

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104306; File No. SR-GEMX-2025-32]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange’s Pricing Schedule at Options 7, Section 3

December 4, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 20, 2025, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 3, “Regular Order Fees and Rebates.”³

This fee change shall be effective on November 13, 2025.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings>, and at the principal office of the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On November 13, 2025, the Exchange filed SR-GEMX-2025-29. On November 20, 2025, the Exchange withdrew SR-GEMX-2025-29 and filed SR-GEMX-2025-31. Subsequently, on November 20, 2025, the Exchange withdrew SR-GEMX-2025-31 and filed this proposal.

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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, "Regular Order Fees and Rebates" to: (1) increase the Tier 4 Penny Symbol Maker Rebate for a Market Maker;⁴ and (2) add a new note 19. A technical amendment is also proposed to current note numbering for a duplicative note 18. Each change is described below.

Tier 4

Today, GEMX offers 4 tiers of Penny Symbol Maker Rebates. Market Makers are paid the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.20 per contract; a Tier 2 Maker Rebate of \$0.30 per contract; a Tier 3 Maker Rebate of \$0.37 per contract; and a Tier 4 Maker Rebate of \$0.38 per contract. Non-Nasdaq GEMX Market Makers (FarMM),⁵ Firm

⁴ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

⁵ A "Non-Nasdaq GEMX Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

Proprietary⁶ / Broker Dealers⁷ and Professional Customers⁸ are paid the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.20 per contract. GEMX does not pay Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary / Broker Dealers and Professional Customers Tier 2 through Tier 4 Penny Symbol Maker Rebates. Finally, Priority Customers⁹ are paid the following Penny Symbol Maker Rebates: a Tier 1 Maker Rebate of \$0.35 per contract; a Tier 2 Maker Rebate of \$0.48 per contract; a Tier 3 Maker Rebate of \$0.53 per contract; and a Tier 4 Maker Rebate of \$0.53 per contract.

At this time, the Exchange proposes to amend the Tier 4 Penny Symbol Maker Rebate for a Market Maker to increase the rebate from \$0.38 to \$0.39 per contract. The Exchange believes that increasing the Tier 4 Penny Symbol Maker Rebate for a Market Maker will encourage Market Makers to bring additional order flow to GEMX to earn the increased Maker Rebate. Further, other Members may interact with this order flow.

Additionally, the Exchange proposes to offer a new note 19 incentive related to the Tier 4 Priority Customer Maker Rebate for Penny Symbols. The Exchange proposes to pay an additional \$0.01 per contract Maker Rebate for each marginal contract of Customer add liquidity volume that was executed above 2.00% of Customer Total Consolidated Volume (“TCV”) to

⁶ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

⁷ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

⁸ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

⁹ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail.” A “Retail” order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Options 1, Section 1(c).

Members, Affiliated Members, and Affiliated Entities that are eligible for the Tier 4 Priority Customer Maker Rebate for Penny Symbols. For example, assuming 2.00% of 1,000,000,000 of Monthly Customer TCV (which results in 20,000,000 contracts), a Member would be paid additional rebates on executed contracts above 20,000,000 contracts.

The Exchange believes that the new note 19 incentive will encourage market participants to send additional Priority Customer order flow to GEMX to earn an additional \$0.01 per contract Maker Rebate. Further, other Members may interact with this order flow.

Finally, the Exchange proposes to renumber current note 18 which states, “A surcharge for NDX of \$1.50 per contract will be assessed to regular Non-Priority Customer orders that remove liquidity” to note 20. The Exchange inadvertently filed two separate rule changes that were operative on the same date, both adopting a new note 18.¹⁰ At this time, the Exchange proposes to change the numbering for note 18 to note 20 for the rule text that states, “A surcharge for NDX of \$1.50 per contract will be assessed to regular Non-Priority Customer orders that remove liquidity.” This revision should clarify the Pricing Schedule. The Exchange also amended all references to that note related to Index Options to reflect the new numbering.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among

¹⁰ See Securities Exchange Act Release Nos. 103300 (June 24, 2025), 90 FR 27686 (June 27, 2025) (SR-GEMX-2025-13); and 103264 (June 16, 2025), 90 FR 26353 (June 20, 2025) (SR-GEMX-2025-12). There are currently two note 18 in Options 7, Section 3.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

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's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹³

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴

¹³ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of eighteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to increase the Tier 4 Market Maker Penny Symbol Maker Rebate from \$0.38 to \$0.39 per contract is reasonable because the increased Tier 4 Penny Symbol Maker Rebate for a Market Maker will encourage Market Makers to bring additional order flow to GEMX to earn the increased Maker Rebate. Further, other Members may interact with this order flow.

The Exchange's proposal to increase the Tier 4 Market Maker Penny Symbol Maker Rebate from \$0.38 to \$0.39 per contract is equitable and not unfairly discriminatory for various reasons. The Qualifying Tier Thresholds will apply uniformly to all GEMX Members in determining the applicable tier. Priority Customers will continue to receive higher Penny Symbol Maker Rebates in each tier. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow. Market Makers will also continue to be paid Penny Symbol Maker Rebates unlike Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker-Dealers and Professional Customers because Market Makers have

different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁵ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to offer a new note 19 incentive related to the Tier 4 Priority Customer Maker Rebate for Penny Symbols is reasonable because the new incentive should encourage market participants to send additional Priority Customer order flow to GEMX to earn an additional \$0.01 per contract Maker Rebate. Further, other Members may interact with this order flow.

The Exchange's proposal to offer a new note 19 incentive related to the Tier 4 Priority Customer Maker Rebate for Penny Symbols is equitable and not unfairly discriminatory because the Exchange would uniformly pay the incentive to qualifying market participants. Paying the incentive for Priority Customer liquidity is also equitable and not unfairly discriminatory because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to renumber note 18 which states, "A surcharge for NDX of \$1.50 per contract will be assessed to regular Non-Priority Customer orders that remove liquidity" to note 20 is reasonable, equitable and not unfairly discriminatory because the Exchange inadvertently filed two separate rule changes that were operative on the same date,

¹⁵ See GEMX Options 2, Section 5.

both adopting a new note 18¹⁶ and this revision should clarify the Pricing Schedule.

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.

Intermarket Competition

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The Exchange's proposal to increase the Tier 4 Market Maker Penny Symbol Maker Rebate from \$0.38 to \$0.39 per contract does not impose an undue burden on competition. The Qualifying Tier Thresholds will apply uniformly to all GEMX Members in determining the applicable tier. Priority Customers will continue to receive higher Maker Rebates in each tier. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding

¹⁶ See Securities Exchange Act Release Nos. 103300 (June 24, 2025), 90 FR 27686 (June 27, 2025) (SR-GEMX-2025-13); and 103264 (June 16, 2025), 90 FR 26353 (June 20, 2025) (SR-GEMX-2025-12).

increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow. Market Makers will also continue to be paid Penny Symbol Maker Rebates unlike Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker-Dealers and Professional Customers because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).¹⁷ Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to offer a new note 19 incentive related to the Tier 4 Priority Customer Maker Rebate for Penny Symbols does not impose an undue burden on competition because the Exchange would uniformly pay the incentive to qualifying market participants. Also, paying the incentive for Priority Customer liquidity does not impose an undue burden on competition because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants who may interact with the order flow.

The Exchange's proposal to renumber note 18 which states, "A surcharge for NDX of \$1.50 per contract will be assessed to regular Non-Priority Customer orders that remove liquidity" to note 20 does not impose an undue burden on competition because the Exchange inadvertently filed two separate rule changes that were operative on the same date, both adopting a new note 18¹⁸ and this revision should clarify the Pricing Schedule.

¹⁷ See GEMX Options 2, Section 5.

¹⁸ See Securities Exchange Act Release Nos. 103300 (June 24, 2025), 90 FR 27686 (June 27, 2025) (SR-GEMX-2025-13); and 103264 (June 16, 2025), 90 FR 26353 (June 20, 2025) (SR-GEMX-2025-12).

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.¹⁹ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2025-32 on the subject line.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2025-32. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2025-32 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).