SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89391; File No. SR–GEMX–2020–18]

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

July 24, 2020.

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 14, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions.

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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates. The Exchange also proposes an amendment to Options 7, Section 1, General Provisions. Each amendment is described below.

Options 7, Section 3

Penny Symbols

Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of $0.50 per contract for all Non-Priority Customers,[3] Tier 4 and 5 Taker Fees of $0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of $0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. Further, today, the Exchange assesses Penny Symbol Taker Fees for Priority Customers as follows: $0.49 for Tier 1, $0.48 for Tiers 2 and 3, $0.43 for Tier 4 and $0.42 for Tier 5. Current note 13 provides, with respect to Penny Symbol Tiers 1–5, that Non-Priority Customer orders will be charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer and Priority Customer orders will be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer.

The Exchange proposes to amend note 13, with respect to Penny Symbol Tiers 1–5, to instead provide that Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Also, Non-Priority Customers who execute 4.0% [4] or greater of Customer Total Consolidated Volume will be charged a Taker Fee of $0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

Non-Priority Customers, would continue to be charged a $0.50 per contract Taker Fee, in Tiers 1–5 Penny Symbols, when they trade against a Priority Customer, provided they execute less than 4.0% of Customer Total Consolidated Volume. If a Non-Priority Customer executed 4.0% or greater of Customer Total Consolidated Volume, they will be charged a Taker Fee, in Tiers 1–5 in Penny Symbols, of $0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a $0.50 per contract Taker Fee, in Tiers 1–5 Penny Symbols, when they trade against a Priority Customer, to be assessed a reduced $0.47 per contract Taker Fee, in Tier 1–5 Penny Symbols, provided they meet the volume requirement.

Priority Customer orders will continue to be charged a Taker Fee of $0.49 per contract, in Tiers 1–5 Penny Symbols, for trades executed against a Priority Customer. The Exchange believes that this proposal will continue to attract additional volume to GEMX in order to obtain more favorable pricing.

Non-Penny Symbols

The Exchange proposes to increase the Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM) [5] from $1.00 to $1.10 per contract for all Members. While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange.

The Exchange proposes to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options).[6] The Exchange proposes to pay a Market Maker a $0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to pay a Priority Customer a $1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate. These proposed Non-Penny Symbol Tier 5 Maker Rebates are the same as rebates paid, today, for Non-Penny Symbol Tier 4 Maker Rebates. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebate. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Non-Priority Customers consist of Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers.

[4] The Exchange notes that 4.0% of Customer Total Consolidated Volume is equivalent to approximately 1,000,000 contracts.

[5] This fee is $0.05 per contract for all Responses to Crossing Orders executed in the PIM. *See* note 12 within Options 7, Section 4.

[6] The index options fees apply only to NDX. These fees are assessed to all executions in NDX.

Exchange proposes to add these new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make clear, within the Options 7, Section 3 regular order rebates, that Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates today. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.[7]

The Exchange proposes to adopt new Tier 5 Taker Fees in Non-Penny Symbols. The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker Dealer and a Professional Customer a $0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed an $0.82 per contract Taker Fee in Non-Penny Symbols. As is the case with Tier 4 Taker Fees in Non-Penny Symbols, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees. The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of new Non-Penny Symbol Tier 5 Taker Fees will make clear, within the Options 7, Section 3 regular order fees, that Tier 5 qualifying volume would pay the same fees as the Non-Penny Symbol Tier 4 Taker Fees today. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members with Tier 5 Non-Penny Symbol Taker Fees to refer to for qualifying Tier 5 Taker Fee volume in Non-Penny Symbols.[8]

Proposed note 8 within Options 7, Section 3 will be discussed below.

Options 7, Section 4

The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C. By way of background, Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism (''PIM''), Block or Qualified Contingent Cross (''QCC'') order. The Exchange proposes to adopt a Crossing Fee Cap within Options 7, Section 4C, similar to Nasdaq ISE, LLC's crossing fee cap.[9] Specifically, the Exchange proposes to adopt a Crossing Fee Cap of $85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. All eligible volume from affiliated Members would be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders would not be included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 would not be included in the calculation of the monthly fee cap. A service fee of $0.00 per side would apply to all order types that are eligible for the fee cap. The service fee would apply once a Member reached the fee cap level and would apply to every contract side above the fee cap. A Member who did not reach the monthly fee cap would not be charged the service fee. Once the fee cap is reached, the service fee would apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee would not be calculated to reach the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed. The Exchange believes that the Crossing Fee Cap will cause Members to execute a greater number of Crossing Orders on GEMX in order to arrive at the cap and transact orders at no fee.

The Exchange also proposes to add a new note 8 within Options 7, Section 3 to indicate that Firm Proprietary contracts traded are subject to the Crossing Fee Cap proposed within Options 7, Section 4C.

Finally, the Exchange proposes to remove the term ''& SPY'' from Options 7, Section 4, Route-Out Fees. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols. For this reason, the term ''& SPY'' is proposed to be removed from the Penny title.

Options 7, Section 1

The Exchange proposes an amendment to Options 7, Section 1, General Provisions. The Exchange proposes to replace the term ''Penny Pilot Program'' with ''Penny Interval Program.'' On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[10] The Exchange recently filed a proposal to amend GEMX Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'').[11] The Exchange's proposal amended GEMX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. This proposed change to Options 7, Section 1 conforms the name of the program and removes a reference to a list of Penny Pilot Program symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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 been remarkably successful in promoting market competition in its

[7] The Tier 5 Qualifying Tier Threshold, for purposes of Total Affiliated Member % of Customer Total Consolidated Volume, requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

[8] *Id.*

[9] Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of $90,000 per month, per Member.

[10] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

[11] *See* Securities Exchange Act Release No. 89162 (June 26, 2020) (SR–GEMX–2020–16).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [14]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [15] (''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.[16] 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.'' [17]

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'. . . .'' [18] 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.

Options 7, Section 3

Penny Symbols

The Exchange's proposal to amend note 13, within Options 7, Section 4,[19] is reasonable because the proposal will continue to attract additional volume to GEMX in order that Members may obtain more favorable pricing. With this proposal, Non-Priority Customers, would continue to be charged a $0.50 per contract Taker Fee, in Tiers 1–5 Penny Symbols, when they trade against a Priority Customer and execute less than 4.0% of Customer Total Consolidated Volume.[20] Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a reduced Taker Fee, in Tiers 1–5 in Penny Symbols, of $0.47 per contract for trades executed against a Priority Customer. The addition of the volume criteria would cause some Non-Priority Customers, who today are assessed a $0.50 per contract Taker Fee, in Tiers 1–5 Penny Symbols, when they trade against a Priority Customer, to be assessed a $0.47 per contract Taker Fee, in Tier 1–5 Penny Symbols, provided they meet the volume requirement. With this proposal Non-Priority Customers would have the opportunity to lower Taker Fees. Priority Customer orders will continue to be charged a Taker Fee of $0.49 per contract, in Tiers 1–5 Penny Symbols, for trades executed against a Priority Customer. Attracting volume to GEMX is beneficial to all market participants who may interact with that order flow. The Exchange believes that Members benefit from the additional liquidity which the Exchange attracts through its favorable pricing (higher rebates and lower fees) that is offered, today, to Priority Customers in Penny Symbols. Therefore, the Exchange believes that it is appropriate, in some cases, to assess a higher Taker Fee for trades executed against a Priority Customer with this proposal.

The Exchange's proposal to amend note 13, within Options 7, Section 4, is equitable and not unfairly discriminatory because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1–5 in Penny Symbols, to $0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. The Exchange's proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that it is equitable and not unfairly discriminatory to assess, in some cases, a higher Taker Fee to orders that trade against a Priority Customer, or a Priority Customer that trades against another Priority Customer, as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers.

Non-Penny Symbols

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM) [21] from $1.00 to $1.10 per contract for all Members is reasonable. While the Exchange is increasing this fee for all market participants, the Exchange believes that this fee will continue to attract order flow to the Exchange. The Exchange notes that its Crossing Order Fees remain competitive as GEMX is proposing a Crossing Fee Cap herein.

The Exchange's proposal to increase Non-Penny Symbol Fees for Responses to Crossing Orders (excluding PIM) [22] from $1.00 to $1.10 per contract for all Members is equitable and not unfairly discriminatory as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of $1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is reasonable.[23] The Exchange proposes to add these new Non-Penny Symbol Tier 5 Maker Rebates for Market Makers and Priority Customers, which are the same as the Non-Penny Symbol Tier 4 Maker Rebates, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Maker Rebate would receive the same rebates offered in Tier 4, today. The adoption of new Non-Penny Symbol Tier 5 Maker Rebates will make

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[16] *See NetCoalition,* at 534–535.

[17] *Id.* at 537.

[18] *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)).

[19] The Exchange proposes to amend note 13 within Options 7, Section 4 to state, ''Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Taker Fee of $0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.''

[20] Today, the Exchange assesses Penny Symbol Tier 1 through Tier 3 Taker Fees of $0.50 per contract for all Non-Priority Customers, Tier 4 and 5 Taker Fees of $0.48 per contract for Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), and Tier 4 and 5 Taker Fees of $0.49 per contract for Firm Proprietary/Broker-Dealer and Professional Customers. *See* Options 7, Section 3.

[21] This fee is $0.05 per contract for all Responses to Crossing Orders executed in the PIM. *See* note 12 within Options 7, Section 4.

[22] This fee is $0.05 per contract for all Responses to Crossing Orders executed in the PIM. *See* note 12 within Options 7, Section 4.

[23] The Exchange proposes to pay a Market Maker a $0.75 per contract Non-Penny Symbol Tier 5 Maker Rebate. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers would not be eligible for a Non-Penny Symbol Tier 5 Maker Rebate. The Exchange proposes to pay a Priority Customer a $1.05 per contract Non-Penny Symbol Tier 5 Maker Rebate.

clear, within Options 7, Section 3 rebates, that Tier 5 qualifying volume would attain the same rebates as the Non-Penny Symbol Tier 4 Maker Rebates. The proposed Tier 5 Non-Penny Symbol Maker Rebates would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Maker Rebate to refer to for qualifying Tier 5 Maker Rebate volume in Non-Penny Symbols.[24] Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, for purposes of Total Affiliated Member % of Customer Total Consolidated Volume, requires a member to execute 3.5% or greater of Customer Total Consolidated Volume.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) is equitable and not unfairly discriminatory as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume. The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[25] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is reasonable.[26] The Exchange proposes to add these new Non-Penny Symbol Tier 5 Taker Fees, which are the same as the Non-Penny Symbol Tier 4 Taker Fees, to make clear that any Member that qualifies for a Non-Penny Symbol Tier 5 Taker Fee would pay the same fees as Members pay, today, for Non-Penny Symbol Tier 4 Taker Fees. The adoption of a new Non-Penny Symbol Tier 5 Taker Fee will make clear, within the Options 7, Section 3 fees, that Tier 5 qualifying volume would pay the same fees as the Non-Penny Symbol Tier 4 Taker Fees. The proposed Tier 5 Non-Penny Symbol Taker Fees would have no impact to Members, but will provide Members with a Tier 5 Non-Penny Symbol Taker Fee to refer to for qualifying Tier 5 Taker Fee volume in Non-Penny Symbols.[27] Today, Options 7, Section 3 provides that Tier 5 Qualifying Tier Threshold, for purposes of Total Affiliated Member % of Customer Total Consolidated Volume, requires a member to execute 3.5% or greater of Customer Total Consolidated Volume.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols is equitable and not unfairly discriminatory, as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of $85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is reasonable.[28] The Crossing Fee Cap is intended to reward Members for executing a high volume of Firm Proprietary Crossing Orders on the Exchange. Specifically, the Crossing Fee Cap will continue to potentially lower transaction fees for Members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay transactional fees and will instead pay the service fee, thereby lowering their monthly fees. Charging a service fee is reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange believes that the Crossing Fee Cap will benefit all Members and investors that trade on the Exchange as it will provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market.

The Exchange's proposal to adopt a Crossing Fee Cap of $85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 is equitable and not unfairly discriminatory as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with fee caps in

[24] The Tier 5 Qualifying Tier Threshold, for purposes of Total Affiliated Member % of Customer Total Consolidated Volume, requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

[25] *See* GEMX Options 2, Section 5.

[26] The Exchange proposes to assess a Market Maker, a Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker Dealer and a Professional Customer a $0.94 per contract Tier 5 Taker Fee in Non-Penny Symbols. Priority Customers would be assessed a $0.82 per contract Taker Fee in Non-Penny Symbols.

[27] The Tier 5 Qualifying Tier Threshold, for purposes of Total Affiliated Member % of Customer Total Consolidated Volume, requires a member to execute 3.5% or greater of Customer Total Consolidated Volume. The Tier 5 Qualifying Tier Threshold, with respect to Priority Customer Maker % of Customer Total Consolidated Volume, requires a member to execute Priority Customer Maker volume of 2.75% or greater of Customer Total Consolidated Volume.

[28] As proposed within Options 7, Section 4C, Fees are capped at $85,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Options 7, Section 3 are not included in the calculation of the monthly fee cap. A service fee of $0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a Member reaches the fee cap level and shall apply to every contract side above the fee cap. A Member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary orders in all Nasdaq GEMX products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap, the Exchange will attribute eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

place on ISE.[29] As a matter of practice, Members submitting Firm Proprietary orders are most likely to use the Crossing Fee Cap. Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term ''& SPY'' from Options 7, Section 4, Route-Out Fee, is reasonable, equitable and not unfairly discriminatory. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term ''Penny Pilot Program'' with ''Penny Interval Program'' and remove a reference to a list of Penny Pilot Program symbols is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with 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 that have been exempted from compliance with the statutory standards applicable to 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.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

Options 7, Section 3

Penny Symbol

The Exchange's proposal to amend note 13, within Options 7, Section 4, does not impose an undue burden on competition because Non-Priority Customers would have the opportunity to lower the Taker Fee, in Tiers 1–5 in Penny Symbols, to $0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume and trade against a Priority Customer. Priority Customer orders will continue to be charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. The Exchange's proposal assesses all Non-Priority Customers a uniform Taker Fee when trading against a Priority Customer, depending on the percentage of Customer Total Consolidated Volume Executed. The Exchange notes that Priority Customer volume is assessed the lowest fees and highest rebates on GEMX because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that it does not impose an undue burden on competition to assess, in some cases, an increased Taker Fee to orders that trade against a Priority Customer, or a Priority Customer that trades against another Priority Customer, as this proposal is designed to offset the higher rebates and lower fees offered to Priority Customers.

Non-Penny Symbol

The Exchange's proposal to increase the Non-Penny Symbol Fee for Responses to Crossing Orders (excluding PIM)[30] from $1.00 to $1.10 per contract for all Members does not impose an undue burden on competition as the Exchange would apply the Non-Penny Symbol Fee for Responses to Crossing Orders of $1.10 per contract to all Members.

The Exchange's proposal to adopt new Tier 5 Maker Rebates in Non-Penny Symbols (excluding Index Options) does not impose an undue burden on competition as the addition of the Tier 5 Maker Rebates in Non-Penny Symbols will have no impact on any Member. The Non-Penny Symbol Tier 5 Maker Rebates would be paid to those Members that submit qualifying volume on GEMX. All Members that submit qualifying volume are able to obtain higher rebates and lower fees with more qualifying volume. The pricing is the same as the Tier 4 Maker Rebates in Non-Penny Symbols, today, which are the highest rebates achievable for Non-Penny Symbols. As is the case with Non-Penny Symbol Tier 4 Marker Rebates, Priority Customers would receive the highest Non-Penny Symbol Tier 5 Maker Rebates. As has historically been the case, incentivizing Market Makers and Priority Customers with more favorable Maker Rebates encourages order flow. Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[31] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. Also, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to adopt new Tier 5 Taker Fees in Non-Penny Symbols does not impose an undue burden on competition as the addition of the Tier 5 Taker Fees in Non-Penny Symbols will have no impact on any Member. The pricing is the same as the Tier 4 Taker Fees in Non-Penny Symbols, which are the lowest fees attainable for Non-Penny Symbol Taker Fees. As is the case with Non-Penny Symbol Tier 4 Taker Fees, Priority Customers would pay the lowest Non-Penny Symbol Tier 5 Taker Fees.

Options 7, Section 4

The Exchange's proposal to adopt a Crossing Fee Cap of $85,000 within Options 7, Section 4C and add a new note 8 within Options 7, Section 3 does not impose an undue burden on

[29] Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of $90,000 per month, per Member.

[30] This fee is $0.05 per contract for all Responses to Crossing Orders executed in the PIM. *See* note 12 within Options 7, Section 4.

[31] *See* GEMX Options 2, Section 5.

competition as all Members are eligible for the Crossing Fee Cap. The Crossing Fee Cap would apply uniformly to all Members engaged in Firm Proprietary trading in options classes traded on the Exchange. The Exchange believes there is nothing impermissible about offering the Crossing Fee Cap solely to Firm Proprietary transactions given that this practice is consistent with fee caps in place on ISE.[32] Furthermore, to the extent the Crossing Fee Cap provides an incentive for Firm Proprietary orders to transact order flow on the Exchange, such order flow brings increased liquidity to the benefit of all market participants. The service fee would be assessed uniformly on all Members.

The Exchange's proposal to remove the term ''& SPY'' from Options 7, Section 4, Route-Out Fee, does not impose an undue burden on competition. SPY has no separate pricing within Options 7, Section 3 and SPY is part of the Penny Interval Program and would otherwise be subject to the pricing applicable to Penny Symbols.

Options 7, Section 1

The Exchange's proposal to amend Options 7, Section 1 to replace the term ''Penny Pilot Program'' with ''Penny Interval Program'' and remove a reference to a list of Penny Pilot Program symbols does not impose an undue burden on competition. This amendment seeks to conform the name of the program which governs the listing of certain standardized options and remove an obsolete table which linked to a list of pilot symbols.

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,[33] and Rule 19b–4(f)(2)[34] thereunder. 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.* Please include File Number SR–GEMX–2020–18 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–2020–18. 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 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–2020–18 and should be submitted on or before August 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16469 Filed 7–29–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89392; File No. SR–OCC–2020–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning The Options Clearing Corporation's Synthetic Futures Model

July 24, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC is filing a proposed rule change to clarify the intended scope of use of an existing OCC margin model. The proposed changes to OCC's Margins Methodology are contained in confidential Exhibit 5 of filing SR–OCC–2020–007. Material proposed to be added to the Margins Methodology as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

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[32] Nasdaq ISE, LLC has a crossing fee cap within Options 7, Section 6H of $90,000 per month, per Member.

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 240.19b–4(f)(2).

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*