

Nasdaq governance documents to terminology in the By-Laws, remove obsolete text, or otherwise make non-substantive revisions to the By-Laws to make them clearer and easier to use.⁴⁰

The Commission finds that the proposed changes are designed to update the By-Laws for conformance with DGCL and litigation and corporate governance trends, conform the By-Laws with Nasdaq's corporate structure and policies and procedures, or make other clarifying and non-substantive changes. With respect to the proposed changes to Nasdaq's Audit Committee structure,⁴¹ the Exchanges states that such committee must, in any event, satisfy other applicable independence standards.⁴² Certain of the proposed amendments would also clarify when the universal proxy rule would apply.⁴³ Similar to the Exchanges' proposed amendments to the Certificate, the proposed amendments to the By-Laws should help to ensure that the Exchanges are so organized and have the capacity to be able to carry out the purposes of the Act, and are designed to protect investors and the public interest.⁴⁴

IV. Conclusion

For the foregoing reasons, the Commission finds that the Proposals are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the Proposals (SR-NASDAQ-2025-080; SR-BX-2025-024; SR-GEMX-2025-27; SR-MRX-2025-23; SR-Phlx-2025-56; SR-ISE-2025-31) be, and hereby are, approved.

⁴⁰ See, e.g., NASDAQ Exchange Notice, *supra* note 3, at 47427.

⁴¹ See *supra* note 26.

⁴² See, e.g., NASDAQ Exchange Notice, *supra* note 3, at 47423. By-Laws Section 4.13(g), currently and as proposed, requires that Nasdaq's Audit Committee be comprised of three or more directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act.

⁴³ See, e.g., NASDAQ Exchange Notice, *supra* note 3, at 47421-22.

⁴⁴ The Commission has previously stated that certain provisions in the Nasdaq governing documents are designed to ensure that each self-regulatory subsidiary can carry out its regulatory obligations. *See, e.g.*, Securities Exchange Act Release No. 78119 (June 21, 2016) 81 FR 41611 (approving proposed rule changes by ISE, GEMX, and MRX relating to their acquisition by Nasdaq) at 41613. Such provisions are not impacted by the Proposals.

⁴⁵ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104446; File No. SR-GEMX-2025-34]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Sections 3 and 4 Regarding the Crossing Fee Cap

December 18, 2025.

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 December 15, 2025, 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 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings>, and at the principal office of the Exchange.

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

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 4, Other Options Fees and Rebates with respect the Crossing Fee Cap.

Options 7, Section 4

The Exchange currently offers a Crossing Fee Cap at Options 7, Section 4.C. By way of background, Crossing Orders³ are contracts that are submitted as part of a Facilitation, Solicitation, Price Improvement Mechanism, Block or Qualified Contingent Cross Order. The Crossing Fee Cap is \$85,000 per month, per Member on all Firm Proprietary⁴ transactions that are part of the originating or contra side of a Crossing Order. All eligible volume from affiliated Members is 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 applies to all order types that are eligible for the fee cap. The service fee applies once a Member has 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 is not charged the service fee. Once the fee cap is reached, the service fee applies 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 attributes eligible volume to the GEMX Member on whose behalf the Crossing Order was executed.

³ "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Options 7, Section 1(c).

⁴ A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1(c).

At this time, the Exchange proposes to remove the Crossing Fee Cap from its Pricing Schedule in Options 7, Section 4,C. The Exchange also proposes to remove note 8 at Options 7, Section 3 that refers to the Crossing Fee Cap. Note 8 of Options 7, Section 3 states, "Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 4C." Finally, the Exchange proposes to remove references to note 8 in the tables in Options 7, Section 3.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, "[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'"⁷

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of eighteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing

venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

The Exchange's proposal to remove the Crossing Fee Cap of \$85,000 within Options 7, Section 4,C and note 8 in Options 7, Section 3 is reasonable because the Exchange no longer seeks to incentivize Members for executing a high volume of Firm Proprietary Crossing Orders on the Exchange. While the Exchange's Crossing Fee Cap could have potentially lowered transaction fees for Members providing liquidity on the Exchange, the program did not attract Members. While the Exchange believed the Crossing Fee Cap would provide additional opportunities for market participants to interact with this Crossing Order Flow, contributing to a robust and competitive market, the Exchange notes that the fee [sic] did not achieve those goals and therefore the Exchange seeks to remove the fee [sic].

The Exchange's proposal to remove the Crossing Fee Cap of \$85,000 in Options 7, Section 4,C and note 8 in Options 7, Section 3 is equitable and not unfairly discriminatory as no Member would be eligible for the Crossing Fee Cap.

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 Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue 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. 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 Exchange's proposal to remove the Crossing Fee Cap of \$85,000 in

Options 7, Section 4,C and note 8 in Options 7, Section 3 does not impose an undue burden on competition as no Member would be eligible for the Crossing Fee Cap.

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.⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2025-34 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-2025-34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange.

⁵ See 15 U.S.C. 78f(b).

⁶ See 15 U.S.C. 78f(b)(4) and (5).

⁷ See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2025-34 and should be submitted on or before January 13, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104461; File No. SR-CboeBZX-2025-165]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.9(c)(8) To Clarify Pegged Order Operation and To Align BZX Rule 11.9(c)(8) With the Corresponding Rule of Its Affiliate Exchanges, Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX")

December 18, 2025.

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 December 16, 2025, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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 the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the

Securities and Exchange Commission (the "Commission") a proposed rule change to amend Rule 11.9(c)(8) to clarify Pegged Order operation and to align BZX Rule 11.9(c)(8) with the corresponding rule of its affiliate exchanges, Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"). The text of the proposed rule changes is in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

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 Exchange proposes to amend Rule 11.9(c)(8) to clarify Pegged Order operation and to align BZX Rules with the rules of its affiliate exchanges in order to provide consistency amongst the Exchange and its affiliates. The Exchange notes that the proposed rule text is based on EDGA/EDGX Rule 11.6(j) and is different only to the extent necessary to conform to the Exchange's current rules.⁵ The proposed amendment does not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on EDGA or EDGX.

By way of background, Exchange Rule 11.9, Orders and Modifiers, lists and describes the types of orders Users⁶

⁵ To the extent a proposed rule change is based on existing EDGA and EDGX Rules, the language of the EDGA, EDGX, and Exchange Rules may differ to extent necessary to conform with existing Exchange rule text or to account for details or descriptions included in the Exchange Rules but not currently included in EDGA and EDGX Rules based on the current structure of such rules.

⁶ See Exchange Rule 1.5(cc). A "User" is defined as "any Member or Sponsored Participant who is

may enter into the System,⁷ including Pegged Orders as described in Exchange Rule 11.9(c)(8). A Pegged Order⁸ is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO.⁹ A Pegged Order will peg to the NBB or NBO or a certain amount away from the NBB¹⁰ or NBO,¹¹ as described in Exchange Rules 11.9(c)(8)(A) and 11.9(c)(8)(B). Pegged Orders are not eligible for routing pursuant to Exchange Rule 11.13(b).¹² A new time stamp is created for a Pegged Order each time it is automatically adjusted.¹³

A Pegged Order may be a Primary Pegged Order or a Market Pegged Order.¹⁴ A Primary Pegged Order will have its price pegged by the System to the NBB, for a buy order, or the NBO for a sell order.¹⁵ A User may, but is not required to, specify that such order's price will offset the inside quote on the same side of the market by an amount set by the User (the "Primary Offset Amount").¹⁶ A Primary Pegged Order is eligible to be displayed or non-displayed, however, the Primary Offset Amount for a displayed Primary Pegged Order must result in the price of such order being inferior to or equal to the inside quote on the same side of the market.¹⁷ A displayed Primary Pegged Order with a Primary Offset Amount shall only include a time-in-force of RHO,¹⁸ or if entered during Regular

authorized to obtain access to the System pursuant to Rule 11.3.

⁷ See Exchange Rule 1.5(aa). The "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

⁸ See Rule 11.9(c)(8).

⁹ See Rule 1.5(o). The term "NBBO" shall mean the national best bid or offer.

¹⁰ See Rule 1.5(o). The term "NBB" shall mean the national best bid.

¹¹ See Rule 1.5(o). The term "NBO" shall mean the national best offer.

¹² See Rule 11.9(c)(8).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Rule 11.9(c)(8)(A).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Rule 11.9(b)(7). A time-in-force of Regular Hours Only ("RHO") may be applied to a limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions for BZX listed securities and the Opening Process for non-BZX-listed securities (as such terms are defined in Rule 11.23 and 11.24). Any portion of a market RHO order will be cancelled immediately following any auction in which it is not executed.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).