

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to delay the implementation of SR-GEMX-2024-42,<sup>3</sup> which amended GEMX’s Options Regulatory Fee (“ORF”). Specifically, the Exchange proposes to delay the new ORF and methodology therein which will be implemented on June 1, 2025 and sunset on December 1, 2025.<sup>4</sup>

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:

Angela Saccomandi Dunn

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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 and Exchange Act Release No. 101875 (December 11, 2024), 89 FR 102223 (December 17, 2024) (SR-GEMX-2024-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025) (“SR-GEMX-2024-42”).

<sup>4</sup> On January 13, 2025, SR-GEMX-2025-03 was filed. The Exchange is withdrawing SR-GEMX-2025-03 on January 28, 2025 and replacing it with this rule change.

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

a. Purpose

GEMX previously filed a proposed amendment to its ORF, effective as of January 1, 2025,<sup>5</sup> to amend its methodology of collection to: (1) specify that it is including options transactions in GEMX proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as "M" at The Options Clearing Corporation ("OCC").<sup>6</sup> Additionally, GEMX proposed to assess a different rate for trades executed on GEMX ("Local ORF Rate") and trades executed on non-GEMX exchanges ("Away ORF Rate").<sup>7</sup>

At this time, the Exchange proposes to delay the implementation of SR-GEMX-2024-42, with respect to the new ORF and methodology therein which was effective on January 1, 2025, so that it would now be implemented on June 1, 2025. Delaying the January 1, 2025 implementation would allow the Exchange to continue to assess the ORF that was in effect in December 2024 of \$0.0012 per contract side for January 2025 transactions and thereafter until June 1, 2025. In light of a comment letter from SIFMA dated December 20, 2024,<sup>8</sup> the Exchange proposes this delay to provide market participants additional time to track the new ORF charges on both Local and Away

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<sup>5</sup> See supra note 3.

<sup>6</sup> ORF revenues are not used to fund the building or operation of CAT systems that are funded through a separate CAT Fee.

<sup>7</sup> See supra note 3.

<sup>8</sup> <https://www.sec.gov/comments/sr-nasdaq-2024-078/srnasdaq2024078-550079-1574622.pdf>.

executions in the “Firm” range. This delay would allow market participants the additional time needed to design, test and implement changes to the ORF.

Additionally, the Exchange proposes to amend the sunset date from July 1, 2025 to December 1, 2025 in light of the proposed delay. The sunset date would revert the ORF back to the ORF methodology and rate of \$0.0012 per contract side that was in effect in December 2024.<sup>9</sup> The Exchange is not substantively amending the proposed ORF with this proposal.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>11</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposal to delay the implementation of SR-GEMX-2024-42, with respect to the new ORF and methodology therein which was effective on January 1, 2025, until June 1, 2025 is consistent with the Act because it will provide market

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<sup>9</sup> The Exchange proposes to reconsider the sunset date and determine whether to proceed with the proposed ORF structure at that time.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

participants additional time to track the new ORF charges on both Local and Away executions in the “Firm” range, providing additional time to design, test and implement changes to the ORF. The proposal to amend the sunset date from July 1, 2025 to December 1, 2025 is also consistent with the Act as this proposal will not go into effect until June 1, 2025. The Exchange is not substantively amending the proposed ORF with this proposal.

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange will continue to assess the ORF in effect in December 2024 to all Members. No Member would be subject to the proposed new ORF until June 1, 2025. The Exchange is not substantively amending the proposed ORF with this proposal.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition not necessary or appropriate in furtherance of the purposes of the Act as other options exchanges may elect to adopt a similar proposal and select their own implementation date.

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,<sup>13</sup> 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.

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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).