

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105631; File No. SR-GEMX-2026-22]

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 3

June 9, 2026.

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> notice is hereby given that on May 27, 2026, 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 related to Index Options.<sup>3</sup>

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.

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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> On April 30, 2026, the Exchange filed SR-GEMX-2026-19. On May 12, 2026, the Exchange withdrew SR-GEMX-2026-19 and filed this proposal. On May 27, 2026, the Exchange withdrew SR-GEMX-2026-20 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 the current surcharge applicable to Nasdaq-100<sup>®</sup> Index (“NDX”) options at Options 7, Section 3, Regular Order Fees and Rebates.

Currently, note 20 of Options 7, Section 3 imposes a surcharge of \$1.50 per contract for NDX electronic simple Non-Priority Customer<sup>4</sup> orders that remove liquidity. This surcharge is in addition to the Options Transaction Charges in NDX for Non-Priority Customer orders of \$0.75 per contract. Today, Priority Customer<sup>5</sup> orders pay a fee of \$0.50 per contract in NDX.<sup>6</sup>

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<sup>4</sup> The term “Non-Priority Customer” includes Market Makers, Non-Nasdaq GEMX Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

<sup>5</sup> 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" as defined below. See Options 7, Section 1(c).

<sup>6</sup> Additionally, for transactions in NDX, a license surcharge of \$0.25 is assessed to Non-Priority Customers at note 9 of Options 7, Section 3. The license surcharge applies to all NDX executions, including executions of NDX orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. Further, pursuant to note 14 of Options 7, Section 3, a surcharge of \$0.25 per contract is assessed to all market participants for executions in NDX with a premium price of \$25.00 or greater.

*Proposal*

At this time, the Exchange proposes to amend the surcharge at note 20 of Options 7, Section 3 to instead assess a surcharge on NDX electronic simple Non-Priority Customer orders that remove liquidity according to the following premium schedule:

Less than \$3.00	\$1.00
Greater than or equal to \$3.00 and less than \$10.00	\$1.50
Greater than or equal to \$10.00 and less than \$25.00	\$2.00
Greater than or equal to \$25.00 and less than \$50.00	\$2.50
Greater than or equal to \$50.00	\$3.00

The Exchange believes its proposed scaled surcharge reflects meaningful differences in risk and market impact across premium levels. Higher-premium options signal greater implied volatility, carry larger notional exposure, exhibit heightened sensitivity to index movements, embed more consequential leverage, and approximate or exceed the economic exposure of comparable futures contracts. Each of these factors independently supports imposing a higher surcharge on higher-premium transactions.

An option's premium is driven in substantial part by the market's expectation of future movement in the underlying index (implied volatility).<sup>7</sup> Accordingly, a higher premium generally signals that the market perceives the Nasdaq-100 Index as presenting greater risk at that point in time. Trades executed in higher-volatility environments carry a greater potential to disrupt orderly market functioning: each transaction can exert more pronounced price pressure, and liquidity providers face commensurately higher hedging costs. A surcharge tied to premium price functions as a self-correcting mechanism — when market conditions are riskier and

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<sup>7</sup> When market participants expect larger swings in the Nasdaq-100 Index, option premiums rise; when they expect less volatility, premiums fall.

premiums rise, the surcharge rises proportionally; when conditions normalize and premiums decline, the surcharge declines accordingly. This design ensures the pricing remains aligned with prevailing market risk without requiring constant manual recalibration. The Nasdaq-100 Index is particularly susceptible to these dynamics given its heavy concentration in large-capitalization technology companies, which can experience sharp and sudden price dislocations that cause option premiums to escalate rapidly.

The notional value<sup>8</sup> of NDX options further supports the proposed tiered surcharge. With a contract multiplier of \$100, a \$1.00 premium option represents \$100 of premium value per contract, while a \$50.00 premium option represents \$5,000 per contract — fifty times the economic stake. A trade in a higher-premium option transfers more capital and more risk between counterparties, requires Market Makers to commit greater resources to hedge the resulting position, and consumes a larger share of available liquidity on the order book. A flat surcharge — identical regardless of premium price — would treat a \$100 trade and a \$5,000 trade as though they imposed equivalent market impact. The tiered schedule, by contrast, scales the fee with the magnitude of economic exposure, ensuring that participants trading higher-value options bear a modestly higher surcharge commensurate with the greater significance of their transactions. The proposed pricing is reasonable because the scaled surcharge reflects these differences in the economic characteristics of the underlying transactions.

Transactions in the Nasdaq-100 Index involving greater effective leverage warrant proportionally higher fees. Leverage permits a trader to gain exposure to a large notional amount in the underlying index for a relatively small upfront payment; however, the significance of that leverage varies materially with the premium price. A \$1.00 premium NDX option offers the

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<sup>8</sup> Notional value refers to the total dollar amount of economic exposure that an option contract represents.

potential for control of a large notional position but is typically far out-of-the-money, meaning the probability that it will deliver meaningful economic value at expiration is low. By contrast, a \$50.00 premium NDX option is likely in-the-money or near-the-money, carrying a high probability of delivering a real economic payoff. In this case, the market participant pays a fraction of the cost of an equivalent direct position in the Nasdaq-100 Index while retaining a strong likelihood of participating in the index's movement. This combination of leverage and high probability of economic delivery makes higher-premium options powerful instruments capable of shifting substantial risk. The proposed tiered surcharge recognizes that higher-premium options carry more consequential leverage and should therefore bear a commensurately higher fee.

Finally, as the premium of NDX options increases, the option's economic behavior converges with that of a futures contract. A CME-listed Nasdaq-100 future provides direct, linear one-for-one exposure to the Nasdaq-100 Index. When an NDX option carries a high premium and a delta approaching 1.0, it behaves substantially like a futures contract: with a \$100 multiplier and a delta near 1.0, each one-point move in the index produces approximately \$100 of profit or loss per contract — the economic equivalent of roughly five E-mini Nasdaq-100 futures contracts. Moreover, options introduce risk dimensions absent from futures, including sensitivity to changes in volatility (vega risk) and accelerating sensitivity to index movements (gamma risk). These additional risk dimensions give high-premium options a risk profile that can exceed that of a comparable futures position, further supporting a higher surcharge at elevated premium levels.

With this proposal, the lowest tier (\$1.00) reduces the existing surcharge for low-premium contracts, conferring a benefit on participants trading less expensive series. The middle

tier (\$1.50) preserves the status quo for the band that historically reflects a substantial portion of activity in NDX. The upper tiers (\$2.00, \$2.50, and \$3.00) modestly increase the surcharge for high-premium contracts, where the participant's economic exposure—and the Exchange's correlative cost burden—is materially greater. The graduated structure thereby ties the magnitude of the fee to an objective, transaction-specific measure of value, which the Commission has long recognized as a reasonable basis for differentiated pricing in the listed options markets.

The Exchange believes that the proposed pricing will continue to attract NDX order flow to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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 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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>12</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>13</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>14</sup>

Further, “[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’ ....”<sup>15</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to replace the current flat surcharge of \$1.50 per contract for regular Non-Priority Customer orders that remove liquidity with a tiered structure<sup>16</sup> scaled to the

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<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>13</sup> See NetCoalition, at 534 - 535.

<sup>14</sup> Id. at 537.

<sup>15</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>16</sup> The Exchange proposes a premium schedule as follows: \$1.00 per contract for premiums less than \$3.00; \$1.50 per contract for premiums greater than or equal to \$3.00 and less than \$10.00; \$2.00 per contract for

premium value of each contract is reasonable because scaling the surcharge to the premium value of the contract more accurately calibrates the fee to the economic value that the liquidity-removing participant derives from the transaction and to the corresponding costs and risks borne by the Exchange and by the liquidity providers whose quotations support the market in NDX.<sup>17</sup> These index options are proprietary products for which the Exchange incurs licensing, market-data, and other costs that scale, in significant part, with the notional and premium value executed on the Exchange. A premium-based tier therefore allocates a larger share of those costs to transactions that consume a proportionally greater amount of Exchange resources and confer a proportionally greater economic benefit on the participant, while reducing the relative burden on lower-premium transactions, which are often associated with lower-delta or hedging-oriented strategies.

The Exchange believes its proposed scaled surcharge reflects meaningful differences in risk and market impact across premium levels. Higher option premiums reflect elevated implied volatility in the Nasdaq-100 Index, signaling greater market risk. A premium-based surcharge operates as a self-correcting mechanism that scales fees with prevailing volatility, ensuring alignment with actual market conditions — particularly given the Nasdaq-100's concentration in

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premiums greater than or equal to \$10.00 and less than \$25.00; \$2.50 per contract for premiums greater than or equal to \$25.00 and less than \$50.00; and \$3.00 per contract for premiums greater than or equal to \$50.00.

<sup>17</sup> With respect to NDX, the two lowest tiers (\$1.00 for premiums less than \$3.00 and \$1.50 for premiums of \$3.00 to less than \$10.00) introduce a modest surcharge on lower-premium executions that today bear no surcharge, in amounts commensurate with the limited economic value of those contracts. The middle tier (\$2.00 for premiums of \$10.00 to less than \$25.00) likewise applies a measured surcharge to a band that is currently exempt. The upper tiers (\$2.50 for premiums of \$25.00 to less than \$50.00 and \$3.00 for premiums of \$50.00 or greater) replace the existing \$0.25 surcharge with charges that more accurately reflect the materially greater economic exposure of high-premium contracts and the correspondingly greater cost burden borne by the Exchange and its liquidity providers. The graduated structure thereby ties the magnitude of the fee to an objective, transaction-specific measure of value across the entire premium spectrum, which the Commission has long recognized as a reasonable basis for differentiated pricing in the listed options markets.

technology stocks prone to sharp price dislocations. Differences in premium translate into significant differences in notional value and market impact. A tiered surcharge ensures that participants whose trades transfer greater capital and consume more liquidity bear fees proportionate to the economic magnitude of their transactions, whereas a flat surcharge would ignore these disparities. The economic significance of an option's embedded leverage depends on whether the option is likely to deliver a real payoff. Low-premium, far out-of-the-money options carry leverage largely in theory, while higher-premium options near or in the money combine meaningful leverage with a high probability of economic delivery, justifying a commensurately higher surcharge. As NDX option premiums rise and delta approaches 1.0, the option's risk profile converges with — and can exceed — that of a comparable Nasdaq-100 futures contract, because options also carry vega and gamma risk. This functional equivalence (and additional complexity) at higher premium levels further supports a scaled surcharge.

Today, market participants are offered different ways to gain exposure to the Nasdaq-100 Index, whether through the Exchange's proprietary products like options overlying NDX or separately through multi-listed options overlying Invesco QQQ Trust ("QQQ"). Offering NDX Options provides market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq-100 Index. Both NDX index options and QQQ options derive their value from the same underlying economic exposure: the Nasdaq-100 index constituents. A participant seeking to hedge or speculate on the performance of the Nasdaq-100 can achieve comparable economic outcomes through either product. While the two products differ in settlement mechanics (NDX settles in cash; QQQ settles in shares of the ETF) and multiplier conventions, they serve as functional substitutes for the same core market exposure. In terms of price comparisons, Non-Priority Customers are assessed a \$0.45 or \$0.46

per contract Penny Symbol Taker Fees<sup>18</sup> to execute (remove liquidity) in an option on QQQ. To measure the notional equivalent of an option on QQQ as compared to NDX options, the fees should be multiplied by the ratio of the settlement price of NDX divided by QQQ. For example, on May 8, 2026, the ratio of settlement prices was 41.10 (29235.00 (NDXP settlement price) / 711.23 (QQQ settlement price)). To create an equivalence in fees, a Taker Fee of \$0.45 per contract for QQQ would equal \$18.50 for NDX. The proposed NDX fees are significantly lower than QQQ options by comparison. A single NDX options contract carries a notional value approximately 41 times greater than a single QQQ options contract. A market participant would need to execute roughly 41 QQQ options to replicate the economic exposure of a single NDX contract. The Exchange therefore believes that a higher per-contract surcharge on NDX is reasonable on a cost-per-unit-of-notional-value basis.

Finally, competing in a regulated capital markets environment imposes several incremental costs on a less mature product. NDX compete against other broad-based indexes such as the S&P 500 Index (“SPX”), which is a mature index in comparison to NDX. As a result, NDX incur significant marketing expenditures aimed at funding educational content for NDX indexes to build awareness.

The Exchange’s proposal to replace the current flat surcharge of \$1.50 per contract for regular Non-Priority Customer orders that remove liquidity with a tiered structure scaled to the premium value of each contract is not unfairly discriminatory because the surcharge applies uniformly to all electronic simple Non-Priority Customer orders that remove liquidity in NDX. Every Non-Priority Customer (Professionals, Broker-Dealers, Firms, and Market Makers) will be subject to the same tier table, and the applicable tier for any given execution will be determined

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<sup>18</sup> See Options 7, Section 3.

solely by the objective premium value of the contract executed. While the proposed surcharge does not apply to Customer orders, the Exchange notes that Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of market makers—particularly in response to pricing—facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Such developments would benefit all market participants.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. NDX are proprietary options contracts while options on QQQ are multi-listed. Other options exchanges may price options on QQQ in a manner so as to compete directly with options on NDX. Further, options exchanges may offer competing broad-based indexes such as Cboe Exchange, Inc.’s SPX Options to compete with NDX. The manner in which options exchanges elect to price substitute or competing products may cause order flow to be diverted to another exchange.

Intra-market Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange’s proposal to replace the current flat surcharge of \$1.50 per contract for regular Non-Priority Customer orders that remove liquidity with a tiered structure scaled to the premium value of each contract does not impose an undue burden on competition because the surcharge applies uniformly to all electronic simple

Non-Priority Customer orders that remove liquidity in NDX. Every Non-Priority Customer (Professionals, Broker-Dealers, Firms, and Market Makers) will be subject to the same tier table, and the applicable tier for any given execution will be determined solely by the objective premium value of the contract executed. While the proposed surcharge does not apply to Priority Customer orders, the Exchange notes that Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of market makers—particularly in response to pricing—facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Such developments would benefit all market participants.

Further, today, market participants have the opportunity to transact in NDX options, or separately execute options overlying QQQ. The NDX products provide market participants with an additional means to gain exposure to the Nasdaq-100 Index. NDX products compete with options on QQQ directly, and SPX products indirectly and that competition is driven in part through the pricing of these products. Finally, the proposed pricing differentiates among transactions — not among market participants — and does so on the basis of an objective, market-determined variable (premium price) that directly correlates with the costs imposed on the Exchange. For these reasons noted above, the Exchange believes that the proposed pricing is pro-competitive.

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>19</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.

### 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](mailto:rule-comments@sec.gov). Please include file number SR-GEMX-2026-22 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-2026-22. This file number should be included on the subject line if email is used. To help the Commission process and

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2026-22 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.<sup>20</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).