

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106048; File No. SR-GEMX-2026-29]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange’s Transaction Fees at Options 7, Section 3, Note 18

August 6, 2026.

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 July 31, 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 the Exchange’s transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 3, 2026.

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

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers³ and Non-Nasdaq GEMX Market Makers.⁴ Currently, the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers are \$0.43 per contract when the Member is (i) both the buyer and the seller, or (ii) if the Member removes liquidity from another Member as an Affiliated Member⁵ or Affiliated Entity.⁶ The Exchange

³ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

⁴ A "Non-Nasdaq GEMX Market Maker," also referred to as a "FarMM," 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).

⁵ An "Affiliated Member" is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. See Options 7, Section 1(c).

⁶ An "Affiliated Entity" is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may

proposes to increase this fee for Tier 3 and Tier 4 to \$0.47 and \$0.45 per contract, respectively. The proposed Tier 3 fee of \$0.47 per contract would be in lieu of the default \$0.50 per contract Penny Symbol Tier 3 Taker Fee, and the proposed Tier 4 fee of \$0.45 per contract would be in lieu of the default \$0.49 per contract Penny Symbol Tier 4 Taker Fee, for Market Makers and Non-Nasdaq GEMX Market Makers. A Member would continue to receive the pricing in either note 17 or amended note 18 with respect to SPY, whichever is more favorable, but not both in a given month. While the Exchange is increasing the Taker Fee in note 18, note 18 continues to offer a fee reduction to encourage Market Makers and Non-Nasdaq GEMX Market Makers to remove liquidity on GEMX at the reduced Penny Symbol Taker Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the

not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. See Options 7, Section 1(c).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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.”⁹

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁰ (“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.¹¹ 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.”¹²

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’”¹³ Although the court and the SEC were discussing the

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

¹⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹¹ See NetCoalition, at 534 - 535.

¹² Id. at 537.

¹³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782-83 (Dec. 9, 2008) (SR-NYSEArca-2006-21)).

cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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 18 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 proposed amended fees are equitable and not unfairly discriminatory because the Exchange would uniformly apply the new fees to any member or member organization who meets the criteria for the new fees.

The Exchange's proposal to amend note 18 to Options 7, Section 3 to increase the Penny Symbol Taker Fee from \$0.43 per contract to \$0.47 per contract for Tier 3 and \$0.45 per contract for Tier 4 is reasonable because it would continue to allow Market Makers and Non-Nasdaq GEMX Market Makers to lower their Tier 3 and Tier 4 Penny Symbol Taker Fees thereby attracting more order flow to GEMX. The proposed Tier 3 fee of \$0.47 per contract would be in lieu of the \$0.50 per contract Penny Symbol Tier 3 Taker Fee, and the proposed Tier 4 fee of \$0.45 per contract would be in lieu of the \$0.49 per contract Penny Symbol Tier 4 Taker Fee, for Market Makers and Non-Nasdaq GEMX Market Makers. The Exchange's proposal to amend note 18 to Options 7, Section 3 is equitable and not unfairly discriminatory because Market Makers have different requirements and additional obligations as compared to other market

participants (such as quoting requirements).¹⁴ The proposed note 18 fee reduction is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. While the Exchange is increasing the Taker Fee in note 18, note 18 continues to offer a fee reduction from the standard Tier 3 and Tier 4 Penny Symbol Taker Fees to encourage Market Makers and Non-Nasdaq GEMX Market Makers to remove liquidity on GEMX at the reduced Penny Symbol Taker Fee. Non-Nasdaq GEMX Market Makers qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to continue to remove liquidity on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers) with this fee reduction. Because the fee reduction is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal remains competitive with other options markets and will offer market participants

¹⁴ See GEMX Options 2, Section 5.

another choice of where 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. 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.

Intra-market Competition

The Exchange's proposed amendments to the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member or Affiliated Entity, would not impose an undue burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the Exchange would uniformly apply the revised fees to all qualifying GEMX members and member organizations. Additionally, the proposed note 18 fee changes do not impose an undue burden on intra-market competition because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).¹⁵ Although the Exchange is increasing the Taker Fee in note 18, note 18 continues to offer a fee reduction from the standard Tier 3 and Tier 4 Penny Symbol Taker Fees, and this fee reduction is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit

¹⁵ See GEMX Options 2, Section 5.

of all market participants. Non-Nasdaq GEMX Market Makers qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to continue to remove liquidity on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers) with this fee reduction. Because the fee reduction is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal does not impose an undue burden on intra-market competition because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

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.¹⁶ 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.

¹⁶ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2026-29 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-2026-29. 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-2026-29 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.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).