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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75910; File No. SR-NASDAQ-2015-102]

September 14, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend transaction fees at Chapter XV, Section 2 entitled “NASDAQ Options Market – Fees and Rebates”

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 September 1, 2015, The NASDAQ Stock Market LLC (“Nasdaq” 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 transaction fees at Chapter XV, Section 2 entitled “NASDAQ Options Market – Fees and Rebates,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2015.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.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 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 the following five [sic] changes to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot options program. The Penny Pilot was established in March 2008 and has since been expanded and extended through June 30, 2016.³

³ See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR-NASDAQ-2009-097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR-NASDAQ-2010-013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR-NASDAQ-2010-053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR-NASDAQ-2011-169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR-NASDAQ-2012-075) (notice of filing and immediate effectiveness and extension

The proposed changes are as follows:

Rebate to Add Liquidity in Penny Pilot Options: the Exchange proposes to

1. Increase the rebates to Participants that qualify for Tiers 8 of the Customer⁴ and Professional⁵ rebate program and that add greater than 1.40 percent of total Customer interest for the month.

Fee for Removing Liquidity in Penny Pilot Options: the Exchange proposes to:

2. Increase fees from \$0.50 to \$0.54 per contract for all Participant categories other than Customer, which remains at \$0.48. Fees for removing liquidity in SPY⁶ will remain unchanged by this proposal.

and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR-NASDAQ-2012-143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR-NASDAQ-2013-082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR-NASDAQ-2013-154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR-NASDAQ-2014-056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR-NASDAQ-2014-115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015) and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR-NASDAQ-2015-063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted.) See also NOM Rules, Chapter VI, Section 5.

⁴ The term "Customer" refers to a customer in a transaction that is marked by a Participant in the Customer range for clearing purposes at The Options Clearing Corporation ("OCC"). Such a transaction is not for the account of a broker, dealer or "Professional" (see next footnote).

⁵ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), See Chapter I, Section 1(a)(48). All Professional orders must be appropriately marked by Participants.

⁶ SPDR® S&P 500® ETF Trust.

3. Increase the fee for removing liquidity for Participants that qualify for Tiers 7 and 8 of the Customer and Professional rebate program.

Each specific change is described in greater detail below.

Change 1

The Exchange is proposing to increase the rebates paid for providing Customer and Professional liquidity in Penny Pilot options. Currently, the Exchange offers eight volume-based rebate Tiers for Participants providing Customer or Professional liquidity in Penny Pilot options. These rebates range from \$0.20 (Tier 1) to \$0.48 (Tier 8) per contract depending upon the level of liquidity provided. Tiers 1 through 4 are based on Participants adding Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options as a percentage of total industry customer equity and ETF option ADV contracts per day in a month. Participants qualifying for Tiers 1 through 4 earn a rebate of \$0.20 to \$0.43 per contract. Tiers 5 through 7 add other, challenging volume-based requirements and offer rebates of \$0.45 to \$0.47 per contract of Customer or Professional liquidity provided in Penny Pilot options. Tiers 1 through 7 of the Customer or Professional rebate program will remain unchanged.

The Exchange is proposing to change only Tier 8 which currently offers a \$0.48 rebate for executed Customer or Professional liquidity where:

Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month or Participant adds (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant qualifies for rebates under the Qualified Market Maker ("QMM") Program set forth in Rule 7014.

In addition, Participants that qualify for Tier 8 can get a supplemental rebate if they add:

Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional \$0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month.

Participants that qualify for Tier 8 and the supplemental rebate receive a total rebate of \$0.50 per contract of Customer liquidity provided in Penny Pilot options.

Beginning September 1, the Exchange is proposing to offer an increased supplemental rebate for certain Participants that qualify for Tier 8. Specifically, the Exchange proposes to offer an additional \$0.05 rebate per contract for adding Customer liquidity in Penny Pilot Options in that month for Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month. Participants that qualify for Tier 8 and the new supplemental rebate will receive a total rebate of \$0.53 per contract of Customer liquidity executed in Penny Pilot options. This represents an increase of \$0.03 per contract for Participants qualifying for this new supplemental rebate.

Change 2

The Exchange also proposes, beginning September 1, to increase from \$0.50 to \$0.54 per contract the fees assessed for removing liquidity in Penny Pilot options for all Participant categories other than Customer, which will remain unchanged at \$0.48. This will represent an increase of \$0.04 per contract of liquidity removed in the Professional, Firm, NOM Market Maker, Non-NOM Market Maker, and Broker Dealer categories for Participants that qualify for no fee reductions. For executions in SPY, the fees will remain unchanged by this proposal.

Specially, the fees assessed for executions in SPY will remain \$0.48 per contract for Customer and \$0.50 per contract for all other Participants.

Change 3

The Exchange proposes to increase the fee assessed for removing liquidity for Participants that qualify for Tiers 7 and 8 of the Customer and Professional rebate program. As described above, the Exchange currently offers eight tiers of volume-based rebates for Participants that add Customer or Professional liquidity in Penny Pilot options. Relative to other Participants, Participants that qualify for Tiers 7 and 8 receive increased rebates for adding liquidity, and they also are assessed reduced fees for removing liquidity. Specifically, Participants that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month are assessed a Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee for Removing Liquidity in Penny Pilot Options of \$0.48 per contract and a Customer Fee for Removing Liquidity in Penny Pilot Options of \$0.47 per contract. Participants that do not qualify for Tiers 7 and 8 currently pay \$0.50 per contract for removing liquidity in the Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer categories, and \$0.48 per contract for removing liquidity in the Customer category. In other words, this represents a relative reduction of \$0.02 in the Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer categories, and a \$0.01 relative reduction in the Customer liquidity category.

Beginning September 1, the Exchange proposes to charge these same Participants (those that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month) a fee of \$0.50 for removing liquidity for Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer in Penny Pilot Options. As described above, also beginning

September 1, Participants that do not qualify for Tiers 7 and 8 will pay \$0.54 per contract for removing liquidity in the Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer categories, and \$0.48 per contract for removing liquidity in the Customer category. As a result, beginning September 1, Participants that qualify for Tiers 7 and 8 will enjoy a relative fee reduction of \$0.04 in the Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer categories, and will pay the same Customer fee for removing liquidity of \$0.48 per contract as is the case for all other Participants.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁸ 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 or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Change 1

The Exchange believes that it is an equitable allocation of reasonable fees to offer an additional \$0.05 rebate per contract for adding Customer liquidity in Penny Pilot Options in that month for Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.40% or more of total industry customer equity and ETF option ADV contracts per day in a month. As stated above, the use of volume-based rebate tiers is well accepted as consistent with an equitable allocation of reasonable fees under the Act. In fact, the Exchange's proposal represents only a

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

minor extension of the rebate program that already exists on the Exchange: Participants that qualify for Tier 8 and the new supplemental rebate will receive a total rebate of \$0.53 per contract of Customer liquidity executed in Penny Pilot options which is an increase of \$0.03 per contract beyond the existing supplemental rebate of \$0.02.

The Exchange's proposal to increase the supplemental rebate for providing Customer liquidity in Penny Pilot options is also equitable and not unfairly discriminatory under the Act. As stated above, the use of volume-based incentives has long been accepted as an equitable and not unfairly discriminatory pricing practice employed at multiple competing options exchanges. In fact, the specific volume-based incentive proposed here - a supplemental rebate for providing greater amounts of Customer liquidity in Penny Pilot options – is currently employed by NOM and it has been accepted as equitable and not unfairly discriminatory under the Act. As is true of the existing supplemental rebate, the proposed \$0.03 additional supplement is a “fair” form of discrimination because it benefits all market Participants by attracting valuable liquidity to the market and thereby enhancing the trading quality and efficiency of all.

Change 2

It is also an equitable allocation of reasonable fees for the Exchange to increase from \$0.50 to \$0.54 per contract the fees assessed for removing liquidity in Penny Pilot options for all Participant categories other than Customer, while the rebate [sic] for Customer liquidity remains unchanged at \$0.48. The increase of \$0.04 per contract of liquidity removed in the Professional, Firm, NOM Market Maker, Non-NOM Market Maker, and Broker Dealer categories results in a maximum fee that is within the range of maximum fees at other exchanges Penny Pilot options

that have been accepted as an equitable allocation of reasonable fees under the Act.⁹ The total differential of \$0.06 also is below the maximum differentials employed by other exchanges that have previously been and currently are accepted as equitable and reasonable under the Act. Finally, this proposed fee increase for removing liquidity must be read in conjunction with Change 1, which increase rebates for providing liquidity, when determining the overall equity and reasonableness of this proposed rule change.

The Exchange also believes that maintaining the current execution prices for SPY while raising fees for other options is consistent with an equitable allocation of reasonable fees and is not unfairly discriminatory. Multiple exchanges have adopted pricing for a select group of symbols, a practice that has been accepted as consistent with an equitable allocation of reasonable fees under the Act.¹⁰ The unique nature of trading in SPY, the most actively traded standardized option in the U.S, justifies differentiating it from other symbols, particularly where that differentiation results in maintaining lower execution fees.

The Exchange's proposal is equitable and not unfairly discriminatory for many of the same reasons. It is common practice among options exchanges to differentiate between fees for removing Customer liquidity and fees for removing other categories of liquidity, and such differentiation has been accepted as not unfairly discriminatory under the Act. Charging lower fees for removing Customer liquidity has been considered beneficial in that attracting this liquidity benefits all market Participants by improving the overall quality of trading on the Exchange. The level of differentiation (\$0.06) is also within the bounds of what has been

⁹ For example, MIAX charges \$0.55 for executions in the following penny pilot options: EEM, GLD, IWM, QQQ and SPY (see MIAX fee schedule). BOX assesses fees greater than \$0.55 to Non-customers for executions in Penny Pilot options (see BOX Options fee schedule).

¹⁰ See, e.g., fee schedules of MIAX and CBOE (both CBOE and C2).

accepted as not unfairly discriminatory under the Act. Finally, the proposed fees will be imposed equally within each category of liquidity removed among all Participants.

Change 3

It is an equitable allocation of reasonable fees for the Exchange to charge Participants that qualify for Customer or Professional Rebate to Add Liquidity Tiers 7 or 8 in a given month a fee of \$0.50 (an increase from \$0.48) for removing liquidity in Penny Pilot Options for Professional, Firm, Non-NOM Market Maker, NOM Market Maker or Broker-Dealer Fee and \$0.48 (an increase from \$0.47) for removing Customer liquidity. The total maximum fee for qualifying Participants will be \$0.50, which is below the maximum fees assessed by other exchanges for similar executions. Moreover, the increase of \$0.01 for the removal of liquidity in the Customer category and \$0.02 for removing liquidity in all other categories is a modest increase in isolation, and even more so when read in conjunction with the proposed increased rebates for providing liquidity described above regarding Changes 1, 2, and 3. Finally, Participants that qualify for Tiers 7 and 8 and that pay this increased fee will actually enjoy a slightly higher differential of \$0.04 as opposed to the current differentials of \$0.01 and \$0.02 relative to non-qualifying Participants.

The Exchange's proposal is equitable and not unfairly discriminatory for many of the same reasons. It is common practice among options exchanges to differentiate between fees for removing Customer liquidity and fees for removing other categories of liquidity, and such differentiation has been accepted as not unfairly discriminatory under the Act. In fact, the NOM fee reductions for Participants qualifying for Tiers 7 and 8 of the Customer and Professional rebate program has existed and been accepted as consistent with the Act for some time. The level of differentiation created by this minor revision (\$0.04) is within the bounds of what has been

accepted as not unfairly discriminatory under the Act. Finally, the proposed fees will be imposed equally within each category of liquidity removed among all Participants.

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 operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply responding to competition by adjusting rebates and fees in order to remain competitive in the current environment.

Change 1

The Exchange does not believe that increasing the rebates to Participants that qualify for Tiers 8 of the Customer and Professional rebate program and that add greater than 1.40 percent of total Customer interest for the month places any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As described above, the use of volume-based tiers has been accepted as consistent with the Act, including Tiers 1 through 8 of the existing Customer and Professional rebate program for Penny Pilot options. Volume-based fee reductions such as that proposed here are recognized by economists as a pro-competitive reflection of a competitive marketplace such as the SEC has fostered in the national market system for standardized options.

Additionally, the proposed change is pro-competitive because it encourages Participants to add more liquidity to the NOM market and thereby strengthen NOM's competitive position. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. All Participants are eligible to participate in the Firm category if they choose, and each can thereby become eligible to earn the rebates by transacting the requisite volume.

Change 2

The Exchange does not believe that increase fees from \$0.50 to \$0.54 per contract for all Participant categories other than Customer, which remains at \$0.48 places any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In a competitive marketplace such as that for trading of standardized options, the Exchange is constrained from raising prices to super-competitive levels by the risk of losing out to better-priced competitors. The resulting fee of \$0.54 is below fees charged by other Exchanges, which have themselves been considered consistent with the Act. In addition, the fee increase should be read in conjunction with increased rebates (lower fees) described above that offset the fee increase and that the Exchange believes are necessary and well-targeted to increase the overall competitiveness of the market.

The Exchange does not believe that maintaining existing fees for executions in SPY (\$0.48 per contract for Customer liquidity and \$0.50 for all other liquidity), which remains at \$0.48 places any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that distinguishing between SPY and all other options is pro-competitive in that it reflects the unique nature of the fierce competition that

exists in SPY as the most actively traded multiply listed option in the U.S. Multiple exchanges set prices that apply to a select group of symbols and those pricing programs have been accepted as consistent with the Act.¹¹

Change 3

The Exchange does not believe that increasing the fee for removing liquidity for Participants that qualify for Tiers 7 and 8 of the Customer and Professional rebate program places any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In a competitive marketplace such as that for trading of standardized options, the Exchange is constrained from raising prices to super-competitive levels by the risk of losing out to better-priced competitors. The fee increases of \$0.02 or \$0.01 are modest, and the resulting fees of \$0.50 and \$0.48 are below fees charged by other Exchanges, which have themselves been considered consistent with the Act. In addition, the fee increase should be read in conjunction with increased rebates (lower fees) described above that offset the fee increase and that the Exchange believes are necessary and well-targeted to increase the overall competitiveness of the market.

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.¹²

¹¹ For example, MIAX charges \$0.55 for executions in the following penny pilot options: EEM, GLD, IWM, QQQ and SPY (see MIAX fee schedule). See also CBOE and C2 fee schedules.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-102 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-102. This file number should be included on the subject line if e-mail 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-102 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,
Secretary.

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¹³ 17 CFR 200.30-3(a)(12).