

of the Act.<sup>48</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>49</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that the proposal to list and trade options on AAAU on the Exchange will provide investors with the ability to transact in AAAU options in a listed market environment, which could provide investors with heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options, as well as increased transparency and enhanced price discovery. Moreover, the Exchange already lists options on other gold-based ETFs, which, as described above, are trusts structured in substantially the same manner as AAAU,<sup>50</sup> and the Exchange represents that it has not identified any issues with the continued listing and trading of the gold-backed ETF options that it currently lists for trading.<sup>51</sup>

As a national securities exchange, Cboe is required under Section 6(b)(1) of the Act<sup>52</sup> to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade AAAU options also will be subject to best execution obligations and FINRA rules.<sup>53</sup> Applicable exchange rules also require that customers receive appropriate disclosure before trading AAAU Options.<sup>54</sup> Further, brokers opening accounts and recommending options transactions must comply with

relevant customer suitability standards.<sup>55</sup>

Options on AAAU will trade as options under the trading rules of the Exchange.<sup>56</sup> AAAU options must also satisfy Exchange initial listing and continued listing standards applicable to options on all Units, including the gold-backed commodity ETFs already approved for options trading on the Exchange. A security on which options may be listed and traded on the Exchange must be duly registered and be an “NMS stock” as defined under Rule 600 of Regulation NMS<sup>57</sup> and be characterized by a substantial number of outstanding shares which are widely held and actively traded.<sup>58</sup> Additionally, Units must meet either (1) the criteria and guidelines under Cboe Rule 4.3.01,<sup>59</sup> or (2) they must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.<sup>60</sup>

Series of AAAU options also will be subject to the Exchange’s continued listing requirements, including standards applicable to the underlying Trust. If the Units cease to be an NMS stock or the Units are halted from trading in their primary market, the Exchange will deem Units that were initially approved for options trading pursuant to Cboe Rule 4.3.06 not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units.<sup>61</sup>

The Exchange represents that its existing surveillance and reporting

safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including AAAU options.<sup>62</sup> The Exchange also represents that it has the necessary systems capacity to support the new ETF option series.<sup>63</sup> Additionally, the Commission notes that AAAU options will trade in the same manner as any other options on ETFs, and the same Exchange rules that currently govern the listing and trading of ETF options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on AAAU.

Finally, the Commission believes that the Exchange’s proposals to make grammatical edits to the rule text and update the names of certain ETFs in Cboe Rule 4.3.06(a)(4) are helpful technical changes that add clarity and accuracy to the rule text.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> that the proposed rule change (SR-CBOE-2022-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94935; File No. SR-GEMX-2022-07]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2022, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule

<sup>62</sup> See Notice, *supra* note 3, 87 FR at 20903.

<sup>63</sup> See *id.*

<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</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>48</sup> 15 U.S.C. 78f.

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> See e.g., Securities Exchange Act Release No. 59055 (Dec. 4, 2008), 73 FR 75148 (Dec. 10, 2008) (approving proposals to list and trade options on IAU and the iShares Silver Trust); Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (Jun. 5, 2008) (approving proposals to list and trade options on GLD); and Securities Exchange Act Release No. 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010) (approving proposals to list and trade options on the ETFS Gold Trust and ETFS Silver Trust).

<sup>51</sup> See Notice, *supra* note 3, at 20904.

<sup>52</sup> 15 U.S.C. 78f(b)(1).

<sup>53</sup> See FINRA Rule 5310.

<sup>54</sup> See Cboe Rule 9.9 and Rule 9.15.

<sup>55</sup> See Cboe Rule 9.3.

<sup>56</sup> See Chapter 5 of Cboe’s Rules.

<sup>57</sup> 17 CFR 242.600.

<sup>58</sup> See Cboe Rule 4.3(a); see also *supra* note 19.

<sup>59</sup> See Cboe Rule 4.3.06(b)(1). See also Cboe Rule 4.3.01 (providing guidelines established by the Board of Directors to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions).

<sup>60</sup> See Cboe Rule 4.3.06(b)(2). The Exchange represents that, at minimum, the AAAU satisfies this initial listing criteria. See Notice, *supra* note 3, 87 FR at 20903.

<sup>61</sup> See Cboe Rule 4.4.06.

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 the Amended and Restated Certificate of Incorporation ("Certificate") of its parent corporation, Nasdaq, Inc. ("Nasdaq" or the "Company"), to increase Nasdaq's authorized share capital.

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**

The purpose of the proposed rule change is to amend the Nasdaq Certificate<sup>3</sup> to increase the total number of authorized shares of Nasdaq common stock, par value \$0.01 per share ("Common Stock"). Specifically, the Exchange proposes to amend Article Fourth, Section A such that the total number of shares of Stock (*i.e.*, capital stock) that Nasdaq is authorized to issue would be increased from 330,000,000 to 930,000,000 shares, and the portion of

that total constituting Common Stock would be changed from 300,000,000 to 900,000,000 shares. As amended, Article Fourth, Section A of the Certificate would provide:

The total number of shares of Stock which Nasdaq shall have the authority to issue is Nine Hundred Thirty Million (930,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value \$.01 per share (hereinafter referred to as "Preferred Stock"), and Nine Hundred Million (900,000,000) shares of Common Stock, par value \$.01 per share (hereinafter referred to as "Common Stock").<sup>4</sup>

As noted above, the proposed amendments to the Certificate were approved by the Nasdaq Board of Directors ("Nasdaq Board") on March 23, 2022. The proposed amendments to the Certificate would be effective when filed with the Secretary of State of Delaware, which would not occur until approval of the amendments by the stockholders of Nasdaq is obtained at the 2022 Annual Meeting of the Stockholders on June 22, 2022 and until this proposed rule change becomes effective and operative.

The trading price of Nasdaq's Common Stock has risen significantly over the past several years. Since Nasdaq first became a publicly traded company in 2002, the total number of authorized shares of Common Stock has remained constant at 300,000,000 shares. However, over the last five years, the trading price of Nasdaq's Common Stock has increased by approximately 162%.<sup>5</sup> As the trading price of Nasdaq's Common Stock has risen, the Nasdaq Board has carefully evaluated the effect of the trading price of the Common Stock on the liquidity and marketability of the Common Stock. The Nasdaq Board believes that this price appreciation may be affecting the liquidity of the Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the Nasdaq Board approved pursuing a 3-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, two shares of Common Stock for each share of Common Stock held by such holder (the "Stock Dividend"). The Nasdaq Board's approval of the Stock Dividend was contingent upon this proposed rule change becoming effective and

operative, and Nasdaq stockholder approval of the proposed amendments to the Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds Nasdaq's authorized but unissued shares of Common Stock. The proposed rule change would increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend.

The proposed changes would not otherwise alter the Certificate, including the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate that generally provides no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries, and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act,<sup>7</sup> in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

<sup>3</sup> Nasdaq owns 100% of the equity interest in U.S. Exchange Holdings, Inc., which in turn owns 100% of the equity interest in International Securities Exchange Holdings, Inc., which in turn owns 100% of the equity interest in the Exchange. The Exchange's affiliates, Boston Stock Exchange Clearing Corporation, Nasdaq BX, Inc., Nasdaq MRX, LLC, Nasdaq ISE, LLC, The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, and Stock Clearing Corporation of Philadelphia will each concurrently submit substantially the same rule filings to propose the changes described herein.

<sup>4</sup> Nasdaq currently has no Preferred Stock outstanding.

<sup>5</sup> The price of one share of Common Stock on March 31, 2017 was \$69.45 and the closing market price of one share of Common Stock on April 1, 2022 was \$181.92 as reported on the Nasdaq Stock Market.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(1).

The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Exchange believes that the proposed rule change would 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, because by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

The Exchange also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. ("ICE"), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of Incorporation to effectuate a similar stock split as proposed by the Exchange herein.<sup>9</sup> As such, the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

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

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of the Exchange, 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.

#### *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) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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:

##### *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-2022-07 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-2022-07. 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-2022-07 and should be submitted on or before June 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**BILLING CODE 8011-01-P**

## **SMALL BUSINESS ADMINISTRATION**

**[Docket No. SBA-2022-001]**

### **Class Waiver of the Nonmanufacturer Rule**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notification of class waiver of the Nonmanufacturer Rule for dental equipment and supplies.

**SUMMARY:** The U.S. Small Business Administration (SBA) is granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for dental equipment and supplies.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. See Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR-NYSE-2016-57, SR-NYSEArca-2016-119, and SR-NYSEMKT-2016-80) (hereinafter, "ICE Approval").

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.