Ports are currently subject to a monthly cap ("SQF Fee Cap") of \$17,500, which is applicable to Market Makers. The Exchange now proposes to increase the foregoing pricing by 9%. As amended, the SQF Port and SQF Purge Port fees would each become \$1,365 per port per month. The amended SQF Fee Cap would likewise increase by 9% to \$19,075.

The proposed pricing increases would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for risk protections and capacity has increased. The Exchange continues to invest in maintaining, improving, and enhancing its protocols like SQF Ports and SQF Purge Ports for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware, upgrading risk protections and information security, and offering customers additional capacity. Nevertheless, the Exchange has not increased the fees for SQF Ports and SQF Purge Ports, or the SQF Fee Cap, since 2017<sup>6</sup> (where inflation has been roughly 9%, as measured using the metric described below). As such, the Exchange proposes to increase its SQF and SQF Purge Port fees by 9% to align to the inflation that has occurred since 2017. Further, the

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<sup>5</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

<sup>6</sup> See Securities Exchange Act Release No. 80808 (May 30, 2017), 82 FR 25894 (June 5, 2017) (SR-GEMX-2017-20) (adopting the subject fees). The Exchange subsequently increased the monthly cap in October 2017. See Securities Exchange Act Release No. 81881 (October 16, 2017), 82 FR 48869 (October 20, 2017) (SR-GEMX-2017-44).



Exchange proposes to increase the SQF Fee Cap by 9% to align with the foregoing fee increases.

As discussed below, the Exchange proposes to adjust its pricing by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its pricing. Continuing to operate at pricing frozen at 2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The pricing increases the Exchange proposes are based on an industry-specific Producer Price Index ("PPI"), which is a tailored measure of inflation.<sup>7</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index ("CPI"), that measure price change from the purchaser's perspective.<sup>8</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>9</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI

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<sup>7</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>8</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>9</sup> See *id.*

that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS - 518210 in the North American Industry Classification System.<sup>10</sup> According to the BLS “[t]he 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. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>11</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed pricing changes because the Exchange uses its “own

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<sup>10</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>11</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. options securities on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services via its data center and proprietary matching engine software.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from May 2017 to October 2024 (when the subject pricing was first adopted), and from October 2017 to October 2024 (when the Exchange increased the fee cap). The Data PPI had a starting value of 106.7 in both May 2017 and October 2017, and an ending value of 115.902 in October 2024, around a 9% increase. This data indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 9% (during the period from May 2017 to October 2024). Based on that percentage change, the Exchange proposes to make a one-time fee increase of 9%, which reflects an increase covering roughly the entire period since the last price adjustments were made to the SQF Port fee, the SQF Purge Port fee, and the related SQF Fee Cap.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile

than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>12</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed pricing increases.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>15</sup> 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 two factors. First, the current pricing does not properly reflect the quality of the SQF and SQF Purge Ports, as fees for these offerings have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the risk protections and capacity of SQF and SQF Purge Ports has increased the performance of these offerings.

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<sup>12</sup> See <https://www.usinflationcalculator.com/>.

<sup>13</sup> See supra discussion of SQF Port and SQF Purge Port enhancements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79); and 34-101519 (November 5, 2024), 89 FR 89071 (November 12, 2024) (SR-CboeBYX-2024-039).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4) and (5).

### **The Proposed Rule Change Is Reasonable**

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its SQF Ports and SQF Purge Ports, enhancing the quality of its services, as measured by, among other things, increased capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.66% per year, on average, producing a cumulative inflation rate of 28.63%.<sup>16</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was roughly 9%. The Exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for seven years for the SQF and SQF Purge Ports, or the corresponding SQF Fee Cap. The proposed pricing changes represent a modest increase from the current fees and related cap. The Exchange believes the proposed fee increases are reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its port products – for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing several aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of the enhancements discussed above, among other things, is to

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<sup>16</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

provide more modern connectivity to the match engine. Accordingly, the Exchange continues to expend resources to innovate and modernize its technology so that it may benefit its members in offering SQF and SQF Purge Ports.

**The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory**

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange pricing has fallen in real terms during the relevant period. The Exchange also believes that the proposed pricing increases are equitably allocated and not unfairly discriminatory because they would apply uniformly to all Market Makers that subscribe to SQF and SQF Purge Ports to quote on the Exchange. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange.<sup>17</sup> These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to the Exchange on a continuous basis. SQF Ports and SQF Purge Ports are only utilized in a Market Maker's assigned options series.

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

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

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<sup>17</sup> Unlike other market participants, Market Makers are subject to market making and quoting obligations. See Options 2, Sections 4 and 5.

### **Intra-market Competition**

The Exchange believes that the proposed pricing does not put any market participants at a relative disadvantage compared to other market participants. As noted above, the Exchange would apply the proposed 9% increase to the SQF Port and SQF Purge Port fees (and related SQF Fee Cap) to all Market Makers uniformly. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees (and subject to the related SQF Fee Cap) because they are the only market participants that are permitted to quote on the Exchange. These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to the Exchange on a continuous basis. SQF Ports and SQF Purge Ports are only utilized in a Market Maker's assigned options series.

### **Intermarket Competition**

The Exchange believes that the proposed pricing does not impose an undue burden on intermarket competition or on other SROs that is not necessary or appropriate. In determining the proposed pricing, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its port offerings such as the SQF and SQF Purge Ports. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase the fees for the SQF Port and SQF Purge Port (and the related SQF Fee Cap) to recoup the Exchange's investment in maintaining and enhancing such offerings would not impose a burden on intermarket competition.

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.<sup>18</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-GEMX-2024-44 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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



All submissions should refer to file number SR-GEMX-2024-44. 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-2024-44 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.<sup>19</sup>

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

**EXHIBIT 5**

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

**NASDAQ GEMX, LLC RULES**

\* \* \* \* \*

**Options 7 Pricing Schedule**

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**Section 6. Connectivity Fees**

\* \* \* \* \*

**C. Ports and Other Services**

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

\* \* \* \* \*

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

- (1) **FIX Port Fee<sup>2</sup>** \$650 per port, per month, per account number
- (2) **SQF Port Fee<sup>1</sup>** \$1,365[1,250] per port, per month
- (3) **SQF Purge Port Fee<sup>1</sup>** \$1,365[1,250] per port, per month
- (4) **OTTO Port Fee<sup>2</sup>** \$650 per port, per month, per account number

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<sup>1</sup>The SQF Port and the SQF Purge Port are subject to a monthly cap of \$19,075[17,500], which cap is applicable to Market Makers.

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