

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100612; File No. SR-GEMX-2024-20)

July 29, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Sections 5, 6 and 10; and Options 3, Sections 7 and 17; and Options 7, Section 6

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 July 24, 2024, 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 2, Sections 5, 6 and 10; and Options 3, Sections 7 and 17; and Options 7, Section 6.

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

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange proposes to amend Options 2, Section 5, Market Maker Quotations, to amend intra-day quoting requirements. The Exchange proposes to amend Options 2, Section 6, Market Maker Orders, and Options 3, Section 7(g), Reserve Orders, to bring additional clarity to the types of orders available to Market Makers. The Exchange proposes to amend Options 2, Section 10, Preferred Orders, to define various terms related to Preferred Orders and harmonize the rule text to other Nasdaq affiliated markets. The Exchange proposes to amend Options 3, Section 17, Kill Switch, to indicate the configurations available in the Kill Switch. Finally, the Exchange proposes to remove dated rule text in Options 7, Section 6, Ports and Other Services. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend the quoting requirements of a Competitive Market Maker and a Preferred CMM in Options 2, Section 5.

With respect to a Competitive Market Maker, today, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.

The Exchange proposes to amend the quoting obligations for a Competitive Market Maker by requiring a Competitive Market Maker to enter quotations each day in the options classes to which it is appointed. Specifically, the Exchange proposes to require in proposed Options 2, Section 5(e)(1) that,

Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options.

As is the case today, Competitive Market Makers may continue to choose to quote a Quarterly Options Series, any adjusted options series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index option, in addition to regular series in the options class. Such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in Options 2, Section 5(e)(1). The Exchange believes that requiring a Competitive Market Maker to quote each day will increase liquidity on the Exchange.

Additionally, the Exchange proposes to amend the quoting requirements for a Preferred CMM. Today, the last sentence of Options 2, Section 5(e) provides, "A Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, ("Preferred CMM") shall be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferred Order." Further, today, Options 2, Section 5(e)(3) provides,

Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). A Preferred CMM may be preferred in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).

Today, Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member is considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a Preferred CMM/ Preferred PMM for that day in all series for that option class in which it received the Preferred Order. Today, the Member must be quoting at the NBBO at the time the Preferred Order is received and must execute the order. If a CMM does not receive a Preferred Order, it will not be considered a Preferred CMM in that options class and any quotations in that options class by the CMM will not be considered when determining whether it met its Preferred CMM quoting obligations.

At this time, the Exchange proposes to utilize the term "Preferred Market Maker" instead of "Preferred CMM" as both Competitive Market Makers and Primary Market Makers are

Preferred Market Makers pursuant to proposed renumbered Options 2, Section 10(a)(1)(iii).<sup>3</sup>

Also, the Exchange proposes replacing the word “receives” with the word “executes” in Options 2, Section 5(e). The proposed new sentence would provide, “A Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, (“Preferred Market Maker”) shall be held to the standard of a Preferred Market Maker among all options series of any options class in which it executes the Preferred Order.” The Exchange proposes to amend this sentence to specify that the 90% quoting obligation described herein would be among all options series instead of in each assigned option series.

Additionally, the Exchange proposes amendments to Options 2, Section 5(e)(3) to utilize the term “Preferred Market Maker” and amend the quoting obligation as stated in the last sentence of Options 2, Section 5(e) to require that the Preferred Market Maker collectively meet the 90% quoting obligation among all options series in which the Preferred Market Maker executes a Preferred Order. The Exchange proposes to replace the word “receives” with “executes.” As amended, Options 2, Section 5(e)(3) would state,

Preferred Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. A Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

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<sup>3</sup> Renumbered Options 2, Section 10 (a)(1)(iii) states that a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Options Series, the Adjusted Options Series, and an options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

The Exchange is amending the Preferred Market Maker quoting obligation to first require that a Market Maker indicate interest in the program with the Exchange.<sup>4</sup> Once the Market Maker indicates it would like to receive a Preferred Order, that Market Maker would be obligated, collectively, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

A Preferred Market Maker has an ongoing 90% quoting obligation, on a daily basis, from the time a Preferred Market Maker executes its first Preferred Order in the option in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that it is no longer preferred.

The Exchange proposes to replace the word “receives” with “executes” in Options 2, Section 5(e) and (e)(3) rule text because for a Market Maker to become aware of their quoting

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<sup>4</sup> The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and received their enhanced allocation. A Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Option Series, the Adjusted Option Series, and an option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferred Order, only if it complies with the heightened 90% quoting requirement.

To make clear the manner in which the quoting obligations will be applied, below are some examples.

### **Example 1**

- Assume a Competitive Market Maker was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Competitive Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative

number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

### *Obligations*

This Competitive Market Maker is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options series are open for trading among **AAPL, SPY, and ORCL** to fulfill its Competitive Market Maker obligation.

Separately, this Competitive Market Maker would be obligated, separate and apart from its Competitive Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred Market Maker Obligation.

This Competitive Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Competitive Market Maker or Preferred Market Maker requirements.

### **Example 2**

- Assume a Primary Market Maker<sup>5</sup> was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Primary Market Maker had previously executed a Preferred Order and executes a Preferred Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferred Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all

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<sup>5</sup> Pursuant to Options 2, Section 5(e), a Member is required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as GEMX may announce. Today, a Primary Market Maker who executes a Preferred Order, as described in Options 2, Section 10 and Options 3, Section 10, ("Preferred PMM") shall be held to the standard of a Preferred PMM in the options series of any options class in which it receives the Preferred Order.



options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order each day, regardless of whether the Preferred Market Maker executed a Preferred Order that day.

### *Obligations*

This Primary Market Maker, associated with the same Options Participant, is collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **AAPL, SPY, and ORCL** to fulfill its Primary Market Maker obligation.<sup>6</sup>

Separately, this Primary Market Maker would be obligated, separate and apart from its Primary Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among **NFLX and ADBE** to fulfill its Preferred Market Maker obligation.

A Primary Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Primary Market Maker or Preferred Market Maker requirements.

The Exchange proposes to amend Options 2, Section 5(e)(5) that currently states, “GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on a monthly basis.” The Exchange proposes to instead provide that “For purposes of the Exchange’s surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis.” The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

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<sup>6</sup> See Options 2, Section 4(j)(1).

The Exchange will implement the amendments to Options 2, Section 5 on or before April 30, 2025.<sup>7</sup>

Options 2, Section 6 and Options 3, Section 7

Options 2, Section 6, Market Maker Orders, provides Market Makers with information as to the types of orders that may be entered on the Exchange. The current rule text at Options 2, Section 6(a) provides that, in options classes in which the Market Maker is appointed, a Market Maker may enter all order types defined in Options 3, Section 7 in the options classes to which they are appointed under Options 2, Section 3, except Reserve Orders and Customer Cross Orders. Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.

With the changes proposed to the Competitive Market Maker quoting requirements, the Exchange is also removing the last sentence of Options 2, Section 6 which provides, “Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.” Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5.

The Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. The Exchange proposes to modify the current rule text so that it will read clearly and harmonize with rule text on Phlx and BX at Options 2, Section 6. The Exchange proposes to first note that, today, Market Makers may enter all Complex Order types. To make this clear in the rule text, the Exchange proposes to cite to Options 3, Section 14, which governs Complex

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<sup>7</sup> The Exchange will provide Members with notification of these changes in an Options Regulatory Alert and the Exchange will announce the implementation date in a second Options Regulatory Alert.

Orders, in addition to citing to Options 3, Section 7 which governs single-leg orders. Further, the Exchange proposes to remove the current rule text in Options 3, Section 6(b)(1) as the language is superfluous. In its place, the Exchange proposes to amend the text in Options 2, Section 6(a) to remove the title “Options Classes to Which Appointed” and add “non-appointed” to the paragraph so that it reflects all the order types for Market Makers in both appointed and non-appointed classes. The current language in Options 2, Section 6(b)(1) provides,

A Market Maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the Market Maker is not appointed under Options 2, Section 3, except for Reserve Orders, provided that:

- (i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Options 2, Section 4(b)(4); and
- (ii) the Market Maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

The Exchange believes that the rule will read more clearly by adding non-appointed to Options 2, Section 6(a) and removing current Options 2, Section 6(b)(1) which says the same thing. Today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Further Options 2, Section 6(b)(1)(i) is a requirement provided for in Options 2, Section 4(b)(4) and does not need to be repeated in this rule. Finally, Options 2, Section 6(b)(1)(ii) is circular because Options 2, Section 6(a) allows Market Makers to enter all orders in appointed options classes except for Reserve Orders which is the same restriction applicable to non-appointed options classes.

The Exchange also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols. The Exchange proposes to amend Options 3, Section 7(g), concerning

Reserve Orders, that Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6. The Exchange believes that the addition of this language will remind Market Makers of the obligations noted within Options 2, Section 6.

#### Options 2, Section 10

Options 2, Section 10 describes Preferred Orders. An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”).<sup>8</sup> The Exchange proposes to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1). The Exchange proposes to amend the definition of a “Preferred Order” to mean any order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider.<sup>9</sup> The Exchange proposes to provide that the term “Order Flow Provider” means any Member that submits, as agent, orders to the Exchange.<sup>10</sup> Finally, the Exchange proposes to renumber current Options 2, Section 10(a)(1) which states, “A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class” as Options 2, Section 10(a)(1)(iii). These definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

#### Options 3, Section 17

The Exchange proposes to amend Options 3, Section 17, Kill Switch. Previously, the Exchange amended Options 3, Section 17 in order to decommission graphical user interface

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<sup>8</sup> See Options 2, Section 10(a).

<sup>9</sup> See proposed Options 2, Section 10(a)(1)(i).

<sup>10</sup> See proposed Options 2, Section 10(a)(1)(ii).

(“GUI”) functionality.<sup>11</sup> In eliminating the GUI functionality, the Exchange amended Options 3, Section 17(a)(1) to remove language related to the GUI functionality, including rule text related to purging orders at both the user and group level. While the GUI permitted a purge at both the user and group level, the remaining port functionality only removes orders at the user level, as specified in Options 3, Section 17(a)(1). At this time, the Exchanges proposes to remove the group level language from Options 3, Section 17(a).<sup>12</sup> This proposed change is intended to clarify the current rule text.

#### Options 2, Section 6

The Exchange proposes to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023. In 2023, GEMX filed a pricing change<sup>13</sup> to permit Members to request certain duplicative ports at no additional cost, from November 1, 2023 through November 30, 2023, to facilitate a technology migration. The rule text related to the 2023 technology migration is no longer necessary because the migration is complete and the pricing is no longer applicable. At this time, the Exchange proposes to remove this rule text.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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<sup>11</sup> See Securities Exchange Act Release No. 96817 (February 6, 2023), 88 FR 8922 (February 10, 2023) (SR-GEMX-2023-02).

<sup>12</sup> The Exchange proposes to remove the words “or group” and the following sentence that applies to a group. The Exchange proposes to remove this sentence, “Permissible groups must reside within a single broker-dealer.”

<sup>13</sup> See Securities Exchange Act Release No. 97360 (April 24, 2023), 88 FR 26349 (April 28, 2023) (SR-GEMX-2023-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7).

the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

#### Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker are consistent with the act as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day will increase liquidity on the Exchange. The Exchange notes that other markets have similar requirements.<sup>16</sup>

The Exchange's proposal to amend the quoting obligations for a Preferred CMM are consistent with the Act. The Exchange proposes to amend the current rule text in Options 2, Section 5 to apply the obligation to a Preferred Market Maker more generally for ease of understanding the rule. The obligations for a Preferred CMM and Preferred PMM are the same and combining the obligations will make this clear. Today, pursuant to Options 2, Section 10, a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. Further, the Exchange proposes to first require that a Market Maker indicate interest in the program with the Exchange.<sup>17</sup> Once a Market Maker indicates interest in the program, the Preferred Market Maker has an ongoing

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See Nasdaq Phlx LLC and Nasdaq BX, Inc. Options 2, Section 5.

<sup>17</sup> The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferred Orders.

obligation, collectively, to quote in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferred. The Exchange notes that other markets have similar requirements to quote, collectively, in 90% of the cumulative number of seconds among all options series on a daily basis.<sup>18</sup>

Similar to the last sentence of Options 2, Section 5(e), the Exchange proposes to revise Options 2, Section 5(e) to require a Preferred Market Maker who executes a Preferred Order, as described in Options 2, Section 10, to be held to the standard of a Preferred Market Maker among all options series in which the Preferred Market Maker executed a Preferred Order and to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis.

The Preferred Market Maker requirement to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferred Order on a daily basis is in addition to the quoting requirements for a Competitive Market Maker and Primary Market Maker. The Exchange believes that these quoting requirements create a direct nexus between the allocation that would be received by a Preferred Market Maker pursuant to Options 3, Section 10 and the liquidity that the Preferred Market Maker would be required to provide to the market in that particular options series. The Exchange notes that any Preferred Market Maker would need, collectively, to provide two-sided quotes in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has

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<sup>18</sup> See NYSE Arca, Inc. (“NYSE Arca”) Rule 6.88-O and NYSE American LLC (“NYSE American”) Rule 964.1NY. NYSE Arca Rule 6.88-O(iv) states that these obligations will apply collectively to all series in all of the issues for which the Directed Order Market Maker receives Directed Orders, rather than on an issue-by-issue basis.

executed a Preferred Order for the entire day and on a daily basis. The Exchange believes that this quoting obligation is designed to promote just and equitable principles of trade by ensuring that Preferred Market Makers quote competitively in as many series as possible to attract Preferred Orders so that they may receive an enhanced allocation as a Preferred Market Maker.

The Exchange's proposal to replace the word "receives" with the word "executes" in Options 2, Section 5(e) and (e)(3) is consistent with the Act and protects investors and the public interest because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferred Order. Market Makers are unaware if an order is preferred to them until such time as they execute the Preferred Order and receive their enhanced allocation. Of note, a Market Maker must be quoting at the NBBO at the time the Preferred Order is received to be allocated. Therefore, a Preferred Market Maker has an ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferred Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferred.

The Exchange's proposal to amend Options 2, Section 5(e)(5) to provide that "For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis" is consistent with the Act. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

#### Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to



Options 3, Section 14, which governs Complex Orders, remove the title “Options Classes to Which Appointed” and add “non-appointed” to the paragraph is consistent with the Act for several reasons. Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, in their appointed and non-appointed classes. Today, Market Makers may not enter Customer Cross Orders in their appointed or non-appointed options classes as only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). With this proposal, the Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. Removing the last sentence of Options 2, Section 6 is consistent with the Act because Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. Removing Options 2, Section 6(b) is consistent with the Act because the language is repetitive of rule text contained in Options 2, Section 6(a) and Options 2, Section 4(b)(4). Finally, adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) is consistent with the Act because it will remind Market Makers of the obligations noted within Options 2, Section 6. The language would harmonize GEMX’s rule text to that of BX and Phlx in Options 2, Section 6.

#### Options 2, Section 10

The Exchange’s proposal to amend the definition of a “Preferred Order” and add a definition for “Order Flow Provider” in new subsection (1) are consistent with the Act and protect investors and the general public because they clarify the meaning of terms utilized with respect to Preferred Orders. The definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

### Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned is consistent with the Act. The Exchange notes that purging orders through ports can only occur at the user level as specified in Options 3, Section 17(a)(1). The amendment will clarify the current rule text.

### Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6.C related to a technology migration that took place in 2023 is reasonable, equitable and not unfairly discriminatory because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

#### **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 that is not necessary or appropriate in furtherance of the purposes of the Act.

### Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not impose an undue burden on competition as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers.

The Exchange's proposal to amend the quoting obligations for a Preferred Market Maker does not impose an undue burden on competition because as amended the quoting obligations of

Preferred Market Maker would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers or Primary Market Makers. The proposal does not impose an undue burden on inter-market competition as other options markets may impose similar quoting obligations.

Finally, amending Options 2, Section 5(e)(5) to provide that “For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis” does not impose an undue burden on competition. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum. Nor does the amendment to Options 2, Section 5(e)(5) impose an undue burden on inter-market competition as other markets may elect to perform their surveillance in a similar fashion.

#### Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title “Options Classes to Which Appointed” and add “non-appointed” to the paragraph does not impose an undue burden on competition as the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Additionally, today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Adding rule text that states that “Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6” in Options 3, Section 7(g) does not impose an undue burden on competition because it will remind Market Makers of the obligations

noted within Options 2, Section 6. Removing the last sentence of Options 2, Section 6 does not impose an undue burden on competition because all Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. The rule text will harmonize GEMX's language to Phlx and BX Options 2, Section 6. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy GEMX's order types and impose similar restrictions.

#### Options 2, Section 10

The Exchange's proposal to amend the definition of "Preferred Order" and add a definition for "Order Flow Provider" in new subsection (1) does not impose an undue burden on competition because the defined terms provide additional clarity and harmonize to rule text in Phlx at Options 2, Section 10. The proposed changes are not substantive in nature.

#### Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned does not impose an undue burden on competition because no Member may purge orders at the group level. The amendment will clarify the current rule text. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy GEMX's Kill Switch functionality.

#### Options 7, Section 6

The Exchange's proposal to remove the italicized language in Options 7, Section 6. C related to a technology migration that took place in 2023 does not impose an undue burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2023 technology migration.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>19</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>20</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 necessary or appropriate in the public interest, for the protection of investors, or 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:

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

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2024-20 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-2024-20. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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-2024-20 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>21</sup>

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

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<sup>21</sup> 17 CFR 200.30-3(a)(12).