1. Text of the Proposed Rule Change

(a) Nasdaq GEMX, LLC ("GEMX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to establish fees for its expanded co-location services, as described further below.

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

a. Purpose

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

Ultra High Density Cabinet

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

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3 Securities Exchange Act Release No. 34-101074 (September 5, 2024), 89 FR 77920 (September 24, 2024) (SR-GEMX-2024-34).

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

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

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

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5 Supra note 3.

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

Cabinet ranges from approximately $482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to $723 per kW (at the low end of the power density range for Ultra High Density Cabinets). The Exchange's vendor also charges the Exchange higher fees for installing Ultra-High Density Cabinets in NY11-4 than it does for installing cabinets in NY11, which accounts for the higher fees that the Exchange proposes to charge for Ultra-High Density Cabinet installation in NY11-4 than it does for cabinet installation in NY11.

Installation Fee for Cabinets in NY11-4

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

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

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

fee of $5,940 is comparable to fees charged for similar products.[9] It largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. The Exchange notes that the proposed installation fee for cabinets in NY11-4 is actually less than that which the Exchange's vendor charges it for the installation of such cabinets. The Exchange's vendor also charges the Exchange higher fees for installing cabinets in NY11-4 than it does for installing cabinets in NY11, which accounts for the higher fees that the Exchange proposes to charge for cabinet installation in NY11-4 than it does for cabinet installation in NY11.

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of $3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of $4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to

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

experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.[10] Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")[11] in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3[12] power distribution units in NY11-4. The Exchange proposes to establish a fee of $4,100 for a Phase 1 PDU and $5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the

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

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

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

Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.[13] A PDU replacement is required when switching between phases/voltage.

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

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11-4, installation fees for power installation in NY11-4, and fees for power distribution unit options in NY11-4 is reasonable. First, the Exchange's proposal to establish a $7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11-4 is reasonable because it is comparable to the

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

14 15 U.S.C. 78f(b).

15 15 U.S.C. 78f(b)(4) and (5).

Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the $4,748 ongoing monthly fee charged for High Density Cabinets and the $8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately $475 per kW to $916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately $482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to $723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of $5,940 is reasonable as compared to the installation fees in NY11 (of $3,693 – $4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11-4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power installation fees of $3,600 for Phase 1 power options and $4,560 for Phase 3 power

options in NY11-4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11-4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,[16] warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,[17] connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that

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16 Supra note 10.

17 There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

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

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

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

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

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative

exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 can do so on a non-discriminatory basis.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[18] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.