

**EXHIBIT 5**

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**Nasdaq GEMX, LLC Rules**

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**General 2 ORGANIZATION AND ADMINISTRATION**

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**Section 11. Organization and Administration**

(a) Each Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact system.

(b) 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.

(c) 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.

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**General 3 MEMBERSHIP AND ACCESS**

Series 1000 of the Rules of The Nasdaq Stock Market, LLC (“Nasdaq”), as such rules may be in effect from time to time (the “Nasdaq Rule 1000 Series”), are hereby incorporated by reference into this Nasdaq GEMX General 3 (other than Nasdaq Rule 1031), 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 Nasdaq Rule 1000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. The defined terms “Exchange” or “Nasdaq” shall be read to refer to the Nasdaq GEMX Exchange; “Rule” or “Exchange Rule” shall be read to refer to the Exchange Rules; the defined term “Applicant” in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq GEMX Exchange; the defined terms “Board” or “Exchange Board” in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term “Director” in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq GEMX Exchange; the defined term “Exchange Review Council” in the Nasdaq Rule 1000 Series

shall be read to refer to the Nasdaq GEMX Exchange Review Council; the defined term “Subcommittee” in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq GEMX Exchange Review Council; the defined term “Interested Staff” in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq GEMX; the defined term “Member” in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker; the defined term “Associated Person” shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms “Exchange Membership Department” or “Membership Department” shall be read to refer to the Nasdaq GEMX Membership Department; and the defined term “Exchange Regulation Department” shall be read to refer to the Nasdaq GEMX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to “General 1 and Equity 1” shall be read as references to Nasdaq GEMX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to “General 9, Section 20” shall be read as references to Nasdaq GEMX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to “General 9, Section 37” shall be read as references to Nasdaq GEMX Options 9, Section 21; and cross references to the “General 4, Rule 1200 Series” shall be read as references to Nasdaq GEMX General 4, Section 1.

The Nasdaq Rule 1000 Series shall also apply to Nasdaq GEMX Members who meet the following requirements:

**Foreign Members:** A Member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange must:

- (1) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;
- (2) reimburse the Exchange for any expense incurred in connection with examinations of the Member to the extent that such expenses exceed the cost of examining a Member located within the continental United States; and
- (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

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### **[Section 1. Qualification of Members**

(a) The Exchange shall issue Memberships that confer the ability to transact on the Exchange. There is no limit on the number of Memberships that may be issued by the Exchange. In addition, in no event shall the Exchange act in a manner under this paragraph that does not comply with the provisions of Section 6(c)(4) of the Exchange

Act. A Member of the Exchange may be a corporation, partnership, or LLC. Each Member must:

- (1) be a broker-dealer registered pursuant to Section 15 of the Exchange Act; and
- (2) meet the qualifications for a Member in accordance with Exchange Rules applicable thereto.

(b) A Member that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange must:

- (1) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;
- (2) reimburse the Exchange for any expense incurred in connection with examinations of the Member to the extent that such expenses exceed the cost of examining a Member located within the continental United States; and
- (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

(c) Every Member shall have as the principal purpose of being a Member the conduct of a securities business. Such a purpose shall be deemed to exist if and so long as:

- (1) the Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and
- (2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder.

## **Section 2. Denial of and Conditions to Becoming a Member**

(a) An applicant to become a Member of the Exchange must seek approval in the form and manner prescribed by the Exchange.

(b) The Exchange may deny (or condition) approval of a Member, or may prevent a person from becoming associated (or condition an association) with a Member, for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Exchange Act.

(c) The Exchange also may deny (or condition) approval of a Member, or may prevent a person from becoming associated with (or condition an association) with a Member, when the applicant, directly or indirectly:

- (1) has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action);
  - (2) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures; or
  - (3) is unable satisfactorily to demonstrate reasonably adequate systems capability and capacity.
- (d) When an applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.
- (e) The Exchange may determine not to permit a Member or person associated with a Member to continue as a Member or associated therewith, if the Member or associated person:
- (1) fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof;
  - (2) fails to meet any condition placed by the Exchange on such Member or association with a Member;
  - (3) violates any agreement with the Exchange; or
  - (4) becomes subject to a statutory disqualification under the Exchange Act.
- (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 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 General 5, Section 3. 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 the Rule 9000 Series, any applicant whose application to become a Member is denied 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 Department's decision to the Exchange Review Council, as set forth below.

- (1) *Initiation of Review by Applicant.* Within 25 days after service of a decision under this Rule, 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 this Rule, 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 General 5, Section 3 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.
- (E) *Video Conferencing Hearing*. Upon consideration of the current public health risks presented by an in-person hearing, the Exchange Review Council or Subcommittee may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.
- (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 General 3, Section 2(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 General 3, Section 2.

(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 General 3, Section 2(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 General 3, Section 2(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.

**Section 3. Persons Associated with Members**

- (a) Persons associated with Members shall be bound by the By-Laws and Rules of the Exchange and the Rules of the Clearing Corporation. The Exchange may bar a person from becoming or continuing to be associated with a Member if such person does not agree in writing, on a form prescribed by the Exchange, to furnish the Exchange with information with respect to such person's relationship and dealings with the Member, and information reasonably related to such person's other securities business, as may be required by the Exchange, and to permit the examination of its books and records by the Exchange to verify the accuracy of any information so supplied.
- (b) Each Member shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Member(s) who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file



with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U-4).

(c) A claim of any person associated with a Member described in the first sentence of paragraph (b) of this Rule against such organization shall be subordinate in right of payment of customers and other Members.

#### **Section 4. Documents Required of Applicants and Members**

(a) Although the Exchange may request additional information, at a minimum, the partnership agreement and all amendments thereto, in the case of a partnership, the articles of incorporation, by-laws and all amendments thereto, in the case of a corporation, and in the case of a limited liability company, the articles of organization and operating agreement and all amendments thereto shall be filed with, and shall be subject to review by, the Exchange; however, no action or failure to act by the Exchange shall be construed to mean that the Exchange has in any way passed on the investment merits of or given approval to any such document.

(b) 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) In a manner and form prescribed by the Exchange, every Member shall pledge to abide by the By-Laws and Rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the By-Laws and Rules.

#### **Section 5. Member Application Procedures**

(a) *Nasdaq ISE Members.* A Nasdaq ISE Member in good standing is eligible to become a Nasdaq GEMX Member of the same category (i.e., a Nasdaq ISE PMM Member is eligible to become a Nasdaq GEMX PMM Member, a Nasdaq ISE CMM Member is eligible to become a Nasdaq GEMX CMM Member and a Nasdaq ISE EAM Member is eligible to become a Nasdaq GEMX EAM Member). Nasdaq ISE Member applicants are not required to complete and submit an Exchange application. Instead, only Exchange forms concerning electing to trade on the Exchange, submitting to the Exchange's jurisdiction, and operational matters need to be completed and tendered.

(b) *Non-Nasdaq ISE Members.* All non-Nasdaq ISE Members seeking to become a Member of the Exchange must submit an application to the Exchange in accordance with such procedures as shall be established by the Exchange via Options Regulatory Alert

including submission deadlines and payment of any applicable application fees. The Exchange shall provide non-Nasdaq ISE Members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint Market Makers pursuant to Exchange Options 2, Section 3 in order to ensure non-Nasdaq ISE Members have a reasonable opportunity to participate in those processes. A market participant must have completed a membership application to be eligible to participate in the processes set forth in Options 2, Section 3. In addition, the following shall apply:

- (i) Applications must be accompanied by a non-refundable application fee.
- (ii) Within a reasonable time following receipt of an application, the name of the applicant shall be posted by the Exchange.
- (iii) An applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in General 3, Section 1(c).
- (iv) Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay. Persons associated with the applicant are subject to investigation by the Exchange and may be required to appear in person before the Exchange. The Exchange may also require any person associated with a Member who may possess information relevant to the applicant's suitability to be a Member to provide information or testimony.
- (v) The Exchange will determine whether to approve an application. Written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefor, shall be provided to the applicant.
- (vi) If the application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn.
- (vii) With respect to each Membership that becomes effective in accordance with this Rule, the Exchange shall promptly notify all Members thereof.

(c) *Rights of Members.* No rights shall be conferred upon a Member except those set forth in the Rules as amended from time to time. A Membership shall not convey any ownership interest in the Exchange. Memberships may not be leased and are not transferable except in the event of a change in control or corporate reorganization involving a Member. In such case, Member status may be transferred to a qualified affiliate or successor upon written notice to the Exchange.

(d) *Fees and Charges for Members.* Members shall be subject to such fees and charges as are established by the Exchange from time to time pursuant to General 2, Section 2 and the Exchange's Pricing Schedule. The entire fee for a Member shall be due and payable in full on or before the first day on which the Membership is effective on a nonrefundable

basis. An organization holding a Membership in its name shall be responsible for paying all fees and charges for that Membership.

(e) *Exchange Jurisdiction over Members.* Every Member shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1 of the Rules.

### **Section 6. 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.]

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