

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104446; File No. SR-GEMX-2025-34]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Sections 3 and 4 Regarding the Crossing Fee Cap

December 18, 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 December 15, 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 Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates.

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.

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 Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates with respect to the Crossing Fee Cap.

Options 7, Section 4

The Exchange currently offers a Crossing Fee Cap at Options 7, Section 4.C. By way of background, Crossing Orders³ are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism, Block or Qualified Contingent Cross Order. The Crossing Fee Cap is \$85,000 per month, per Member on all Firm Proprietary⁴ transactions that are part of the originating or contra side of a Crossing Order. All eligible volume from affiliated Members is aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the

³ "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Options 7, Section 1(c).

⁴ A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side applies to all order types that are eligible for the fee cap. The service fee applies once a Member has reached the fee cap level and would apply to every contract side above the fee cap. A Member who did not reach the monthly fee cap is not charged the service fee. Once the fee cap is reached, the service fee applies to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange attributes eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

At this time, the Exchange proposes to remove the Crossing Fee Cap from its Pricing Schedule in Options 7, Section 4,C. The Exchange also proposes to remove note 8 at Options 7, Section 3 that refers to the Crossing Fee Cap. Note 8 of Options 7, Section 3 states, “Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 4C.” Finally, the Exchange proposes to remove references to note 8 in the tables in Options 7, Section 3.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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.

⁵ See 15 U.S.C. 78f(b).

⁶ See 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[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’”⁷

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

The Exchange’s proposal to remove the Crossing Fee Cap of \$85,000 within Options 7, Section 4,C and note 8 in Options 7, Section 3 is reasonable because the Exchange no longer seeks to incentivize Members for executing a high volume of Firm Proprietary Crossing Orders

⁷ See NetCoalition, 615 F.3d at 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)).

on the Exchange. While the Exchange's Crossing Fee Cap could have potentially lowered transaction fees for Members providing liquidity on the Exchange, the program did not attract Members. While the Exchange believed the Crossing Fee Cap would provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market, the Exchange notes that the fee [sic] did not achieve those goals and therefore the Exchange seeks to remove the fee [sic].

The Exchange's proposal to remove the Crossing Fee Cap of \$85,000 in Options 7, Section 4,C and note 8 in Options 7, Section 3 is equitable and not unfairly discriminatory as no Member would be eligible for the Crossing Fee Cap.

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 remove the Crossing Fee Cap of \$85,000 in Options 7, Section 4,C and note 8 in Options 7, Section 3 does not impose an undue burden on competition as no Member would be eligible for the Crossing Fee Cap.

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.⁸ 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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2025-34 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-2025-34. 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-2025-34 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.⁹

Sherry R. Haywood,
Assistant Secretary.

⁹ 17 CFR 200.30-3(a)(12).