

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89071; File No. SR-GEMX-2020-15)

June 15, 2020

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the GEMX Disciplinary Rules in General 5 to Incorporate by Reference The Nasdaq Stock Market LLC's Series 8000 and 9000 Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2020, 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 the GEMX Disciplinary Rules in General 5 to incorporate by reference The Nasdaq Stock Market LLC's ("Nasdaq") Series 8000 and 9000 Rules, currently located under the General 5 title of the Nasdaq rulebook,<sup>3</sup> instead of the BX Rules, which the Exchange currently incorporates by reference.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

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

In connection with a recent rule change to relocate the Nasdaq BX, Inc. (“BX”) Disciplinary Rules under the General 5 title (“Discipline”),<sup>4</sup> and incorporate by reference The Nasdaq Stock Market LLC’s (“Nasdaq”) Series 8000 and 9000 Rules, GEMX proposes to similarly incorporate by reference Nasdaq’s Series 8000 and 9000 Rules.

The BX Disciplinary Rules, which were relocated to General 5 of the BX Rules,<sup>5</sup> were replaced with introductory paragraphs that respectively incorporate by reference the Nasdaq Series 8000 and 9000 Rules (located under the General 5 title in the Nasdaq rulebook).<sup>6</sup>

Currently, GEMX incorporates the BX Disciplinary Rules within the Series 8000 and 9000

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<sup>4</sup> See Securities Exchange Act Release No. 88938 (May 26, 2020), 88 FR 33235 (June 1, 2020) (SR-BX-2020-009).

<sup>5</sup> Id.

<sup>6</sup> Id. The Exchange notes that the proposed changes will not become operative unless and until the Commission approves the Exchange’s request, to be filed pursuant to Section 36 of the Exchange Act and SEC Rule 0-12 thereunder, for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act as to changes to the Current GEMX 8000 Series (new General 5, Section 1) and Current GEMX 9000 Series (new General 5, Section 2) that are effected solely by virtue of a change to the Nasdaq Series 8000 or 9000 Rules Series.

Rules, which were relocated to General 5 of the BX Rules with the aforementioned rule change.<sup>7</sup> At this time, GEMX proposes to incorporate by reference the Nasdaq Series 8000 and 9000 Rules (located in General 5 Discipline), respectively, and state that such Nasdaq Rules shall be applicable to Exchange Members, associated persons, and other persons subject to GEMX's jurisdiction.

Except as noted below, the Nasdaq Series 8000 and 9000 Rules are substantially similar to BX's Disciplinary Rules, which the Exchange currently incorporates by reference. The following discussions identify the differences between the current BX Disciplinary Rules and the corresponding Nasdaq Disciplinary Rules to be incorporated by reference into GEMX:

**Current BX IM-8310-3(b)**

Current BX Rule 9120(f) provides that “[t]he term “Department of Enforcement” means the Department of Enforcement of FINRA Regulation, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.”<sup>8</sup> Current BX IM-8310-3(b), however, uses the term “Department of Enforcement of FINRA.” Since Nasdaq IM-8310-3(b) uses the term “Department of Enforcement” GEMX believes it is appropriate to utilize the Nasdaq terms going forward and incorporate by reference into the GEMX rule.

**Current BX Rule 8320**

In 2010, Nasdaq created Rule 7007 (“Collection of Fees”) to facilitate an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to Nasdaq from The Nasdaq Option Market (“NOM”) Participants.<sup>9</sup>

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<sup>7</sup> Securities Exchange Act Release No. 88938 (May 26, 2020), 88 FR 33235 (June 1, 2020) (SR-BX-2020-009).

<sup>8</sup> This definition mirrors the one in the Nasdaq rulebook under Rule 9120(f).

<sup>9</sup> See Securities Exchange Act Release No. 63536 (December 14, 2010), 75 FR 80102 (December 21, 2010) (SR-NASDAQ-2010-163). Nasdaq Rule 7007 was later relocated

Similarly, in 2012, BX adopted its options market rules (“BX Options Market”) to operate as a fully automated, price/time priority execution system built on the core functionality of NOM.<sup>10</sup> In its filing, BX proposed to adopt, under respective Chapter XV, Section 2, a rule identical to the Nasdaq Collection of Fees rule.<sup>11</sup> Although, at the time of its creation, the Nasdaq Collection of Fees rule was cross-referenced to current Nasdaq Rule 8320(a)(1),<sup>12</sup> such cross-reference was not included in the filing that created the BX Options Market. GEMX also has the same Collection of Fees rule<sup>13</sup>, that is identical to the Nasdaq rule. Because BX Rule 8320, which GEMX incorporates by reference, does not include a cross-reference to the Collection of Fees rule, GEMX will follow the Nasdaq rule going forward, which has the correct cross-reference. The Exchange also proposes to add rule text, within General 5, Section 3, to note the distinction between the location of the Collection of Fees rules. Specifically, the Exchange proposes to add rule text to provide that references in the Nasdaq 8000 Series to “Nasdaq’s Options 7, Section 1” shall be read to refer to GEMX Options 7, Section 2.

Based on the above, the Exchange believes that it is appropriate that GEMX adopts the aforementioned cross-reference to make the collection of fees owed to the Exchange more

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to Options Chapter XV, Section 1 and then moved to its current location under Options 7, Section 1, in the Nasdaq rulebook shell. See Securities Exchange Act Release No. 66158 (January 13, 2012), 75 FR 80102 (January 13, 2012) (SR-NASDAQ-2012-006) and Securities Exchange Act Release No.84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR-NASDAQ-2018-098).

<sup>10</sup> Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030). This rule was later relocated to the BX Rulebook shell. See Securities Exchange Act Release No. 84326 (October 1, 2018), 83 FR 50414 (October 1, 2018) (SR-BX-2018-046).

<sup>11</sup> Id.

<sup>12</sup> See supra note 9.

<sup>13</sup> See GEMX Options 7, Section 2.

efficient. Therefore, the Exchange believes that it is appropriate to incorporate by reference Nasdaq Rule 8320 into GEMX Rules.

### **Current BX Rule 9120**

In 2018, BX amended its Disciplinary Rules to align them with the investigatory and disciplinary processes of Nasdaq PHLX LLC (“Phlx”).<sup>14</sup> As stated in its proposal, the changes to the “Interested Staff” concept (which, at the time, was relocated under 9120(r)) were done to conform the BX rule to Phlx’s definition. At the time, however, the proposed harmonizing changes to BX Rule 9120(r)(1)(B) inadvertently excluded the words “Head of” and omitted to add the word “the”; indeed, the text should have read “Head of the Exchange’s Regulation Department” instead of, simply, “Exchange’s Regulation Department.”

The correct definition, as explained above, would also align with the term currently defined in Nasdaq Rule 9120(r)(1)(B), which provides that “Interested Staff” shall mean “an Exchange employee of the Nasdaq Regulation Department who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department.”

The Exchange believes that it is appropriate to apply Nasdaq Rule 9120 and to incorporate it by reference into the GEMX rule. Additionally, the Exchange notes that applying Nasdaq Rule 9120 and incorporating it by reference into the Exchange rule should correct a typo in current BX Rule 9120(v) that erroneously uses the term “RINRA” instead of the acronym “FINRA.”

### **Current BX Rule 9231**

The Exchange proposes to adopt the cross-reference in Nasdaq Rule 9231(c) concerning the appointment of arbitrators pursuant to the FINRA Rules 12000 and 13000 Series (the

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<sup>14</sup> See Securities Exchange Act Release No. 84354 (October 3, 2018), 83 FR 50723 (October 9, 2018) (SR-BX-2018-042).

“FINRA Arbitration Rules”). Current BX Rule 9231(c) provides that arbitrators shall be appointed pursuant to BX General 6 (“BX Arbitration Rules”).<sup>15</sup> The BX Arbitration Rules incorporate by reference the similar Nasdaq arbitration rules (also under Nasdaq’s General 6 title); GEMX’s arbitration rules within General 6 also incorporate Nasdaq’s arbitration rules; in turn, the Nasdaq rules incorporate the FINRA Arbitration Rules by reference into its text. Following the incorporation by reference of Nasdaq Rule 9231, GEMX Rule 9231(c) will directly cross-reference the FINRA Arbitration Rules, which will not create any differences from the current ISE rules.

#### **Current BX Rule 9232**

Currently, Nasdaq Rule 9232(a) provides a cross-reference to subsections (A) through (D) in Nasdaq Rule 9231(b)(1), whereas current BX Rule 9232(a) simply provides a reference to BX Rule 9231(b)(1). The Exchange believes that it is appropriate to apply Nasdaq Rule 9232(a) and incorporate it by reference into the GEMX rule since the Nasdaq rule contains a more precise cross-reference to Nasdaq Rule 9231(b)(1).

#### **Current BX Rule 9522**

The Exchange proposes to apply and incorporate by reference Nasdaq Rule 9522 in place of current BX Rule 9522. This proposal amends the first sentence in current BX Rule 9522(a)(1) by replacing the term “Exchange’s Regulation Department” with the term “Department of Member Regulation” as currently provided in Nasdaq Rule 9522(a)(1). As previously indicated by the Exchange,<sup>16</sup> the FINRA Department of Member Regulation<sup>17</sup> currently performs the

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<sup>15</sup> See Securities Exchange Act Release No. 84476 (October 24, 2018), 83 FR 54630 (October 30, 2018) (SR-BX-2018-048).

<sup>16</sup> See Securities Exchange Act Release No. 84354 (October 3, 2018), 83 FR 50724 (October 9, 2018) (SR-BX-2018-042).

<sup>17</sup> As defined in BX 9120(g).

functions described in current BX Rule 9522. Therefore, applying the Nasdaq rule and incorporating it by reference into GEMX Rule 9522, provides clarity to the rule text and aligns it with Nasdaq and Phlx's rules.

The GEMX introductory paragraphs currently list instances in which various terms and rules within the BX Disciplinary Rules shall be read to refer to Exchange specific rules and terms. Replacing references to "BX" with "Nasdaq" in this introductory paragraph should align the Nasdaq and GEMX rules. All of these specific terms are identical as between the Nasdaq and BX Rules and, therefore, the term "BX" is being replaced with "Nasdaq."

The Exchange also proposes to remove certain references within GEMX General 5, Section 3, Code of Procedure, which are no longer necessary because they align with the current rules referenced within the Nasdaq 9000 Rule Series.<sup>18</sup> The Exchange also proposes to amend certain references to Nasdaq Rules, as a result of the relocation of certain Nasdaq Rules in conjunction with a larger Rulebook relocation.<sup>19</sup> Specifically, the Exchange proposes to amend: (a) Rule 1160 to relocated General 2, Section 11; (b) Equity Rules 2110 and 2120 to relocated General 9, Section 1;<sup>20</sup> (c) Equity Rule 2150 to relocated General 9, Section 2.<sup>21</sup> Additionally, as noted above, the Exchange proposes to add rule text to provide that references in the Nasdaq

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<sup>18</sup> The following Nasdaq Rules were relocated in connection with a Nasdaq rule relocation filing: Rules 0120, 1070, 1160, 4110A, 4120A; Equity Rules 2110, 2120, 2140, 2150; Rule 1000 Series and Chapter III, Section 16. See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>19</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>20</sup> Equity Rule 2120 was more specifically relocated to General 9, Section 1(g), however the Nasdaq Rule 9000 Series only reference General 9, Section 1.

<sup>21</sup> Id.

8000 Series to “Nasdaq’s Options 7, Section 1” shall be read to refer to GEMX Options 7, Section 2.

The Exchange also proposes to update certain GEMX rule references. The proposed updated reference to “General 9, Section 1”, replacing Equity Rule 2110, would refer to Nasdaq GEMX Options 9, Section 1. The Section 1 is being added as a more specific reference. Additionally, the proposed updated reference to “General 9, Section 1”, replacing Equity Rule 2120, would refer to Nasdaq GEMX Options 9, Section 6. The Section 6 is being added as a more specific reference.

#### Other Technical Amendments

Further, the Exchange proposes to amend references to General 5 to more specific references to the Nasdaq 9000 Series Rules, which pursuant to the proposed incorporation by reference will become GEMX Rules. Specifically, the Exchange proposes to amend General 1, Section 1 (Definitions); General 3, Section 2 (Denial of and Conditions to Becoming a Member); and General 3, Section 6 (Dissolution and Liquidation of Members). Further, the Exchange proposes to amend General 1, “Provisions” to General 1, “General Provisions” to mirror the name of the Chapter on Nasdaq Phlx LLC, Nasdaq BX, Inc., and Nasdaq.

The Exchange also proposes to amend a typographical error within General 5, Sections 2 and 3 to remove a hyphen. The Exchange also proposes to amend a reference to Nasdaq GEMX Rule 1614 within General 5, Section 3 to instead reference Options 11, Section 1(b) to reflect a relocated rule, and correct a typographical error to remove a stray period.



## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by consolidating its rules into a single rule set. The various Nasdaq exchanges (“Affiliated Exchanges”) have filed similar proposed rule changes to amend and relocate their disciplinary rules<sup>24</sup> in order that the Nasdaq 8000 Series and 9000 Series Rules, which govern the investigative and disciplinary processes, are similarly consolidated and incorporated by reference.<sup>25</sup> To the extent there will be differences remaining between the two rule sets, the Exchange notes those differences in introductory paragraphs to each of GEMX’s Disciplinary Rules.

Incorporating the Nasdaq Disciplinary Rules by reference into the GEMX Rules, instead of the BX Disciplinary Rules, will conform the alignment of these rules and permit the rules of Phlx, BX, Nasdaq ISE, LLC, Nasdaq MRX, LLC and GEMX to be incorporated by reference to one rule set. This proposal would permit the Nasdaq Series 8000 and 9000 Rules to be the source document for all of the Nasdaq Exchanges’ investigative and disciplinary processes. The

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<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> See Securities Exchange Act Release No. 86138 (July 18, 2019), 84 FR 29567 (July 24, 2019) (SR-ISE-2019-17); Securities Exchange Act Release No. 86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR-GEMX-2019-08); and Securities Exchange Act Release No. 86424 (July 12, 2019), 84 FR 36134 (July 26, 2019) (SR-MRX-2019-15); and Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098). Similarly, Phlx recently submitted a proposal to relocate its disciplinary rules. See Securities Exchange Act Release No. 88519 (March 31, 2020), 85 FR 19203 (April 6, 2020) (SR-Phlx-2020-09).

<sup>25</sup> See Securities Exchange Act Release Nos. 88519 (March 31, 2020), 85 FR 19203 (April 6, 2020) (SR-Phlx-2020-09); and 88938 (May 26, 2020), 88 FR 33235 (June 1, 2020) (SR-BX-2020-009), as well as SR-ISE-2020-22 and SR-MRX-2020-12.

Exchange notes that its current Disciplinary Rules are not substantively changing. The Exchange desires to conform its rules to give its Members and the members of its Affiliated Exchanges the ability to quickly locate rules in one central location and also to have a unified disciplinary rule set.

The Exchange also believes that the proposal is consistent with Section 6(b)(6) of the Act,<sup>26</sup> which requires that the rules of an exchange provide that its Members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Member, or any other fitting sanction.

#### Other Technical Amendments

These technical amendments are intended to align GEMX with other Nasdaq affiliated markets Rulebooks. Nasdaq Phlx LLC and Nasdaq BX, Inc. Rulesets are also incorporating by reference the Nasdaq Rules and those rulesets provide specific references to the Nasdaq disciplinary rules within the 9000 Series.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that this rule change does not impose an undue burden on competition because the Nasdaq Series 8000 and 9000 Rules, which are substantially similar to BX's Disciplinary Rules, will be incorporated by reference into GEMX's Rules. Those rules will now apply to GEMX Members, associated persons, and other persons subject to the Exchange's

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<sup>26</sup> 15 U.S.C. 78f(b)(6).

jurisdiction. To the extent that there will be differences remaining between the two rule sets, the Exchange notes those differences in introductory paragraphs to each of GEMX's Disciplinary Rules. As noted above, the proposed introductory paragraphs list instances in which cross references in Nasdaq Series 8000 and 9000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. Because Nasdaq Current Series 8000 and 9000 Rules are substantially similar to BX's Disciplinary Rules, which GEMX currently incorporates by reference, and because the introductory paragraphs ensure that any differences are preserved, the proposed changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange believes that the proposed amendments, including the technical amendments contained herein, do not impose an undue burden on competition because the amendments to relocate the Rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules.

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)(iii) of the Act<sup>27</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>28</sup>

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2020-15 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-2020-15. 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

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<sup>28</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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-2020-15 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).