

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 30	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2014 - * 007	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
A proposal to use Nasdaq Execution Services, LLC as opposed to Nasdaq Options Services LLC for outbound order routing from The NASDAQ Options Market and to route equities and options orders through NES either directly or through a third party routing broker-dealer.				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	Edith	Last Name *	Hallahan	
Title *	Principal Associate General Counsel			
E-mail *	edith.hallahan@nasdaqomx.com			
Telephone *	(215) 496-5179	Fax		
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	01/15/2014	Executive Vice President and General Counsel		
By	Edward S. Knight			
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
Persona Not Validated - 1383935917270,				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”), 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> is filing with the Securities and Exchange Commission (“Commission”) a proposal to use Nasdaq Execution Services, LLC (“NES”) as opposed to Nasdaq Options Services LLC (“NOS”) for outbound order routing from The NASDAQ Options Market (“NOM”), as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit

5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 17, 2013. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

Questions and comments on the proposed rule change may be directed to Edith Hallahan, Principal Associate General Counsel, The NASDAQ OMX Group, Inc., at 215-496-5179.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via NOS and in equities via NES. Both NOS and NES are affiliates and members of Nasdaq. As a result, certain conditions have been imposed on the existing routing arrangements.<sup>3</sup>

Replacing NOS with NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to NOM Rules, Chapter VI, Section 11, NES will now be the outbound routing broker for NOM. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing

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<sup>3</sup> See, e.g., Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-04 and SR-NASDAQ-2007-080) at 14533.

options orders to destination options exchanges. This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

#### Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker to route to away exchanges, rather than routing directly through NES, for both equities and options. To date, the Exchange has used a third-party routing broker in equities and is amending Rule 4758 to clarify this and incorporate the use of a third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to away markets through NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders through NES today, NES routes those orders through a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Chapter VI, Section 11 of NOM's rules accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.*, third-party Routing

Brokers).<sup>4</sup> In those cases, orders are submitted to the third-party Routing Broker through the affiliated routing broker, and the third-party Routing Broker routes the orders to the routing destination in its name.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (“routing brokers”). Specifically, the Exchange proposes to amend NOM Rules, Chapter VI, Section 11, which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 4758(b) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, NOM Rules, Chapter VI, Section 11(e) and Nasdaq Rule 4758 currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the

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<sup>4</sup> See Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057) at note 6; and 68395 (December 10, 2012), 77 FR 74530 (December 14, 2012) (SR-NASDAQ-2012-134) at note 4.

routing broker that provides the routing services).<sup>5</sup> This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.<sup>6</sup>

The Exchange also proposes to expressly state in Rule 4758(b)(1) and NOM Rules, Chapter VI, Section 11(e) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.<sup>7</sup>

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access

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<sup>5</sup> This is substantially similar to NYSEArca Rule 6.96(a)(8).

<sup>6</sup> See NOM Chapter VI, Section 11(e) (which currently provides that NOS is a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer) and Rule 4758(b)(4) (which currently provides that the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Nasdaq Stock Market LLC or any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

<sup>7</sup> This is based on NYSEArca Rule 6.96(a)(1)(A).

certain markets where the Exchange finds that the costs of maintaining a membership (for NES) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.<sup>8</sup> Sometimes, it will not make economic sense for NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (“FINRA”) and The Options Clearing Corporation (“OCC”) to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or early February.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to

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<sup>8</sup> For these reasons, today, transaction fees for orders vary depending on the market where an order is ultimately executed. See e.g., NASDAQ Rule 7000 series and NOM Rules, Chapter XV.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).



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, by providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other members' orders or the routing of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.<sup>11</sup>

4. 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 proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce

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<sup>11</sup> See proposed Rules 4758(b)(1) and (8) and NOM Rules, Chapter VI, Section 11(e).

the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>13</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposal does not significantly affect the protection of investors or the public interest, because it provides for the opportunity to use a routing broker, which has the potential to benefit investors, as explained above. It also changes which of the Exchange's affiliated broker-dealers will serve as the Routing Facility for options, which should also benefit investors by reducing costs. The proposal does not change whether

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

an order is routed, but rather merely the mechanics of how it is routed. The proposal does not impose any significant burden on competition, as explained further above.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposal is substantially similar to NYSEArca Rule 6.96(a) and NYSE MKT Rule 993NY(a), albeit structured a bit differently, including that those exchanges' rules contemplate using both an affiliated as well as an unaffiliated routing broker.<sup>14</sup> The aspect of the proposal that replaces NES for NOS as the options Routing Facility is also similar to NYSEArca's arrangement, where Arca Securities, their affiliated broker-dealer, is able to route orders for both equities and options. The language regarding the designated examining authority in NYSEArca Rule 6.96(a)(7) is slightly different but not in a material way and generally provides for the same thing.

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<sup>14</sup> See e.g., Securities Exchange Act Release No. 67836 (September 12, 2012), 77 FR 57611 (September 18, 2012) at note 5.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2014-007)

January \_\_, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Outbound Routing

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 January 15, 2014, 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 use Nasdaq Execution Services, LLC (“NES”) as opposed to Nasdaq Options Services LLC (“NOS”) for outbound order routing from The NASDAQ Options Market (“NOM”), as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

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.

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

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

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 proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via NOS and in equities via NES. Both NOS and NES are affiliates and members of Nasdaq. As a result, certain conditions have been imposed on the existing routing arrangements.<sup>3</sup>

Replacing NOS with NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its

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<sup>3</sup> See, e.g., Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-04 and SR-NASDAQ-2007-080) at 14533.

affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to NOM Rules, Chapter VI, Section 11, NES will now be the outbound routing broker for NOM. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders to destination options exchanges. This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

#### Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker to route to away exchanges, rather than routing directly through NES, for both equities and options. To date, the Exchange has used a third-party routing broker in equities and is amending Rule 4758 to clarify this and incorporate the use of a third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to away markets through NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders through NES today, NES routes those orders through a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Chapter VI, Section 11 of NOM's rules accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES

to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.*, third-party Routing Brokers).<sup>4</sup> In those cases, orders are submitted to the third-party Routing Broker through the affiliated routing broker, and the third-party Routing Broker routes the orders to the routing destination in its name.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (“routing brokers”). Specifically, the Exchange proposes to amend NOM Rules, Chapter VI, Section 11, which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 4758(b) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, NOM Rules, Chapter VI, Section 11(e) and Nasdaq Rule 4758 currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and

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<sup>4</sup> See Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057) at note 6; and 68395 (December 10, 2012), 77 FR 74530 (December 14, 2012) (SR-NASDAQ-2012-134) at note 4.



any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).<sup>5</sup> This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.<sup>6</sup>

The Exchange also proposes to expressly state in Rule 4758(b)(1) and NOM Rules, Chapter VI, Section 11(e) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.<sup>7</sup>

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<sup>5</sup> This is substantially similar to NYSEArca Rule 6.96(a)(8).

<sup>6</sup> See NOM Chapter VI, Section 11(e) (which currently provides that NOS is a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer) and Rule 4758(b)(4) (which currently provides that the designated examining authority of NES shall be a self-regulatory organization unaffiliated with the Nasdaq Stock Market LLC or any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

<sup>7</sup> This is based on NYSEArca Rule 6.96(a)(1)(A).

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.<sup>8</sup> Sometimes, it will not make economic sense for NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (“FINRA”) and The Options Clearing Corporation (“OCC”) to secure the necessary approvals for NES to perform these functions. The Exchange has now secured those approvals. The Exchange seeks to complete this process and implement this proposal in January or early February.

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<sup>8</sup> For these reasons, today, transaction fees for orders vary depending on the market where an order is ultimately executed. See e.g., NASDAQ Rule 7000 series and NOM Rules, Chapter XV.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other members' orders or the routing

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.<sup>11</sup>

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 proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

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

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<sup>11</sup> See proposed Rules 4758(b)(1) and (8) and NOM Rules, Chapter VI, Section 11(e).

to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</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: (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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-007 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>13</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.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-007. 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 Web site (<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-2014-007 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>14</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5****NASDAQ Stock Market Rules****Equity Rules**

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**4758. Order Routing**

(a) No change.

**(b) Routing Broker**

(1) All routing by the System shall be performed by the Nasdaq Stock Market LLC's affiliated broker-dealer, Nasdaq Execution Services, LLC ("NES"), which, in turn, shall route orders to other market centers as directed by the Nasdaq Stock Market LLC either directly or through one or more third-party unaffiliated routing broker-dealers. The Nasdaq Stock Market LLC will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (8) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(2) NES [Nasdaq Execution Services LLC] will not engage in any business other than: (a) as an outbound router for the Nasdaq Stock Market LLC and (b) any other activities it may engage in as approved by the Commission

(3) NES [Nasdaq Execution Services LLC] shall operate as a facility, as defined in Section 3(a)(2) of the Act, of the Nasdaq Stock Market LLC.

(4) For purposes of SEC Rule 17d-1, the designated examining authority of NES [Nasdaq Execution Services LLC] shall be a self-regulatory organization unaffiliated with the Nasdaq Stock Market LLC or any of its affiliates. The Nasdaq Stock Market LLC and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.

(5) The Nasdaq Stock Market LLC shall be responsible for filing with the Securities and Exchange Commission rule changes related to the operation of, and fees for services provided by, NES [Nasdaq Execution Services LLC] and NES [Nasdaq Execution Services] shall be subject to exchange non-discrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NES [Nasdaq Execution Services LLC] as a facility of the Nasdaq Stock Market LLC shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Nasdaq Stock Market LLC for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of NES



[Nasdaq Execution Services LLC] as a facility of the Nasdaq Stock market LLC shall be subject at all times to inspection and copying by the Commission.

(7) Use of NES [Nasdaq Execution Services] to route orders to other market centers will be optional. Parties that do not desire to use NES [Nasdaq Execution Services LLC] must enter orders into the Nasdaq Stock Market LLC as immediate-or-cancel orders or any other order-type available through the Nasdaq Stock Market LLC that is ineligible for routing.

(8) NES [Nasdaq Execution Services LLC] shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Stock Market LLC and its facilities (including NES [Nasdaq Execution Services LLC] as its routing facility) and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(c) *Market Access.* In addition to the Exchange Rules regarding routing to away trading centers, NES [NASDAQ Execution Services] has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES [NASDAQ Execution Services] to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES will seek to cancel the order if it has been routed.

**(d) Cancellation of Orders and Error Account**

(1) Nasdaq or NES [Nasdaq Execution Services] may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at Nasdaq, NES [Nasdaq Execution Services], or a routing destination. Nasdaq or NES [Nasdaq Execution Services] shall provide notice of the cancellation to affected members as soon as practicable.

(2) NES [Nasdaq Execution Services] shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES [Nasdaq Execution Services], Nasdaq, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this Rule 4758(d), an error position shall not include any position that results from an order submitted by a member to Nasdaq

that is executed on Nasdaq and automatically processed for clearance and settlement on a locked-in basis.

**(B)** Except as provided in Rule 4758(d)(2)(C), NES [Nasdaq Execution Services] shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to [Nasdaq Execution Services] NES's error account.

**(C)** If a technical or systems issue results in Nasdaq not having valid clearing instructions for a member to a trade, NES [Nasdaq Execution Services] may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

**(3)** In connection with a particular technical or systems issue, NES [Nasdaq Execution Services] or Nasdaq shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

**(A)** NES [Nasdaq Execution Services] or Nasdaq shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES [Nasdaq Execution Services] or Nasdaq:

**(i)** determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

**(ii)** determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

**(iii)** has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (d)(1) above.

**(B)** If NES [Nasdaq Execution Services] or Nasdaq is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES [Nasdaq Execution Services] or Nasdaq determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (d)(1) above, then NES [Nasdaq Execution Services] shall liquidate the error positions as soon as practicable. NES [Nasdaq Execution Services] shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and [Nasdaq Execution Services]NES /Nasdaq associated with the liquidation of the error positions.

(4) NES [Nasdaq Execution Services] and Nasdaq shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

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## Options Rules

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## Chapter VI Trading System

Sec. 1 – 10 No change.

Sec. 11 Order Routing

(a) – (d) No change.

(e) NOM shall route orders in options via Nasdaq [Options] Execution Services, LLC (“NES”), a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. NES [Nasdaq Options Services LLC] serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to NOM rules [solely] on behalf of NOM. The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. The Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act.

Use of NES [Nasdaq Options Services LLC] to route orders to other market centers is optional. Parties that do not desire to use NES [Nasdaq Options Services LLC] must designate orders as not available for routing.

The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (f) below, the

routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

(f) *Market Access.* In addition to the Exchange Rules regarding routing to away trading centers, NES [NASDAQ Options Services] has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES [NASDAQ Options Services] to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NES [NOS] will seek to cancel the order if it has been routed.

(g) Cancellation of Orders and Error Account

(1) The Exchange or NES [Nasdaq Options Services LLC] may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES [Nasdaq Options Services LLC], or a routing destination. The Exchange or NES [Nasdaq Options Services LLC] shall provide notice of the cancellation to affected members as soon as practicable.

(2) NES [Nasdaq Options Services LLC] shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES [Nasdaq Options Services LLC], the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this Section 11(g), an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in Section 11(g)(2)(C), NES [Nasdaq Options Services LLC] shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member's account to [Nasdaq Options Services LLC] NES's error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES [Nasdaq Options Services LLC] may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(3) In connection with a particular technical or systems issue, NES [Nasdaq Options Services LLC] or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) NES [Nasdaq Options Services LLC] or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NES [Nasdaq Options Services LLC] or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (g)(1) above.

(B) If NES [Nasdaq Options Services LLC] or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if NES [Nasdaq Options Services LLC] or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (g)(1) above, then NES [Nasdaq Options Services LLC] shall liquidate the error positions as soon as practicable. NES [Nasdaq Options Services LLC] shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall

not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES [Nasdaq Options Services LLC]/the Exchange associated with the liquidation of the error positions.

(4) NES [Nasdaq Options Services LLC] and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

Sec. 12 – 19 No change.