

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-31 and should be submitted on or before January 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96481; File No. SR-GEMX-2022-12]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Fees

December 13, 2022.

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 December 7, 2022, 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 5, Legal & Regulatory, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the additional processing of each initial or amended Form U4, Form U5 or Form BD and electronic Fingerprint Processing Fees to become operative on January 2, 2023. Additionally, the Exchange designates that the FINRA Annual System Processing Fee Assessed only during Renewals become operative on January 2, 2024.<sup>3</sup> The amendments to the paper Fingerprint Fees are immediately effective.

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 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

This proposal amends Options 7, Section 5, Legal & Regulatory, to reflect adjustments to FINRA Registration Fees and Fingerprinting Fees.<sup>4</sup> The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of GEMX Members that are not FINRA members ("Non-FINRA members"). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

The Exchange proposes to amend: (1) the \$110 fee for the additional processing of each initial or amended

Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the \$15 Second Submission (Electronic) Fingerprint Processing Fee to \$20. Each of these fees are listed within GEMX Options 7, Section 5. These amendments are being made in accordance with a FINRA rule change to adjust to its fees.<sup>5</sup>

The Exchange also proposes to amend the following Fingerprint Fees: (1) the \$29.50 Initial Submission (Electronic) fee to \$31.25;<sup>6</sup> (2) the \$44.50 Initial Submission (Paper) fee to \$41.25;<sup>7</sup> (3) the \$29.50 Third Submission (Electronic) fee to \$31.25;<sup>8</sup> and (4) the \$44.50 Third Submission (Paper) fee to \$41.25.<sup>9</sup> Specifically, today, the FBI fingerprint charge is \$11.25<sup>10</sup> and the FINRA electronic Fingerprint Fee will increase from \$15 to \$20 in 2023.<sup>11</sup> While FINRA did not amend the paper Fingerprint Fee, previously the FBI Fee was reduced from \$14.50 to \$11.25.<sup>12</sup> The paper Fingerprint Fees are not currently reflecting the amount assessed by FINRA. The amendment to the paper Fingerprint Fees will conform these fees with those of FINRA.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)

<sup>5</sup> See note 4. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA's regulatory mission.

<sup>6</sup> This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

<sup>7</sup> This fee includes a \$30 FINRA Fee and a \$11.25 FBI Fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

<sup>8</sup> This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

<sup>9</sup> This fee includes a \$30 FINRA Fee and a \$11.25 FBI Fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

<sup>10</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository) ("2012 Rule Change")

<sup>11</sup> See note 4.

<sup>12</sup> See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA's Regulatory Mission).

<sup>4</sup> FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

of the Act,<sup>13</sup> in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</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 Exchange believes it is reasonable to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees<sup>15</sup> because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons.

These costs are borne by FINRA when a Non-FINRA member uses Web CRD. The Exchange's rule text will reflect the current registration and electronic fingerprint rates that will be assessed by FINRA as of January 2, 2023 for the additional processing of each initial or amended Form U4, Form U5 or Form BD and Second Submission (Electronic) Fingerprint Processing Fee and the registration rates that will be assessed by FINRA as of January 2, 2024 for the FINRA Annual System Processing Fee Assessed only during Renewals.<sup>16</sup>

The Exchange believes it is reasonable to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25.<sup>17</sup> The amendments to the paper Fingerprint Fees will provide all GEMX Members with the correct Fingerprint Fees.

The Exchange believes it is equitable and not unfairly discriminatory to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the

electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees<sup>18</sup> because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. Similarly, the Exchange believes it is equitable and not unfairly discriminatory to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25<sup>19</sup> because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

#### *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.

The Exchange believes that its proposal to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees<sup>20</sup> does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposal will reflect the fees that will be assessed by FINRA to all Members who register or require fingerprints as of January 2, 2023 and January 2, 2024, respectively.

Similarly, the Exchange believes it does not impose an undue burden on competition to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25 because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

#### *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>21</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 (<http://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-2022-12 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-2022-12. 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 (<http://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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

<sup>16</sup> See note 4.

<sup>17</sup> See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

<sup>18</sup> The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

<sup>19</sup> See 2012 Rule Change at note 6. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

<sup>20</sup> The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2022-12 and should be submitted on or before January 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96487; File No. SR-NYSENAT-2022-26]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.19

December 13, 2022.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 8, 2022, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Rule 7.19 pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 7.19 pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms.

###### Background and Purpose

In 2020, in order to assist ETP Holders' efforts to manage their risk, the Exchange amended its rules to add Rule 7.19 (Pre-Trade Risk Controls),<sup>4</sup> which established a set of pre-trade risk controls by which Entering Firms and their designated Clearing Firms<sup>5</sup> could set credit limits and other pre-trade risk controls for an Entering Firm's trading on the Exchange and authorize the Exchange to take action if those credit limits or other pre-trade risk controls are exceeded. Specifically, the Exchange added a Gross Credit Risk Limit, a Single Order Maximum Notional Value Risk Limit, and a Single Order Maximum Quantity Risk Limit<sup>6</sup> (collectively, the "2020 Risk Controls").

<sup>4</sup> See Securities Exchange Act Release No. 88905 (May 19, 2020), 85 FR 31582 (May 26, 2020) (SR-NYSENAT-2020-17).

<sup>5</sup> The terms "Entering Firm" and "Clearing Firm" are defined in Rule 7.19.

<sup>6</sup> The terms "Gross Credit Risk Limit," "Single Order Maximum Notional Value Risk Limit, and "Single Order Maximum Quantity Risk Limit" are defined in Rule 7.19.

The Exchange now proposes to expand the list of the optional pre-trade risk controls available to Entering Firms by adding several additional pre-trade risk controls that would provide Entering Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. Like the 2020 Risk Controls, use of the pre-trade risk controls proposed herein is optional, but all orders on the Exchange would pass through these risk checks. As such, an Entering Firm that does not choose to set limits pursuant to the new proposed pre-trade risk controls would not achieve any latency advantage with respect to its trading activity on the Exchange. In addition, the Exchange expects that any latency added by the pre-trade risk controls would be *de minimis*.

The proposed new pre-trade risk controls proposed herein would be available to be set by Entering Firms only. Clearing Firms designated by an Entering Firm would continue to be able to view all pre-trade risk controls set by the Entering Firm and to set the 2020 Risk Controls on the Entering Firm's behalf.

##### Proposed Amendment to Rule 7.19

To accomplish this rule change, the Exchange proposes to amend paragraph (a) to include a new paragraph (a)(3) that would define the term "Pre-Trade Risk Controls" as all of the risk controls listed in proposed paragraph (b), inclusive of the 2020 Risk Controls and the proposed new risk controls.

In proposed paragraph (b), the Exchange proposes to list all Pre-Trade Risk Controls available to Entering Firms, which would include the existing 2020 Risk Controls and the proposed new controls. The Exchange proposes to move the definition of Gross Credit Risk Limit from current paragraph (a)(5) to proposed paragraph (b)(1), with no substantive change. Next, the Exchange proposes to add paragraph (b)(2), which would list all available "Single Order Risk Controls." The Exchange proposes to move the definitions of Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit from current paragraphs (a)(3) and (a)(4) to proposed paragraph (b)(2)(A), with no substantive change. Next, the Exchange proposes to add paragraphs (b)(2)(B) through (b)(2)(F) to enumerate the proposed new Single Order Risk Controls, as follows:

(B) controls related to the price of an order (including percentage-based and dollar-based controls);

(C) controls related to the order types or modifiers that can be utilized;

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.