

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93583; File No. SR-GEMX-2021-10)

November 16, 2021

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend FINRA Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2021, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX’s Pricing Schedule at Options 7, Section 5, Legal and Regulatory, to reflect adjustments to FINRA Registration Fees. Additionally, this rule change amends the Continuing Education Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2022.<sup>3</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA’s Regulatory Mission).

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

This proposal amends GEMX's Pricing Schedule at Options 7, Section 5, Legal and Regulatory, to reflect adjustments to FINRA Registration Fees.<sup>4</sup> Additionally, this rule change amends the Continuing Education Fees. The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of GEMX members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, GEMX Options 7, Section 5B, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the introductory paragraph to add a sentence to make clear that FINRA collects the fees listed

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<sup>4</sup> FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

within Options 7, Section 5B on behalf of the Exchange. The fees listed within Options 7, Section 5B reflect fees set by FINRA.

Specifically, with respect to the General Registration Fees, the Exchange proposes to increase the \$100 fee to \$125 for each initial Form U4 filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.<sup>5</sup>

The Exchange also proposes to amend the Continuing Education Fees to update those fees to reflect current fees assessed by FINRA. The Exchange proposes to provide an introductory paragraph which states, “The Continuing Education Fee will be assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. This fee is paid directly to FINRA.” Additionally, the Exchange proposes to replace the current rule text<sup>6</sup> with the following rule text, “\$100.00 (\$55.00 if the Continuing Education is Web-based) for each individual who is required to complete the S101 or S201.” This proposed rule text reflects a rule change previously made by FINRA<sup>7</sup> which discontinued the S501 Regulatory Element. Since the time the S501 fee was discontinued, FINRA has been collecting the appropriate registration

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<sup>5</sup> Id. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

<sup>6</sup> The current rule text provides, “\$60-S501. Assessed to each individual who is solely registered as a Proprietary Trader required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq GEMX Rule 1240.”

<sup>7</sup> See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR-FINRA-2015-015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements).

fees for the S101 and S201 registrations. This amendment will make clear the current Continuing Education Fees that FINRA assesses today.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment to FINRA's fees.<sup>10</sup> The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. Additionally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees will bring greater transparency to its fees. Also, amending the Continuing Education Fees to properly reflect the current fee of \$100.00 for each individual who is required to complete the S101 or S201 and \$55.00 if the Continuing Education is Web-based will bring greater transparency to the Continuing Education fees currently assessed by FINRA. Finally, referencing the rule which governs the Regulatory Element of the

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See note 3 above.

Continuing Education Requirements and, noting that the fee is paid directly to FINRA, will provide more information to Members regarding the fees for Continuing Education. The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all Members who require Form U4 filings as of January 2, 2022. Additionally, reflecting the current Continuing Education Fees for the S101 or S201 and removing outdated language is equitable and not unfairly discriminatory as FINRA currently assesses these rates to all Members that are required to have those registrations. Finally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees and referencing the rule which governs the Regulatory Element of the Continuing Education Requirements will bring greater transparency to FINRA's fees. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Additionally, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the increased fee for each initial Form U4 filed for the

registration of a representative or principal will be assessed by FINRA to all Members who require Form U4 filings as of January 2, 2022. Also, reflecting the current Continuing Education Fees for the S101 or S201 and removing outdated language does not impose an undue burden on competition as FINRA currently assesses these rates to all Members that are required to have those registrations. Finally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees and referencing the rule which governs the Regulatory Element of the Continuing Education Requirements will bring greater transparency to FINRA's fees. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>11</sup>

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2021-10 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2021-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2021-10, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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