

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

BY-LAWS OF NASDAQ GEMX, LLC

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Article I DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) - (m) No change

(n) "Industry member" means an Exchange Review Council member or a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(o) – (r) No change.

(s) "Member Representative member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(t) – (w) No change.

(x) "Non-Industry member" means an Exchange Review Council member or a member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry member.

(y) – (z) No change.

(aa) "Public member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

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Article III BOARD OF DIRECTORS

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Section 6. Committees Not Composed Solely of Directors

(a) The Board shall appoint an Exchange Review Council as provided in Article VI of the By-Laws[Reserved].

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Exchange Members or the Sole LLC Member under the terms of the LLC Agreement and these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on [any]the Exchange Review Council or any other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Exchange Review Council.

(i) – (v) No change.

(c) No change.

Section 7. Conflicts of Interest; Contracts and Transactions Involving Directors

(a) A Director or a committee member, including a member of the Exchange Review Council or any other committee, shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or [committee]Exchange Review Council member or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or [committee]Exchange Review Council member or other committee member shall recuse himself or herself or shall be disqualified.

(b) No change.

Section 8. Compensation of Board, Council, and Committee Members

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Exchange Review Council members, and the [committee]members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

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Article VI EXCHANGE REVIEW COUNCIL[RESERVED.]

Section 1. Appointment and Authority

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the national securities exchange operated by the Company. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

Section 2. Number of Members and Qualifications

The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50 percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Section 3. Nomination Process

The Secretary of the Company shall collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Section 4. Term of Office

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

Section 5. Resignation

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 6. Removal

Any or all of the members of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Section 7. Disqualification

Notwithstanding Article VI, Section 4, the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy.

Section 8. Filling of Vacancies

If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Section 9. Quorum and Voting

At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than 50 percent of the Non-Industry members of the Exchange Review Council and at

least one Member Representative member of the Exchange Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 720, 720A, and 804 shall consist of three members of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Section 10. Meetings

The members of the Exchange Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Section 11. Review Subcommittee

The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Rules and to perform any other function authorized by the Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

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Nasdaq GEMX Rules

1. Definitions

Rule 100. Definitions

(a) The following terms, when used in these Rules, shall have the meanings specified in this Chapter 1, unless the context indicates otherwise. Any terms defined in the Limited Liability Company Agreement (the "LLC Agreement") or the By-Laws of Nasdaq GEMX, LLC (the "By-Laws") and not otherwise defined in this Chapter shall have the meaning assigned in the LLC Agreement or the By-Laws.

(1) – (14) No change.

(14A) The term “Code of Procedure” means the procedural rules contained in Chapter 90.

(15) – (20) No change.

(21) The term “Exchange Act” or the “Act” means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as amended from time to time.

(21A) The term “Exchange Review Council” means the committee authorized and directed to act for the Board of Directors of the Exchange in a manner consistent with the Exchange Rules with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange Rules 303, 720,720A, and 804; and (7) such other proceedings or actions authorized by the Exchange Rules.

(22) – (58) No change.

(59) The terms “SEC” and the “Commission” mean[s] the United States Securities and Exchange Commission.

(60) – (67) No change.

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Rule 206. Reserved[Liability for Payment of Fees

(a) A Member that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within thirty (30) days after they have become payable shall be reported to the Chief Executive Officer and President, who may, after giving reasonable notice to the Member of such arrearages, suspend the Member’s trading privileges until payment is made.

(b) A person associated with a Member who fails to pay any fine or other amounts due to the Exchange within thirty (30) days after such amount has become payable and after reasonable notice of such arrearages, may be suspended from association with a Member until payment is made.]

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Rule 303 Denial of and Conditions to Becoming a Member

(a) – (e) No change.

(f) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must[, within thirty (30) days of becoming subject to a statutory disqualification,] submit an application to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification, as set forth in Rule 9522. Failure to timely file such an application is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (e) of this Rule.

(g) Review by the Exchange Review Council

Subject to Chapter 90[15 (Summary Suspension)] of the Rules, any applicant whose application to become a Member is denied [Membership]or conditioned by the Exchange's Membership Department ("the Department"), or any person whose association with a Member is denied or conditioned by the Department pursuant to paragraph (b) or (c) of this Rule, and any Member or person associated with a Member who is not permitted by the Department pursuant to paragraph (e) of this Rule to continue as a Member or to be associated with a Member or which continuance as a Member or association is conditioned by the Department, may appeal the [Exchange's] Department's decision [under Chapter 17 (Hearings and Review) of the Rules.] to the Exchange Review Council, as set forth below.

(1) Initiation of Review by Applicant

Within 25 days after service of a decision under Rule 303, an applicant ("Applicant") may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 303, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

(2) Transmission of Documents

Within ten days after the filing of a request for review, the Department shall:

(A) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(B) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(3) Membership Application Docket

The Department shall promptly record in the Exchange's membership application docket each request for review filed with the Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(4) Appointment of Subcommittee

The Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(5) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(6) Hearing

(A) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(B) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(C) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the Exchange Review Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(D) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(7) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(8) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 303 (g)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Exchange. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(9) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to subparagraph (g)(6), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(10) Decision

(A) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (g)(10)(B).

(B) Contents

The decision shall include:

- (i) a description of the Department's decision, including its rationale;
- (ii) a description of the principal issues raised in the review;
- (iii) a summary of the evidence on each issue; and
- (iv) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 303.

(C) Issuance of Decision After Expiration of Call for Review Periods

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the membership proceeding for review pursuant to Rule 303(h). If the Exchange Board does not call the membership proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(D) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (g)(10)(C), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.

(h) Discretionary Review by the Exchange Board

(1) Call for Review by Director

A Director may call a membership proceeding for review by the Exchange Board if the call for review is made within the period prescribed in subparagraph (h)(2).

(2) 15 Day Period; Waiver

A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(3) Review At Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (h)(2), the Exchange Board shall review the membership proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the membership proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 303(g)(10)(B).

(5) Issuance of Decision

The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the membership proceeding.

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Rule 306. Registration Requirements

No change.

Supplementary Material to Rule 306

.01 - .04 No change.

.05 Pursuant to the Rule 9600 Series, [T]the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to

the securities business may constitute sufficient grounds to waive a qualification examination.

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Rule 307. Documents Required of Applicants and Members

(a) No change.

(b) [Every Member shall file with the Exchange and keep current an address where notices may be served.]Every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact system. Each Member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each Member shall review and, if necessary, update its required contact information, via such means as the Exchange may specify, within 17 business days after the end of each calendar year. Each member shall comply with any Exchange request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Exchange staff.

(c) No change.

(d) Reserved.[Members shall keep and maintain a current copy of the By-Laws and Rules in a readily accessible place. Members that are approved to do business with the public pursuant to Rule 600 shall make the By-Laws and Rules available for examination by customers.]

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Rule 308. Dissolution and Liquidation of Members

Every Member shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution. Upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Rule 9558[Chapter 15 (Summary Suspension) of these Rules].

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Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the

terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) – (j) No change.

(k) *Appeals*. If a Member affected by a determination made under this Rule so requests within the time permitted below, [the Obvious Error Panel (“Obvious Error Panel”)]an Exchange Review Council panel will review decisions made by the Official under this Rule, including whether an obvious error occurred and whether the correct determination was made.

[(1) The Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making (any such representative, a “MM Representative”) and the other two (2) representatives must be employed by an Electronic Access Member (any such representative, a “Non-MM Representative”). To qualify as a representative of a Member other than a Member engaged in market making, a person must:

(A) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or

(B) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(2)](1) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in market making. At no time should a review panel have more than 50% members engaged in market making. [The Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. In no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.]

[(3)](2) A request for review on appeal must be

made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Obvious Error Panel]Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

[(4)](3) The [Obvious Error Panel]Exchange Review Council panel may overturn or modify an action taken by the Official under this Rule. All determinations by the [Obvious Error Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

[(5)](4) If the [Obvious Error Panel]Exchange Review Council panel votes to uphold the decision made pursuant to paragraph (k)(1) above, the Exchange will assess a \$5,000.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

[(6)](5) Any determination by an Official or by the [Obvious Error Panel]Exchange Review Council panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Supplementary Material to Rule 720

No change.

Rule 720A. Erroneous Trades due to System Disruptions and Malfunctions

(a) No change.

(b) *Procedures for Review of Decisions Made Pursuant to Rule 720A(a).*

(1) If a party to a ruling by Market Control made pursuant to subsection (a) of this Rule requests within the time permitted below, [a Review Panel,]an Exchange Review Council panel will be utilized to review decisions made by Market Control under this Rule.

(i) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in

market making. At no time should a review panel have more than 50% members engaged in market making.[The Review Panel will be comprised of representatives from four (4) Member firms. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member. To qualify as a representative of an Electronic Access Member on a Review Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(ii) The Exchange shall designate at least five (5) market maker representatives and at least five (5) Electronic Access Member representatives to be called upon to serve on the Review Panel as needed. In no case shall a Review Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a Review Panel on an equally frequent basis.]

[(iii)](ii) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Review Panel]Exchange Review Council panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

[(iv)](iii) The [Review Panel]Exchange Review Council panel may overturn or modify an action taken by the Exchange under this Rule. All determinations by the [Review Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

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Rule 804.

Market Maker Quotations

(a) – (e) No change.

(f) *Temporary Withdrawal of Quotations by Primary Market Makers.* A Primary Market Maker may apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Primary Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel

certifying that such legal or regulatory basis exists. The Exchange will act promptly on such a request, and, if the request is granted, the Exchange will temporarily reassign the options class to another Primary Market Maker.

(1) The Exchange Review Council shall have jurisdiction over proceedings brought by Primary Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule or the conditions imposed on their reentry.

(g) – (h) No change.

Supplementary Material to Rule 804

No change.

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15. Reserved[Summary Suspension]

[The rules contained in Nasdaq ISE Chapter 15, as such rules may be in effect from time to time (the “Chapter 15 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 15, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 15 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Board” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Board; and the defined term “Member” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Member. For the avoidance of doubt, the reference to “leases” in Rule 1503 shall not apply to Nasdaq GEMX, since Nasdaq GEMX memberships can’t be leased.]

16. Disciplinary Jurisdiction and Minor Rule Violation Fines[Discipline]

The rules contained in Nasdaq ISE Chapter 16, as such rules may be in effect from time to time (the “Chapter 16 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 16, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 16 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the

Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Affiliate” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Affiliate; and the defined term “Member” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Member. [In addition, for the avoidance of doubt, the contract with FINRA that is referred to in Rule 1615 also covers Nasdaq GEMX.]

17. Reserved[Hearings and Review]

[The rules contained in Nasdaq ISE Chapter 17, as such rules may be in effect from time to time (the “Chapter 17 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 17, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 17 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Business Conduct Committee” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Business Conduct Committee; and the defined term “Member” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Member.]

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23.-79. Reserved

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80. Investigations and Sanctions

Series 8000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 8000 Series"), are hereby incorporated by reference into this Nasdaq GEMX Rules Chapter 80, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction. Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction shall comply with the BX Rule 8000 Series as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. The defined terms "Exchange" or “Nasdaq BX” in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX Exchange; the defined terms "Rule" or “BX Rule” in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX Rules; the defined terms "Board" or “Exchange Board” in the BX Rule 8000 Series shall be

read to refer to the Nasdaq GEMX Board of Directors; the defined term "Member" in the BX Rule 8000 Series shall be read to refer to a Nasdaq GEMX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq GEMX Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq GEMX Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq GEMX; and "Equity Rule" shall be read to refer to a Nasdaq GEMX Rule.

Additionally, references in the BX Rule 8000 Series to "Rule 0120" shall be read to refer to Nasdaq GEMX Rule 100. References in the BX Rule 8000 Series to "Rule 1015" shall be read to refer to Nasdaq GEMX Rule 303.

81.-89. Reserved

90. Code of Procedure

Series 9000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 9000 Series"), are hereby incorporated by reference into this Nasdaq GEMX Rules Chapter 90, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the BX Rule 9000 Series as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined terms "Exchange" or "Nasdaq BX" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Exchange; the defined terms "Rule" or "BX Rule" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Rules; the defined terms "Board" or "Exchange Board" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term "Member" in the BX Rule 9000 Series shall be read to refer to a Nasdaq GEMX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq GEMX Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq GEMX Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq GEMX; and "Equity Rule" shall be read to refer to a Nasdaq GEMX Rule.

Additionally, references in the BX Rule 9000 Series to the following rules shall be read to refer to the following Nasdaq GEMX Rules: “Rule 0120” shall be read to refer to Nasdaq GEMX Rule 100; “Rule 1013” shall be read to refer to Nasdaq GEMX Rules 302 and 307; “Rule 1070” shall be read to refer to the Supplementary Material to Nasdaq GEMX Rule 306; “Rule 1160” shall be read to refer to Nasdaq GEMX Rule 307(b); “Equity Rule 2110” shall be read to refer to Nasdaq GEMX Rule 400; “Equity Rule 2120” shall be read to refer to Nasdaq GEMX Rule 405; “Rule 2140” shall be read to refer to Nasdaq GEMX Rule 309; “Equity Rule 2150” shall be read to refer to Nasdaq GEMX Chapter 6; “Rule 2170” shall be read to refer to Nasdaq GEMX Rule 403; “Rule 4110A” shall be read to refer to Nasdaq GEMX Chapter 13; “Rule 4120A” shall be read to refer to Nasdaq GEMX Chapter 13; “Rule 10000 Series” shall be read to refer to Nasdaq GEMX Rules Chapter 18; and “Chapter III, Section 16” shall be read to refer to Nasdaq GEMX Rule 403.

Notwithstanding the above, IM-9216 (“Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)”) in the BX Rule 9000 Series shall not apply to the Nasdaq GEMX Exchange or to its Members, Associated Persons, or other persons subject to the jurisdiction of the Exchange. Instead, the Nasdaq GEMX Rule that governs such violations shall be Nasdaq GEMX Rule 1614(b) and references in the BX Rule 9000 Series to IM-9216 shall be read to refer to Nasdaq GEMX Rule 1614(b). Moreover, the procedures set forth in BX Rule 9216(b) and 9143(e)(3), which shall govern the handling of violations of Rules listed in Nasdaq GEMX Rule 1614(b) that are subject to a plan approved by the Commission pursuant to SEC Rule 19d-1(c)(2) (the “Minor Rule Violation Plan” or “MRVP”) and the issuance of MRVP letters, shall also apply to the Exchange’s handling of violations of Rules listed in Nasdaq GEMX Rule 1614(b) that are not subject to the MRVP (“minor rule violations”) and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d-1(c)(1).

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