



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103763; File No. SR-GEMX-2025-21)

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX Options 7, Section 3

August 22, 2025.

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 12, 2025, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a 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 lower certain Maker Rebates for Market Makers³ and amend notes 15 and 18 in Options 7, Section 3.⁴

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ On August 1, 2025 the Exchange filed SR-GEMX-2025-19. On August 12, 2025 the Exchange withdrew SR-GEMX-2025-19 and filed this proposal.

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 its Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates” to: (1) lower certain Maker Rebates for Market Makers; and (2) amend notes 15 and 18 in Options 7, Section 3. Each change will be described below.

Maker Rebates

Today, GEMX offers 4 tiers of Penny Symbol Maker Rebates. GEMX pays the following Penny Symbol Maker Rebates to Market Makers: a Tier 1 rebate of \$0.20 per contract; a Tier 2 rebate of \$0.30 per contract; a Tier 3 rebate of \$0.39 per contract and a Tier 4 rebate of \$0.41 per contract. GEMX pays a Tier 1 Penny Symbol Maker Rebate of \$0.20 per contract to Non-Nasdaq GEMX Market Makers (FarMM),⁵ Firm Proprietary⁶/Broker Dealers⁷ and Professional Customers. Finally, GEMX pays the following Penny Symbol Maker Rebates to Priority Customers:⁸ a Tier 1 rebate of \$0.35 per contract; a Tier 2 rebate of \$0.48 per contract; and a Tier 3 and Tier 4 rebate of \$0.53 per contract.

⁵ 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 GEMX Options 7, Section 1.

⁶ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See GEMX Options 7, Section 1.

⁷ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See GEMX Options 7, Section 1.

⁸ 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” as defined below. See Options 7, Section 1.

At this time, the Exchange proposes to decrease the Tier 3 Maker Rebate for Market Makers from \$0.39 to \$0.37 per contract. Also, the Exchange proposes to decrease the Tier 4 Maker Rebate for Market Makers from \$0.41 to \$0.38 per contract. While the Exchange proposes to decrease these Market Maker rebates, thereby paying less in these tiers, the Exchange believes that Market Makers will continue to send order flow to GEMX to earn these rebates.

Note 15

The Exchange proposes to amend note 15 of Options 7, Section 3 that currently states, “Market Maker Tier 1 through Tier 4 Maker Rebates in Penny Symbols will be (\$0.41) per contract for the following option symbols: SPY, QQQ and IWM. Priority Customer Tier 1 through Tier 2 Taker Fees in Penny Symbols will be \$0.45 per contract for the following option symbols: SPY, QQQ and IWM.” The Exchange proposes to lower the SPY, QQQ and IWM Tier 1 through Tier 4 Maker Rebates in Penny Symbols for Market Makers from \$0.41 to \$0.38 per contract. Additionally, the Exchange proposes to decrease the SPY, QQQ and IWM Priority Customer Tier 1 through Tier 2 Taker Fees in Penny Symbols from \$0.45 to \$0.44 per contract. With this proposal, the Exchange is lowering the Penny Symbol Maker Rebate for Market Makers as well as the Penny Symbol Taker Fee for Priority Customers in SPY, QQQ and IWM. With this proposal, the Exchange would continue to pay a Penny Symbol Maker Rebate equivalent to the highest Penny Symbol Market Maker rebate for all SPY, QQQ and IWM transactions. Also, with this proposal, the Exchange would continue to assess a Penny Symbol Taker Fee that is lower than non-Priority Customer Penny Symbol Taker Fees currently assessed for all other options symbols. These incentives are intended to encourage Members to send volume to GEMX in SPY, QQQ and IWM.

Note 18

The Exchange proposes to amend note 18 to Options 7, Section 3 that provides 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 Member⁹ or Affiliated Entity.¹⁰ The Exchange proposes to increase the \$0.42 per contract Tier 3 and 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) to \$0.43 per contract provided 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. The proposed Penny Symbol Taker Fee is in lieu of the \$0.50 per contract Tier 3 Penny Symbol Taker Fee and in lieu of the \$0.49 per contract Tier 4 Penny Symbol Taker Fee for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM). A Member would continue to receive the pricing in either note 17 or amended note 18 with respect to SPY, whichever is more favorable, but not both in a given month. While the Exchange is increasing the Taker Fee in note 18, the incentive continues to offer a fee reduction to encourage Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) to remove liquidity on GEMX at the reduced Penny Symbol Taker Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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

⁹ 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).

¹⁰ 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).

¹¹ See 15 U.S.C. 78f(b).

¹² See 15 U.S.C. 78f(b)(4) and (5).

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’ ...”¹³

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

Maker Rebates

The Exchange’s proposal to decrease the Tier 3 Maker Rebate for Market Makers from \$0.39 to \$0.37 per contract and the proposal to decrease the Tier 4 Maker Rebate for Market Makers from \$0.41 to \$0.38 per contract are reasonable because while the rebates are being lowered, the Exchange believes the proposed Maker Rebates will continue to attract order flow

¹³ 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)).

to GEMX and incentivize order flow to be sent to GEMX.

The Exchange's proposal to decrease the Tier 3 Maker Rebate for Market Makers from \$0.39 to \$0.37 per contract and the proposal to decrease the Tier 4 Maker Rebate for Market Makers from \$0.41 to \$0.38 per contract are equitable and not unfairly discriminatory because all Market Makers would be paid the same Maker Rebates. Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).¹⁴ Also, Priority Customers would continue to receive higher Maker Rebates as compared to all non-Priority Customer market participants. 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.

Note 15

The Exchange's proposal to amend note 15 of Options 7, Section 3 to lower the Maker Rebate in SPY, QQQ and IWM for Market Maker Tier 1 through Tier 4 Maker Rebates in Penny Symbols from \$0.41 to \$0.38 per contract and decrease the Taker Fee for SPY, QQQ and IWM for Priority Customer Tier 1 through Tier 2 Taker Fees in Penny Symbols from \$0.45 to \$0.44 per contract is reasonable. With this proposal the Exchange is lowering the Penny Symbol Maker Rebate for Market Makers and the Penny Symbol Taker Fee for Priority Customers in SPY, QQQ and IWM. With this proposal, the Exchange would continue to pay a Penny Symbol Maker Rebate equivalent to the highest Penny Symbol Market Maker rebate for all SPY, QQQ and IWM transactions.¹⁵ Also, with this proposal, the Exchange would continue to assess a Penny Symbol Taker Fee that is lower than non-Priority Customer Penny Symbol Taker Fees

¹⁴ See GEMX Options 2, Section 5.

¹⁵ Current Maker Rebates in Tiers 1-4 range from \$0.20 to \$0.53 per contract.

currently assessed for all other options symbols.¹⁶ These incentives are intended to encourage Members to send volume to GEMX in SPY, QQQ and IWM. Accordingly, the Exchange believes that Market Makers will continue to be incentivized to add liquidity in these symbols on the Exchange. Increased liquidity benefits all market participants by deepening the Exchange's liquidity pool and supporting the quality of price discovery. The Exchange also believes that assessing different pricing for SPY, QQQ and IWM, as compared to other symbols, is reasonable because trading in SPY, QQQ and IWM is different from trading in other symbols in that they are more liquid, have higher volume and competition for executions is more intense.

The Exchange's proposal to amend note 15 of Options 7, Section 3 to lower the Maker Rebate in SPY, QQQ and IWM for Market Maker Tier 1 through Tier 4 Maker Rebates in Penny Symbols from \$0.41 to \$0.38 per contract and decrease the Taker Fee for SPY, QQQ and IWM for Priority Customer Tier 1 through Tier 2 Taker Fees in Penny Symbols from \$0.45 to \$0.44 per contract is equitable and not unfairly discriminatory. Market Makers have different requirements and additional obligations that other market participants do not (such as quoting requirements).¹⁷ The amended note 15 incentive is designed to continue to incentivize Market Maker add liquidity activity in SPY, QQQ, and IWM, thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Additionally, paying [*sic*] a lower Tier 1 and Tier 2 Taker Fee in Penny Symbols to Priority Customer is equitable and not unfairly discriminatory because 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.

Note 18

¹⁶ Current Taker Fees in Tiers 1-4 range from \$0.42 to \$0.50 per contract.

¹⁷ See GEMX Options 2, Section 5.

The Exchange's proposal to amend note 18 to Options 7, Section 3 to increase the \$0.42 per contract Penny Symbol Taker Fee to \$0.43 per contract is reasonable because it would continue to allow Market Makers and Non-Nasdaq GEMX Market Makers (FarMM) to lower their Tier 3 and 4 Penny Symbol Taker Fees thereby attracting more order flow to GEMX. The proposed fee would be in lieu of the \$0.50 per contract Penny Symbol Tier 3 Taker Fee and in lieu of the \$0.49 per contract Penny Symbol Tier 4 Taker Fee for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM).

The Exchange's proposal to amend note 18 to Options 7, Section 3 to increase the \$0.42 per contract Penny Symbol Taker Fee to \$0.43 per contract 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).¹⁸ The 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 continue 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.

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

¹⁸ See GEMX Options 2, Section 5.

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

Maker Rebates

The Exchange's proposal to decrease the Tier 3 Maker Rebate for Market Makers from \$0.39 to \$0.37 per contract and the proposal to decrease the Tier 4 Maker Rebate for Market Makers from \$0.41 to \$0.38 per contract does not impose an undue burden on competition because all Market Makers would be paid the same Maker Rebates. Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).¹⁹ Also, Priority Customers would continue to receive higher Maker Rebates as compared to all non-Priority Customer market participants. 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.

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¹⁹ See GEMX Options 2, Section 5.

The Exchange's proposal to amend note 15 of Options 7, Section 3 to lower the Maker Rebate in SPY, QQQ and IWM for Market Maker Tier 1 through Tier 4 Maker Rebates in Penny Symbols from \$0.41 to \$0.38 per contract and decrease the Taker Fee for SPY, QQQ and IWM for Priority Customer Tier 1 through Tier 2 Taker Fees in Penny Symbols from \$0.45 to \$0.44 per contract does not impose an undue burden on competition because Market Makers have different requirements and additional obligations that other market participants do not (such as quoting requirements).²⁰ The amended note 15 incentive is designed to continue to incentivize Market Maker add liquidity activity in SPY, QQQ, and IWM, thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Additionally, paying [*sic*] a lower Tier 1 and Tier 2 Taker Fee in Penny Symbols to Priority Customer does not impose an undue burden on competition because 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.

Note 18

The Exchange's proposal to amend note 18 to Options 7, Section 3 to increase the \$0.42 per contract Penny Symbol Taker Fee to \$0.43 per contract 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).²¹ The 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

²⁰ See GEMX Options 2, Section 5.

²¹ See GEMX Options 2, Section 5.

makers not registered on GEMX will be encouraged to continue 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.

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.²² 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 (<http://www.sec.gov/rules/sro.shtml>);

or

²² 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2025-21 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-2025-21. 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 filing 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-2025-21 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.²³

Vanessa A. Countryman,

Secretary.

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²³ 17 CFR 200.30-3(a)(12).