



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103300; File No. SR-GEMX-2025-13]

### **Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX’s Pricing Schedule to Amend Certain Taker Fees and the Qualifying Tier Thresholds**

June 24, 2025.

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 June 10, 2025, 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 GEMX’s Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates” to (1) amend the Penny Symbol Tier 3 Taker Fees for Market Makers,<sup>3</sup> Non-Nasdaq GEMX Market Makers (FarMM),<sup>4</sup> Firm Proprietary<sup>5</sup> / Broker Dealers<sup>6</sup> and Professional Customers;<sup>7</sup> (2) amend the Penny Symbol Tier 4 Taker Fees for Market Makers

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>4</sup> A “Non-Nasdaq GEMX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

<sup>5</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

<sup>6</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

<sup>7</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

and Non-Nasdaq GEMX Market Makers (FarMM); (3) amend current note 17 and add a new note 18 to Options 7, Section 3; and (4) amend the Qualifying Tier Thresholds and accompanying descriptions of those thresholds.<sup>8</sup>

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings>, 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 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

GEMX proposes to amend GEMX's Pricing Schedule at Options 7, Section 3, "Regular Order Fees and Rebates" to (1) amend the Penny Symbol Tier 3 Taker Fees for Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker Dealers and Professional Customers; (2) amend the Penny Symbol Tier 4 Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM); (3) amend current note 17 and add a new note 18 to Options 7, Section 3; and (4) amend the Qualifying Tier Thresholds and accompanying descriptions of those thresholds.

**Taker Fees**

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<sup>8</sup> On May 30, 2025, SR-GEMX-2025-11 was filed for implementation on June 2, 2025. On June 10, 2025, SR-GEMX-2025-11 was withdrawn and replaced with this rule change.

Today, GEMX offers 4 tiers of Penny Symbol Taker Fees. Non-Priority Customers<sup>9</sup> are assessed Tier 1 and Tier 2 Penny Symbol Taker Fees of \$0.50 per contract. Non-Priority Customers are assessed a Tier 3 Penny Symbol Taker Fee of \$0.49 per contract. Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) are assessed a Tier 4 Penny Symbol Taker Fee of \$0.47 per contract and Firm Proprietary / Broker Dealers and Professional Customers are assessed Tier 4 Penny Symbol Taker Fee of \$0.49 per contract. Priority Customers<sup>10</sup> are assessed a Tier 1 and 2 Penny Symbol Taker Fee of \$0.48 per contract, a Tier 3 Penny Symbol Taker Fee of \$0.44 per contract, and a Tier 4 Penny Symbol Taker Fee of \$0.42 per contract.

With this proposal, GEMX proposes to increase the Non-Priority Customer Taker Fees for Penny Symbols in Tier 3 from \$0.49 to \$0.50 per contract. Also, the Exchange proposes to increase the Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) Taker Fees for Penny Symbols in Tier 4 from \$0.47 to \$0.49 per contract. Despite the proposed increases in Tier 3 and 4 Penny Symbol Taker Fees, the Exchange believes that its pricing remains competitive and will continue to attract order flow to GEMX, particularly given the opportunity to earn the proposed new note 18 fee reduction described below.

The Exchange proposes to amend current note 17 in Options 7, Section 3 to apply to the Tier 3 Penny Symbol Taker Fee in SPY in addition to the current Tier 4 Penny Symbol Taker Fee in SPY in note 17. Today, note 17 states, “Market Maker / Non-Nasdaq GEMX Market Maker (FarMM) in Tier 4 Taker Fees in SPY will be decreased by \$0.01 per contract.” In addition to adding the Tier 3 Penny Symbol Taker Fee to note 17, the Exchange also proposes to add “Penny Symbol” to note 17. The addition of the words “Penny Symbol” to note 17 is not a substantive change because note 17 applies to Penny Symbols today and does not apply to Non-

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<sup>9</sup> “Non-Priority Customers” include Market Makers, Non-Nasdaq GEMX Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

<sup>10</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail”. See Options 7, Section 1(c).

Penny Symbols. As amended note 17 should continue to incentivize market participants to remove liquidity in SPY on GEMX at a lower cost.

The Exchange proposes a new note 18 to Options 7, Section 3 that would provide that Tier 3 and 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) will be \$0.42 per contract when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member<sup>11</sup> or Affiliated Entity.<sup>12</sup> The \$0.42 per contract Penny Symbol Taker Fee would be in lieu of the proposed \$0.50 per contract Tier 3 Penny Symbol Taker Fee and in lieu of the proposed \$0.49 per contract Tier 4 Penny Symbol Taker Fee for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM). Further, in a given month, a Member would receive the pricing in either amended note 17 or new note 18 with respect to SPY, whichever is more favorable, but not both. The Exchange believes that the new note 18 fee reduction will encourage Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) to remove liquidity on GEMX at the reduced Penny Symbol Taker Fees in Tiers 3 or 4.

### **Qualifying Tier Thresholds**

Today, the Exchange has the following Qualifying Tier Thresholds in Options 7, Section 3 in Table 1:

<b>Tier</b>	<b>% of Customer Total Consolidated Volume</b>	<b>Priority Customer Maker % of Customer Total Consolidated Volume</b>
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<sup>11</sup> An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. See Options 7, Section 1(c).

<sup>12</sup> An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. See Options 7, Section 1(c).

Tier 1	Executes less than 1.5% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of less than 0.65% of Customer Total Consolidated Volume
Tier 2	Executes 1.5% to less than 2.25% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 0.65% to less than 1.2% of Customer Total Consolidated Volume
Tier 3	Executes 2.25% to less than 3.0% of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 1.2% to less than 1.6% of Customer Total Consolidated Volume
Tier 4	Executes 3.0% or greater of Customer Total Consolidated Volume	Executes Priority Customer Maker volume of 1.6% or greater of Customer Total Consolidated Volume

The Exchange proposes to amend the Qualifying Tier Thresholds, in Options 7, Section 3 at Table 1 by removing the criteria related to the percentage of Customer Total Consolidated Volume. Today, the Total Affiliated Member or Affiliated Entity % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms. With this proposal, the Exchange would also be removing taker volume as a factor in achieving the Qualifying Tier Thresholds. The Exchange would also replace the Priority Customer Maker percentage in the second column of criteria with Maker percentage of Customer Total Consolidated Volume. With this proposal, all market participant maker volume would count toward the tier thresholds. No taker volume would be counted toward the Qualifying Tier Thresholds. Further, the Exchange proposes to amend the percentages for each tier threshold by increasing each tier to account for the applicability of all market participant maker volume.

Tier 1 criteria currently requires a market participant to execute Priority Customer Maker volume of less than 0.65% of Customer Total Consolidated Volume. With the amendment, the Tier 1 criteria would require a market participant to execute Maker volume of less than 0.85% of Customer Total Consolidated Volume.

Tier 2 criteria currently requires a market participant to execute Priority Customer Maker volume of 0.65% to less than 1.2% of Customer Total Consolidated Volume. With the

amendment, the Tier 2 criteria would require a market participant to execute Maker volume of 0.85% to less than 1.2% of Customer Total Consolidated Volume.

Tier 3 criteria currently requires a market participant to execute Priority Customer Maker volume of 1.2% to less than 1.6% of Customer Total Consolidated Volume. With the amendment, the Tier 3 criteria would require a market participant to execute Maker volume of 1.2% to less than 1.75% of Customer Total Consolidated Volume.

Tier 4 criteria currently requires a market participant to execute Priority Customer Maker volume of 1.6% or greater of Customer Total Consolidated Volume. With the amendment, the Tier 4 criteria would require a market participant to execute Maker volume of 1.75% or greater of Customer Total Consolidated Volume.

Further, the Exchange proposes to remove the rule text at Options 7, Section 3 below Table 1 which states, “The Total Affiliated Member or Affiliated Entity % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.” This rule text is no longer necessary because the Exchange is eliminating the percentage of Customer Total Consolidated Volume criteria in Table 1. Additionally, the Exchange proposes to amend the rule text at Options 7, Section 3 below Table 1 which states, “The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.” Because the Exchange is eliminating the percentage of Customer Total Consolidated Volume criteria in Table 1 and amending the second column in Table 1 to apply to all market participants, the Exchange proposes to amend this rule text to state, “The Maker % of Customer Total Consolidated Volume category includes all eligible market participant volume that adds liquidity in all symbols.”

The amendments to the Qualifying Tier Thresholds should continue to encourage market participants to direct orders to GEMX, particularly as all eligible market participant maker volume will count toward the criteria for each tier threshold. Today, only Priority Customer

maker volume counted toward the Qualifying Tier Thresholds.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</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.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>15</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of eighteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to

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<sup>13</sup> See 15 U.S.C. 78f(b).

<sup>14</sup> See 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> See NetCoalition, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

attract additional order flow to the Exchange and increase its market share relative to its competitors.

### **Taker Fees**

The Exchange's proposal to increase the Non-Priority Customer Taker Fees for Penny Symbols in Tier 3 from \$0.49 to \$0.50 per contract is reasonable because, despite the increase to the fees, the Exchange believes that the pricing will continue to attract order flow to GEMX, particularly given the opportunity to earn a lower Market Maker and Non-Nasdaq GEMX Market Maker (FarMM) Tier 3 Penny Symbol Taker Fee pursuant to proposed new note 18. The Exchange's proposal to increase the Non-Priority Customer Taker Fees for Penny Symbols in Tier 3 from \$0.49 to \$0.50 per contract is equitable and not unfairly discriminatory as all Non-Priority Customers would be assessed the same Tier 3 Penny Symbol Taker Fee. Also, Priority Customers would continue to pay a lower Tier 3 Penny Symbol Taker Fee. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to increase the Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) Taker Fees for Penny Symbols in Tier 4 from \$0.47 to \$0.49 per contract is reasonable because, despite the increase to the fees, the Exchange believes that the pricing will continue to attract order flow to GEMX, particularly given the opportunity to earn a lower Tier 4 Penny Symbol Taker Fee pursuant to proposed new note 18. The Exchange's proposal to increase the Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) Taker Fees for Penny Symbols in Tier 4 from \$0.47 to \$0.49 per contract is equitable and not unfairly discriminatory because all Non-Priority Customers would be assessed the same Tier 4 Penny Symbol Taker Fee. Also, Priority Customers would continue to pay a lower Tier 4 Penny Symbol Taker Fee. Priority Customer liquidity benefits all market participants by providing

more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to amend current note 17 of Options 7, Section 3 to apply to the Tier 3 Market Maker / Non-Nasdaq GEMX Market Maker (FarMM) Penny Symbol Taker Fee in SPY is reasonable because the amendment will decrease the new Tier 3 Penny Symbol Taker Fee in SPY by \$0.01 per contract and incentivize Market Makers / Non-Nasdaq GEMX Market Makers (FarMM) to remove liquidity in SPY on GEMX at the lower cost, thereby attracting more SPY order flow to GEMX. The Exchange's proposal to amend current note 17 of Options 7, Section 3 to apply to the Tier 3 Market Maker / Non-Nasdaq GEMX Market Maker (FarMM) Penny Symbol Taker Fee in SPY is equitable and not unfairly discriminatory because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).<sup>16</sup> The amended note 17 incentive is designed to continue to incentivize Market Makers to remove liquidity in SPY thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Non-Nasdaq GEMX Market Makers (FarMM) qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to remove liquidity in SPY on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers (FarMM)) with this incentive. Because the incentive is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity in SPY thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market. Finally, adding the words "Penny Symbol" to note 17 is reasonable, equitable and not

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<sup>16</sup> See GEMX Options 2, Section 5.

unfairly discriminatory because the addition of the language is a non-substantive change as note 17 only applies to Penny Symbols today.

The Exchange believes that assessing different pricing for SPY, as compared to other symbols, is reasonable, equitable and not unfairly discriminatory because trading in SPY is different from trading in other symbols in that it is more liquid, has higher volume and competition for executions is more intense in comparison.

The Exchange's proposal to adopt a new note 18 to Options 7, Section 3 that would provide that Tier 3 and 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) will be \$0.42 per contract when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member or Affiliated Entity is reasonable because it would allow Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) to lower their Tier 3 and 4 Penny Symbol Taker Fees from the proposed \$0.50 per contract for Tier 3 and the proposed \$0.49 per contract for Tier 4 to \$0.42 per contract, thereby attracting more order flow to GEMX. The Exchange's proposal to adopt a new note 18 to Options 7, Section 3 that would provide that Tier 3 and 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) will be \$0.42 per contract when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member or Affiliated Entity is equitable and not unfairly discriminatory because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).<sup>17</sup> Proposed note 18 incentive is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Non-Nasdaq GEMX Market Makers (FarMM) qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to remove liquidity on GEMX as an away

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<sup>17</sup> See GEMX Options 2, Section 5.

market maker (Non-Nasdaq GEMX Market Makers (FarMM)) with this incentive. Because the incentive is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

Allowing a market participant to receive either the note 17 or 18 incentive with respect to SPY, whichever is more favorable, is reasonable because the Exchange would permit market participants to lower fees with either incentive. Allowing a market participant to receive either the note 17 or 18 incentive, whichever is more favorable, but not both is equitable and not unfairly discriminatory as it would be applied uniformly to all market participants that qualify for the rebate.

### **Qualifying Tier Thresholds**

The Exchange's proposal to amend the Qualifying Tier Thresholds, in Options 7, Section 3 at Table 1 by removing the criteria related to the percentage of Customer Total Consolidated Volume and replacing the Priority Customer Maker percentage in the second column of criteria in Table 1 with Maker percentage of Customer Total Consolidated Volume is reasonable because all market participant maker volume would qualify toward the tier thresholds, not just Priority Customer volume. While the Exchange is amending the tier thresholds to make them higher and removing taker volume from any market participant as a qualifier, a greater amount of market participant maker volume would count toward each tier threshold. The Exchange believes that the amended qualifications for executed volume will encourage market participants to send liquidity to GEMX. All Members may interact with the maker volume from any market participant that is submitted on GEMX. The Exchange's proposal to amend the Qualifying Tier Thresholds, in Options 7, Section 3 at Table 1 by removing the criteria related to the percentage of Customer Total Consolidated Volume and replacing the Priority Customer Maker percentage

in the second column of criteria in Table 1 with Maker percentage of Customer Total Consolidated Volume is equitable and not unfairly discriminatory because the criteria will apply uniformly to all GEMX Members in determining a Member's applicable tier. Taker volume from any market participant will uniformly not be counted toward the Qualifying Tier Thresholds.

The Exchange's proposal to remove the rule text at Options 7, Section 3 below Table 1 which states, "The Total Affiliated Member or Affiliated Entity % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms" is reasonable, equitable and not unfairly discriminatory because the rule text is no longer necessary as the Exchange is eliminating the percentage of Customer Total Consolidated Volume criteria in Table 1. Additionally, the Exchange's proposal to amend the rule text at Options 7, Section 3 below Table 1 which states, "The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols" is reasonable, equitable and not unfairly discriminatory because the Exchange is eliminating the percentage of Customer Total Consolidated Volume criteria in Table 1 and amending the second column to apply to all market participants.

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

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

#### Intermarket Competition

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to

modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

### Intramarket Competition

#### **Taker Fees**

The Exchange's proposal to increase the Non-Priority Customer Taker Fees for Penny Symbols in Tier 3 from \$0.49 to \$0.50 per contract does not impose an undue burden on competition because all Non-Priority Customers would be assessed the same Tier 3 Penny Symbol Taker Fee and Priority Customers would continue to pay a lower Tier 3 Penny Symbol Taker Fee. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to increase the Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) Taker Fees for Penny Symbols in Tier 4 from \$0.47 to \$0.49 per contract does not impose an undue burden on competition because all Non-Priority Customers would be assessed the same Tier 4 Penny Symbol Taker Fee and Priority Customers would continue to pay a lower Tier 4 Penny Symbol Taker Fee. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to amend current note 17 of Options 7, Section 3 to apply to the Tier 3 Market Maker / Non-Nasdaq GEMX Market Maker (FarMM) Penny Symbol Taker Fee in SPY does not impose an undue burden on competition because Market Makers have different

requirements and additional obligations as compared to other market participants (such as quoting requirements).<sup>18</sup> The amended note 17 incentive is designed to continue to incentivize Market Makers to remove liquidity in SPY thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Non-Nasdaq GEMX Market Makers (FarMM) qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to remove liquidity in SPY on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers (FarMM)) with this incentive. Because the incentive is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity in SPY thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

The Exchange believes that assessing different pricing for SPY, as compared to other symbols, does not impose an undue burden on competition because trading in SPY is different from trading in other symbols in that it is more liquid, has higher volume and competition for executions is more intense in comparison.

The Exchange's proposal to adopt a new note 18 to Options 7, Section 3 that would provide that Tier 3 and 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) will be \$0.42 per contract when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member or Affiliated Entity does not impose an undue burden on competition because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).<sup>19</sup> Proposed note 18 incentive is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and

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<sup>18</sup> See GEMX Options 2, Section 5.

<sup>19</sup> See GEMX Options 2, Section 5.

contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Non-Nasdaq GEMX Market Makers (FarMM) qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to remove liquidity on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers (FarMM)) with this incentive. Because the incentive is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

Allowing a market participant to receive either the note 17 or 18 incentive with respect to SPY, whichever is more favorable, is equitable and not unfairly discriminatory as it would be applied uniformly to all market participants that qualify for the rebate.

### **Qualifying Tier Thresholds**

The Exchange's proposal to amend the Qualifying Tier Thresholds, in Options 7, Section 3 at Table 1 by removing the criteria related to the percentage of Customer Total Consolidated Volume and replacing the Priority Customer Maker percentage in the second column of criteria in Table 1 with Maker percentage of Customer Total Consolidated Volume does not impose an undue burden on competition because the criteria will apply uniformly to all GEMX Members in determining a Member's applicable tier. Taker volume from any market participant will uniformly not be counted toward the Qualifying Tier Thresholds.

The Exchange's proposal to remove the rule text at Options 7, Section 3 below Table 1 which states, "The Total Affiliated Member or Affiliated Entity % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms" does not impose an undue burden on competition because the rule text is no longer necessary as the Exchange is eliminating the percentage of Customer Total Consolidated

Volume criteria in Table 1. Additionally, the Exchange's proposal to amend the rule text at Options 7, Section 3 below Table 1 which states, "The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols" does not impose an undue burden on competition because the Exchange is eliminating the percentage of Customer Total Consolidated Volume criteria in Table 1 and amending the second column to apply to all market participants.

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>20</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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

SR-GEMX-2025-13 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-2025-13. 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-2025-13 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>21</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 200.30-3(a)(12).