

HUGHES KRISTINE F  
Form 4  
June 07, 2010

**FORM 4**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

OMB APPROVAL

OMB Number: 3235-0287  
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
HUGHES EUGENE L

2. Issuer Name and Ticker or Trading Symbol  
NATURES SUNSHINE PRODUCTS INC [NATR]

5. Relationship of Reporting Person(s) to Issuer  
  
(Check all applicable)

(Last) (First) (Middle)  
  
NATURES SUNSHINE PRODUCTS, 75 EAST 1700 SOUTH

3. Date of Earliest Transaction (Month/Day/Year)  
06/03/2010

Director  10% Owner  
 Officer (give title below)  Other (specify below)

(Street)  
  
PROVO, UT 84606

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
				(A) or (D) Code V Amount (D) Price			
Common Stock	05/28/2010		G	V 6,000 D \$ 0	1,073,664	I	By Trusts
Common Stock	06/03/2010		S	2,375 D \$ 10.07 (1)	1,071,289	I	By Trusts
Common Stock	06/04/2010		S	4,059 D \$ 10.32 (2)	1,067,230	I	By Trusts
Common					16,335	D	

Stock				
Common Stock	92,073	I	By 401(k) <u>(3)</u>	
Common Stock	61,330	I	By Spouse <u>(4)</u>	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

**Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

SEC 1474  
(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Nu
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## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
HUGHES EUGENE L NATURES SUNSHINE PRODUCTS 75 EAST 1700 SOUTH PROVO, UT 84606	X			
HUGHES KRISTINE F NATURES SUNSHINE PRODUCTS 75 EAST 1700 SOUTH PROVO, UT 84606	X			

## Signatures

/s/ Eugene L. Hughes  
06/07/2010  
Date

\_\_Signature of  
Reporting Person

/s/ Kristine F.  
Hughes

06/07/2010

\_\_Signature of  
Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) The price reported in Column 4 is a weighted average price. These shares were sold in multiple transactions at prices ranging from \$10.01 to \$10.37, inclusive. The reporting person undertakes to provide Nature's Sunshine Products, Inc., any security holder of Nature's Sunshine Products, Inc., or the staff of the Securities and Exchange Commission, on request, full information regarding the number of shares sold at each separate price within the ranges set forth in this footnote to this Form 4.

(2) The price reported in Column 4 is a weighted average price. These shares were sold in multiple transactions at prices ranging from \$10.20 to \$10.70, inclusive. The reporting person undertakes to provide Nature's Sunshine Products, Inc., any security holder of Nature's Sunshine Products, Inc., or the staff of the Securities and Exchange Commission, on request, full information regarding the number of shares sold at each separate price within the ranges set forth in this footnote to this Form 4.

(3) Represents shares allocated to Mr. Hughes' 401(k) plan account, which is indirectly beneficially owned by Eugene L. Hughes and his spouse, Kristine F. Hughes.

(4) Represents shares which are directly beneficially owned by Kristine F. Hughes and indirectly beneficially owned by Mrs. Hughes' spouse, Eugene L. Hughes.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. ; font-size: 10pt">the impact of any new or changed laws, regulations, card network rules or other industry standards affecting our business, including the U.S. government decision to impose sanctions or other legal restrictions that may restrict our ability to do business in Russia; the impact of any significant chargeback liability and liability for merchant or customer fraud, which we may not be able to accurately anticipate and/or collect; our ability to secure or successfully migrate merchant portfolios to new bank sponsors if current sponsorships are terminated;

whether blockchain technology solutions that are being developed by the Company will be adopted by the Company's merchants and consumers, whether such blockchain technology solutions will be successful, whether the Company will be successful in its endeavors to identify and invest into relevant projects and whether investment into blockchain ecosystem will positively impact the Company;

our and our bank sponsors' ability to adhere to the standards of the Visa® and MasterCard® payment card associations; our reliance on third-party processors and service providers; our dependence on independent sales groups ("ISGs") that do not serve us exclusively to introduce us to new merchant accounts; our ability to pass along increases in interchange costs and other costs to our merchants; our ability to protect against unauthorized disclosure of merchant and cardholder data, whether through breach of our computer systems or otherwise; the effect of the loss of key personnel on our relationships with ISGs, card associations, bank sponsors and our other service providers; the effects of increased competition, which could adversely impact our financial performance; the impact of any increase in attrition due to an increase in closed merchant accounts and/or a decrease in merchant charge volume that we cannot anticipate or offset with new accounts; the effect of adverse business conditions on our merchants; our ability to adopt technology to meet changing industry and customer needs or trends;



- the impact of any decline in the use of credit cards as a payment mechanism for consumers or adverse developments with respect to the credit card industry in general;
- the impact of any adverse conditions in industries in which we obtain a substantial amount of our bankcard processing volume;
- the impact of seasonality on our operating results;
- the impact of any failure in our systems due to factors beyond our control;
- the impact of any material breaches in the security of third-party processing systems we use;
- the impact of any new and potential governmental regulations designed to protect or limit access to consumer information;
- the impact on our profitability if we are required to pay federal, state or local taxes on transaction processing;
- the impact on our growth and profitability if the markets for the services that we offer fail to expand or if such markets contract;
- our ability (or inability) to continue as a going concern;
- the willingness of the Company's majority stockholders, and/or other affiliates of the Company, to continue investing in the Company's business to fund working capital requirements;
- the Company's ability (or inability) to obtain additional financing in sufficient amounts or on acceptable terms when needed;
- the impact on our operating results or liquidity in the event of an unfavorable outcome on legal proceedings and claims which arise in the ordinary course;
- the impact on our operating results as a result of impairment of our goodwill and intangible assets;
- our material weaknesses in internal control over financial reporting and our ability to maintain effective controls over financial reporting in the future; and
- the other factors identified in the "Risk Factors" section of this prospectus.

Forward-looking statements are based on our current expectations about future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, these expectations may not be achieved. We are under no duty to update any of the forward-looking statements after the date of this prospectus to conform those statements to actual results. In evaluating these statements, you should consider various factors, including the risks outlined in the section entitled "Risk Factors" beginning on page 6 of this prospectus.

## PRIVATE PLACEMENT OF COMMON STOCK AND WARRANTS

### Overview

On December 29, 2017, we entered into, and consummated the transactions contemplated by, a Unit Purchase Agreement (the “Purchase Agreement”) with Esousa Holdings LLC (“Investor” or “Esousa”). Pursuant to the Purchase Agreement, on December 29, 2017 (the “Closing Date”), the Company sold to Investor (the “Private Placement”) (i) an aggregate of 350,553 shares of Company common stock, par value \$0.0001, at a purchase price of \$11.12 per share (the “Purchase Shares”); (ii) an aggregate of 404,676 five-year warrants to purchase shares of Company common stock (the “Purchase Warrants”) at a purchase price of \$0.125 per share and exercise price of \$11.12 per share; and (iii) an aggregate of 323,907 five-year pre-paid warrants to purchase shares of Company common stock (the “Pre-Funded Warrants”) with exercise price of \$0.01 per share (collectively, the “Securities”). The aggregate purchase price for the Securities was \$7,550,585.

As contemplated by the Purchase Agreement, on the Closing Date, the Company entered into a registration rights agreement with Esousa (the “Registration Rights Agreement”). The Registration Rights Agreement (i) required the Company to file within 21 days of the Closing Date (the “Filing Deadline”) a registration statement for the Securities purchased by Esousa in the Private Placement and (ii) granted certain piggyback rights thereunder. The Registration Rights Agreement requires the Company to use its commercially reasonable efforts to cause the Registration Statement to become effective as promptly thereafter as practicable but in any event not later than 90 days after the Closing Date (the “Effectiveness Deadline”). If the Company fails to meet the Filing Deadline or the Effectiveness Deadline, subject to certain terms provided for in the Registration Rights Agreement, the Company will be required to pay liquidated damages to Esousa described below under the caption “Effectiveness of Registration Statement Condition.” The Registration Rights Agreement provides for customary indemnification and contribution provisions. In the event Esousa no longer holds “Registrable Securities,” as defined in the Registration Rights Agreements or when the Registrable Securities may be resold by Esousa pursuant to Rule 144 promulgated under the 1933 Act, the Company may not be obligated to cause the declaration of effectiveness of the Registration Statement by the SEC

Pursuant to the Purchase Agreement and the Registration Rights Agreement, we are registering 1,079,136 shares of our common stock under the Securities Act, which includes the shares of common stock of the Company issuable upon exercise of the Purchase Warrants (the “Purchase Warrant Shares”) and the Pre-Funded Warrants (the “Pre-Funded Warrant Shares”). All 1,079,136 shares of common stock are being offered pursuant to this prospectus.

### Purchase of Units

Pursuant to the Purchase Agreement, the Company sold to Investor certain units (the “Units”), with each Unit consisting of one Purchase Share and three-fifths ( $3/5$ ) of a Purchase Warrant, where each whole Purchase Warrant entitles the holder to purchase one share of common stock of the Company.

### **Purchase Price**

The total purchase price for the Units was \$7,550,585, which consisted of (i) \$0.125 per Purchase Warrant, and (ii) \$11.12 per Purchase Share. The purchase price for the Purchase Shares was calculated using the consolidated closing bid price for the Company’s common stock, as reported by the Nasdaq Capital Market on the Closing Date.

## **Maximum Percentage**

The Purchase Agreement provides that the Company shall not issue any shares of common stock thereunder if such issuance, when aggregated with all other shares of common stock of the Company beneficially owned by Investor and its affiliates, would result in a beneficial ownership (as calculated pursuant to Section 13(d) of the Exchange Act of 1934, as amended (the “Exchange Act”) and Rule 13d-3 promulgated thereunder) by Investor and its affiliates of more than 9.99% of the then issued and outstanding shares of common stock of the Company (the “Maximum Percentage”).

To the extent that an issuance would cause Investor’s beneficial ownership to exceed the Maximum Percentage, the Purchase Agreement provides that the Company shall, in lieu of issuing such shares, issue warrants to Investor to purchase, at a purchase price of \$0.01 per share, the number of shares of common stock that would have caused Investor’s beneficial ownership to exceed the Maximum Percentage (the “Pre-Funded Warrants”).

Pursuant to these terms and the purchase price as described above, the Company sold to Investor an aggregate of (i) 350,553 Purchase Shares; (ii) 404,676 Purchase Warrants; and (iii) 323,907 Pre-Funded Warrants.

## **Terms of the Warrants**

### *Purchase Warrants*

On December 29, 2017 the Company issued to Investor an aggregate of 404,676 Purchase Warrants at a purchase price of \$0.125 per share and an exercise price of \$11.12 per share. The Purchase Warrants may be exercised at any time through 5:30 P.M., prevailing New York time on December 29, 2022 (the “Expiration Date”). Any portion of the Purchase Warrants not exercised prior to the Expiration Date will be terminated.

The Investor may exercise the Purchase Warrants by delivering to the Company (i) an exercise notice, appropriately completed and duly signed, and (ii) payment of the exercise price in immediately available funds (which may take the form of a “cashless exercise” if so indicated in the exercise notice). The Investor may not exercise or exchange the Purchase Warrants to the extent (but only to the extent) the Investor or any of its affiliates would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act) a number of shares of the Company’s common stock which would exceed 9.99% of the total number of shares issued and outstanding.



*Pre-funded Warrants*

On December 29, 2017 the Company issued to Investor an aggregate of 323,907 Pre-funded Warrants at an exercise price of \$0.01 per share. The Pre-funded Warrants may be exercised at any time through the Expiration Date. Any portion of the Pre-funded Warrants not exercised prior to the Expiration Date will be terminated.

The Investor may exercise the Pre-funded Warrants by delivering to the Company (i) an exercise notice, appropriately completed and duly signed, and (ii) payment of the exercise price in immediately available funds (which may take the form of a “cashless exercise” if so indicated in the exercise notice). The Investor may not exercise or exchange the Pre-funded Warrants to the extent (but only to the extent) the Investor or any of its affiliates would beneficially own (as determined in accordance with Section 13(d) of the Exchange Act) a number of shares of the Company’s common stock which would exceed 9.99% of the total number of shares issued and outstanding.

**Representations**

The Investor represented to the Company in the Purchase Agreement that it is an institutional “accredited investor” as that term is defined in Rule 501(a) of Regulation D of the Securities Act. The Investor further represented that neither it nor any of its agents, representatives and affiliates engaged prior to the Closing Date in any direct or indirect short-selling or hedging of the Company’s common stock.

### **Issuance of Additional Securities**

Pursuant to the Purchase Agreement, the Company agreed that for the period commencing on the date thereof and ending on the date immediately following the 30th day after the satisfaction of the requirement that a registration statement registering the Securities be declared effective (as set forth on the Buyer Schedule thereto) (the “Restricted Period”), the Company shall not directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any “equity security” (as that term is defined under Rule 405 promulgated under the Securities Act), any securities that are convertible into common stock of the Company, any preferred stock or any purchase rights for equity securities of the Company.

Notwithstanding the foregoing, the Company may issue during the Restricted Period the following: (i) issuances pursuant to acquisitions, joint ventures, license arrangements, leasing arrangements and similar transaction arrangements; (ii) equity awards or other compensatory issuances of the Company’s equity securities to the Company’s and its subsidiaries’ employees, independent contractors, consultants, officers and/or directors; or (iii) the exercise of preexisting rights under financing agreements, including issuances pursuant to prior equity lines and warrants or preferred shares currently outstanding, provided, however, that the Company shall not have modified the terms of any financing agreements or warrants to increase the number of securities that are existing or reduce the conversion or exercise price, as applicable, except as provided in such financing agreements or warrants.

The Company further agreed that, without prior consent of the Investor, until the earlier of (A) 6 months after the date on which the registration statement is declared effective or (B) the date on which the Investor has sold or disposed of all Securities, the Company will not issue any floating conversion rate or variable priced securities convertible into common stock of the Company.

### **Effectiveness of Registration Statement Condition**

A registration statement registering the Purchase Shares, the Purchase Warrant Shares, and the Pre-Funded Warrant Shares must be filed and declared effective by the SEC covering the sale by Investor (in accordance with the plan of distribution called for by the Registration Rights Agreement) of the common stock contemplated by, and in the amount of, the Required Registration Amount (as defined in the Registration Rights Agreement). If the registration statement is not declared effective within 90 days of the Closing Date, the Company will incur penalties of 1% of the aggregate purchase price of the Securities per month for each month, or partial month, that the SEC fails to declare the registration statement effective. Such penalties shall be payable in cash or in common stock of the Company and shall lapse upon the six-month anniversary of the Closing Date so long as the Investor’s common stock are eligible for sale, without restriction, under Rule 144.

## Events of Default

An “Event of Default” shall be deemed to have occurred under the Purchase Agreement when any of the following events occurs:

while any registration statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of such registration statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to the Investor for the sale of all of the securities required to be registered by the Registration Rights Agreement, and such lapse or unavailability continues for a period of 10 consecutive business days or for more than an aggregate of 30 business days in any 365-day period, which is not in connection with a post-effective amendment to any such registration statement or the filing of a new registration statement; provided, however, that in connection with any post-effective amendment to such registration statement or filing of a new registration statement that is required to be declared effective by the SEC, such lapse or unavailability may continue for a period of no more than 60 consecutive business days, which such period shall be extended for up to an additional 30 business days if the Company receives a comment letter from the SEC in connection therewith;

- the suspension of the common stock of the Company from trading for a period of 3 consecutive trading days;

13

the delisting of the common stock of the Company from the Nasdaq Capital Market, and such stock is not promptly thereafter trading on the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the OTC Bulletin Board or either of the OTCQB marketplace or the OTCQX marketplace of the OTC Markets Group;

the Company's breach of any representation or warranty (as of the dates made), covenant or other term or condition under the Purchase Agreement or the Registration Rights Agreement if such breach could reasonably be expected to have a Material Adverse Effect (as defined in the Purchase Agreement) and except only if such breach continues uncured for a period of at least 20 business days;

if the Company pursuant to or within the meaning of any bankruptcy law; (A) commences a voluntary case, (B) consents to the entry of an order for relief against it in an involuntary case, (C) consents to the appointment of a custodian of it or for all or substantially all of its and its subsidiaries' property, or (D) makes a general assignment for the benefit of its creditors;

unless dismissed within 90 days from each of the following events, a court of competent jurisdiction enters an order or decree under any bankruptcy law that (A) is for relief against the Company in an involuntary case, (B) appoints a custodian of the Company or for all or substantially all of its and its subsidiaries' property, or (C) orders the liquidation of the Company; or

the Company ceases for more than 3 consecutive business days to be eligible, through its transfer agent, to issue and transfer shares of Common Stock electronically to third parties via the DTC FAST Program of the DWAC system of the Depository Trust Company.

## **Restrictive Legends**

The Securities issued under the Purchase Agreement will bear a restrictive legend until such time as the selling shareholder resells the Securities pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act.

## **USE OF PROCEEDS**

The selling stockholder will receive all of the proceeds from the sale of the shares offered for sale by it under this prospectus. We will not receive proceeds from the sale of the shares by the selling stockholder. We will, however,

Explanation of Responses:

receive the exercise price of the Purchase Warrants (with the exercise price of \$11.12 per share) and the Pre-Funded Warrants (with the exercise price of \$0.01 per share) held by the selling stockholder if and when exercised by the selling stockholder exercised in cash, which, if exercised in cash at the current applicable exercise price with respect to all of the Warrants, would result in gross proceeds to the Company of \$4,503,236.19.

#### SELLING Stockholder

The shares of common stock being offered by the selling stockholder are the Purchase Shares (as defined in the Unit Purchase Agreement) and those issuable to the selling stockholder upon exercise or exchange of the warrants. For additional information regarding the issuance of the common stock and the warrants, see “Private Placement of Common Stock and Warrants” above. We are registering the shares of common stock in order to permit the selling stockholder to offer the shares for resale from time to time. Except for the ownership of the Purchase Shares and the warrants issued pursuant to the Unit Purchase Agreement, the selling stockholder has not had any material relationship with us within the past three years.

The table below lists the selling stockholder and other information regarding the beneficial ownership (as determined under Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) of the shares of common stock held by each of the selling stockholder. The second column lists the number of shares of common stock beneficially owned by the selling stockholder, based on its respective ownership of the shares of common stock and warrants, as of March 6, 2018, assuming exercise or exchange of the warrants held by such selling stockholder on that date but taking account of any limitations on conversion and exercise or exchange set forth therein.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholder and does not take into account any limitations on exercise or exchange of the warrants set forth therein.

In accordance with the terms of a registration rights agreement with the holders of the warrants issued pursuant to the Unit Purchase Agreement, this prospectus generally covers the resale of the 100% of the Purchase Shares and the initial number of shares issued and issuable pursuant to the warrants (or the number of shares so issued and issuable as of the filing of the registration statement to which this prospectus relates, if more). This prospectus also or otherwise covers such other shares of common stock issued or issuable pursuant to the warrants as more fully set forth in this prospectus. Because the exercise price of the warrants may be adjusted for recapitalizations, stock splits, reverse stock splits and the like as set forth in the warrants, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling stockholder pursuant to this prospectus.

Under the terms of the warrants, the selling stockholder may not exercise or exchange the warrants to the extent (but only to the extent) such selling stockholder or any of its affiliates would beneficially own a number of shares of our common stock which would exceed 9.99%. The number of shares in the second column reflects these limitations. The selling stockholder may sell all, some or none of its shares in this offering. See “Plan of Distribution.”

<u>Name of Selling Stockholder</u>	<u>Number of Shares of Common Stock Owned Prior to Offering</u>	<u>Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus</u>	<u>Number of Shares of Common Stock Owned After Offering</u>
Esousa Holdings LLC <sup>(1)</sup>	-	1,079,136	-

(1) Rachel Glicksman has voting and investment control over the shares held by the selling stockholder.

#### Plan of Distribution

We are registering the Purchase Shares and the shares of common stock issuable to the selling stockholder upon exercise or exchange of the warrants to permit the resale of these shares of common stock by the holders of the common stock and warrants from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholder of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholder may sell all or a portion of the shares of common stock held by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholder will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;

- in the over-the-counter market;

- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;

- through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

- an exchange distribution in accordance with the rules of the applicable exchange;

- privately negotiated transactions;

- short sales made after the date the Registration Statement is declared effective by the SEC;

broker-dealers may agree with a selling securityholder to sell a specified number of such shares at a stipulated price per share;

- a combination of any such methods of sale; and

- any other method permitted pursuant to applicable law.

The selling stockholder may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling stockholder may transfer the shares of common stock by other means not described in this prospectus. If the selling stockholder effects such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholder or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). The selling stockholder may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholder may pledge or grant a security interest in some or all of warrants or shares of common stock owned by it and, if the selling stockholder defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholder also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling



beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling stockholder and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholder and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that the selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholder and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholder and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$42,230.88 in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholder against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling stockholder will be entitled to contribution. We may be indemnified by the selling stockholder against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

## **DESCRIPTION OF SECURITIES TO BE REGISTERED**

*The following information describes our common stock, as well as provisions of our certificate of incorporation and bylaws. This description is only a summary. You should also refer to our certificate of incorporation and bylaws, both as filed with the Commission as exhibits to our registration statement, of which this prospectus forms a part.*

### ***Common Stock***

We are authorized to issue up to 100,000,000 shares of common stock, par value \$0.0001 per share. As of March 6, 2018, approximately 3,862,352 shares of common stock were outstanding. All outstanding shares of our common stock are fully paid and non-assessable.

Each holder of our common stock is entitled to a pro rata share of cash distributions made to our stockholders, including dividend payments. The holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors from funds legally available therefore. Cash dividends will be paid at the sole discretion of our board of directors.

The holders of our common stock are entitled to one vote for each share of record on all matters to be voted on by our stockholders. There is no cumulative voting with respect to the election of our directors or any other matter. Therefore, the holders of more than 50% of the shares of our common stock voting for the election of our directors can elect all of our directors.

In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to share ratably in all assets remaining available for distribution to them after payment of our liabilities and after provision has been made for each class of stock, if any, having any preference in relation to our common stock.

Holders of our common stock have no conversion, preemptive or other subscription rights, and there are no redemption provisions applicable to our common stock.

### **Summary of Certain Provisions of Certificate of Incorporation and Bylaws**

Our certificate of incorporation and bylaws, as applicable, among other things, (1) provide our board with the ability to alter the bylaws without stockholder approval, and (2) provide that vacancies on our board of directors may be filled by a majority of directors in office. These provisions, while designed to reduce vulnerability to an unsolicited acquisition proposal, and to discourage certain tactics used in proxy fights, may negatively impact a third-party's decision to acquire us even if it would be beneficial to our stockholders.

### **Anti-Takeover Effects of Delaware Law and Certificate of Incorporation and Bylaws**

We are subject to the Delaware anti-takeover laws regulating corporate takeovers, including Section 203 of the Delaware General Corporation Law (“DGCL”). These anti-takeover laws prevent Delaware corporations from engaging in a merger or sale of more than 10% of its assets with any stockholder, including all affiliates and associates of the stockholder, who owns 15% or more of the corporation’s outstanding voting stock, for three years following the date that the stockholder acquired 15% or more of the corporation’s assets unless:

the board of directors approved the transaction in which the stockholder acquired 15% or more of the corporation’s assets;

after the transaction in which the stockholder acquired 15% or more of the corporation’s assets, the stockholder owned at least 85% of the corporation’s outstanding voting stock, excluding shares owned by directors, officers and employee stock plans in which employee participants do not have the right to determine confidentially whether shares held under the plan will be tendered in a tender or exchange offer; or

on or after this date, the merger or sale is approved by the board of directors and the holders of at least two-thirds (2/3) of the outstanding voting stock that is not owned by the stockholder.

A Delaware corporation may opt out of the Delaware anti-takeover laws if its certificate of incorporation or bylaws so provides. We have not opted out of the provisions of the anti-takeover laws. As such, these laws could prohibit or delay mergers or other takeover or change of control of us and may discourage attempts by other companies to acquire us even if it would be beneficial to stockholders.

### **Transfer Agent and Registrar**

We have appointed Continental Stock Transfer & Trust Company, 17 Battery Place, 8<sup>th</sup> Floor, New York, NY 10004 as our transfer agent and registrar.

### **Listing**

Our common stock is listed on the NASDAQ Capital Market under the symbol "NETE".

## **LEGAL MATTERS**

The validity of the issuance of the common stock offered by this prospectus will be passed upon for us by Snell & Wilmer L.L.P., Los Angeles, California.

## **EXPERTS**

Daszkal Bolton LLP, independent registered public accounting firm, has audited our financial statements as of, and for the years ended, December 31, 2016 and 2015, included in our Annual Reports on Form 10-K/A for the years ended December 31, 2016 and December 31, 2015, as set forth in their reports, which are incorporated by reference in this prospectus. Our financial statements are incorporated by reference in reliance on Daszkal Bolton LLP's reports, given on their authority as experts in accounting and auditing.

## **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We have also filed a registration statement on Form S-3, including exhibits, under the Securities Act with respect to the securities offered by this prospectus. This prospectus is part of the registration statement, but does not contain all of the information included in the registration statement or the exhibits. You may read and copy the registration statement and any other document that we file with the Commission at the Commission's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the Commission at 1-800-SEC-0330 for further information on the Public Reference Room. Our Commission filings are also available to the public on the internet at a website maintained by the Commission located at <http://www.sec.gov>.

## INFORMATION INCORPORATED BY REFERENCE

The Commission allows us to “incorporate by reference” information into this document. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this document, except for any information superseded by information that is included directly in this document or incorporated by reference subsequent to the date of this document.

This prospectus incorporates by reference the documents listed below and any future filings (including the filings after the date of the first registration statement which this prospectus is a part of and prior to effectiveness of such registration statement) that we make with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than current reports on Form 8-K furnished under Item 2.02 or Item 7.01 and exhibits filed on such form that are related to such items), until all the securities offered under this prospectus are sold or the offering is otherwise terminated.

The information incorporated by reference is an important part of this prospectus. Any statement in a document incorporated by reference into this prospectus will be deemed to be modified or superseded to the extent a statement contained in (1) this prospectus or (2) any other subsequently filed document that is incorporated by reference into this prospectus modifies or supersedes such statement

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, as filed with the Commission on March 31, 2017, and Annual Report on Form 10-K/A for the fiscal year ended December 31, 2016, as filed with the Commission on October 19, 2017;
- Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017, as filed with the Commission on May 15, 2017, June 30, 2017, as filed with the Commission on August 14, 2017, September 30, 2017, as filed with the Commission on November 14, 2017 and Quarterly Reports on Form 10-Q/A for the quarters ended March 31, 2017, as filed with the Commission on October 19, 2017, and June 30, 2017, as filed with the Commission on October 19, 2017;
- Our Current Reports on Form 8-K filed with the Commission on January 20, 2017, January 27, 2017, February 10, 2017, March 3, 2017, March 8, 2017, March 17, 2017, March 24, 2017, April 3, 2017 (only with respect to Item 9.01), April 28, 2017, May 15, 2017 (only with respect to Item 9.01), May 23, 2017, May 25, 2017, June 9, 2017, July 3, 2017, July 6, 2017, July 7, 2017, August 2, 2017, August 4, 2017, August 14, 2017 (only with respect to Item 9.01), August 21, 2017, September 1, 2017, September 29, 2017, October 4, 2017, October 20, 2017, November 14, 2017 (only with respect to Item 9.01), December 15, 2017, December 29, 2017, January 2, 2018, and March 6, 2018, and Current Report on Form 8-K/A, as filed with the Commission on March 22, 2017;
- Our Proxy Statement on Schedule 14A, as filed with the Commission on August 10, 2017; and
- The descriptions of our Common Stock contained in our Registration Statement on Form 8-A, filed with the Commission on September 28, 2010 and amended on October 2, 2012, and any other amendment or report filed for the purposes of updating such descriptions.

Documents incorporated by reference are available from the Commission as described above or from us without charge, excluding any exhibits to those documents unless the exhibit is specifically incorporated by reference as an exhibit in this document. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone at the following address:

Net Element, Inc.

3363 NE 163rd St., Suite 705

North Miami Beach, Florida 33160

(305) 507-8808

Attention: Chief Financial Officer

**NET ELEMENT, INC.**

1,079,136 Shares

Common Stock

March 6, 2018

20



**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses to be borne by the Registrant in connection with the issuance and distribution of the securities registered hereby. Other than the Commission registration fee, all of the amounts below are estimates.

Commission registration fee	\$ 730.88
Accounting fees and expenses	\$ 5,000.00
Legal fees and expenses	\$ 30,000.00
Financial printing and miscellaneous expenses	\$ 5,000.00
Transfer Agent fees	\$ 1,500.00
Total	\$ 42,230.88

**Item 15. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law (the “DGCL”) allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit.

Under Section 145 of the DGCL, we can indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the “Securities Act”). Our certificate of incorporation provides that, pursuant to the DGCL, our directors shall not be liable for monetary damages for breach of the directors’ fiduciary duty of care to us and our stockholders. This provision in the certificate of incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under the DGCL. In addition, each director will continue to be subject to liability for breach of the director’s duty of loyalty to us or our stockholders, for acts or omissions not in

good faith or involving intentional misconduct or knowing violations of the law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under the DGCL. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Section 174 of the DGCL provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of our board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

In addition, our directors and officers are covered under directors' and officers' liability insurance policies maintained by us, subject to the limits of the policies, insuring such persons against various liabilities.

II-1

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

**Item 16. Exhibits.**

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
<u>2.1</u>	<u>Agreement and Plan of Merger, dated as of June 12, 2012, by and between Cazador Acquisition Corporation Ltd. and Net Element, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on June 12, 2012)</u>
<u>2.2</u>	<u>Contribution Agreement, dated April 16, 2013, among Net Element International, Inc., Unified Payments, LLC, TOT Group, Inc., Oleg Firer, and Georgia Notes 18 LLC (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on April 17, 2013).</u>
<u>2.3</u>	<u>Term Sheet, dated May 20, 2013, among TOT Group, Inc., Net Element International, Inc. and Aptito.com, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on May 22, 2013)</u>
<u>2.4</u>	<u>Asset Purchase Agreement, dated June 18, 2013, between Aptito, LLC and Aptito.com, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on June 24, 2013)</u>
<u>2.5</u>	<u>Contribution Agreement, dated September 25, 2013, among T1T Lab, LLC, Net Element International, Inc. and T1T Group, LLC (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Commission on September 25, 2013)</u>
<u>2.6</u>	<u>Assignment of Membership Interest, dated February 11, 2014, among T1T Group, LLC, Net Element, Inc., and T1T LAB, LLC (incorporated by reference to Exhibit 2.7 to the Company's Annual Report on Form 10-K filed with the Commission on April 15, 2014)</u>
<u>2.7</u>	<u>Binding Offer Letter, dated March 16, 2015, among TOT Group Europe Ltd., Maglenta Enterprises Inc. and Champfremont Holding Ltd. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K/A filed with the Commission on March 20, 2015)</u>
<u>4.1</u>	<u>Specimen Common Stock Certificate of Net Element International, Inc. (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-4 filed by the Company with the Commission on August 31, 2012)</u>
<u>4.2</u>	

Warrant Certificate of Cazador Acquisition Corporation Ltd. (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form F-1 filed by the Company with the Commission on September 3, 2010)

4.3 Registration Rights Agreement by and between Cazador Acquisition Corporation Ltd., Cazador Sub Holdings Ltd. and Others (incorporated by reference to Exhibit 10.5 to the Registration Statement, as amended, on Form F-1/A filed by the Company with the Commission on October 6, 2010)

4.4 Warrant Agreement by and between Cazador Acquisition Corporation Ltd. and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 4.4 to the Registration Statement, as amended, on Form F-1/A filed by the Company with the Commission on October 6, 2010)

II-2

- 4.5 Secured Convertible Senior Promissory Note dated April 21, 2014 between the Company and Cayman Invest S.A. (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on April 22, 2014)
- 4.6 Form of Amended and Restated Restricted Options to Purchase Shares of Restricted Common Stock (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on October 7, 2015)
- 4.7 Form of Option to Kenges Rakishev to Purchase Shares of Restricted Common Stock (incorporated by reference to Exhibit 4.1 to Net Element's Current Report on Form 8-K filed with the Commission on January 22, 2016)
- 4.8 Registration Rights Agreement, dated as of July 6, 2016, between the Company and Esousa Holdings LLC (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on July 12, 2016)
- 4.9 Registration Rights Agreement, dated as of July 5, 2017, between the Company and Cobblestone Capital Partners LLC (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on July 7, 2017)
- 4.10 Registration Rights Agreement, dated as of December 29, 2017, between the Company and Esousa Holdings LLC (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on January 2, 2018)
- 4.11 Form of Warrant to Purchase Common Stock issued to Esousa Holdings LLC (incorporated by reference to Exhibit A-1 to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 2, 2018)
- 4.12 Form of Pre-Funded Warrant to Purchase Common Stock issued to Esousa Holdings LLC (incorporated by reference to Exhibit A-2 to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 2, 2018)
- 5.1\* Opinion of Snell & Wilmer L.L.P.
- 10.1 Unit Purchase Agreement, dated as of December 29, 2017, between the Company and Esousa Holdings, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 2, 2018)
- 23.1\* Consent of Independent Registered Public Accounting Firm (Daszkal Bolton LLP)
- 23.2\* Consent of Snell & Wilmer L.L.P. (included in Exhibit 5.1)
- 24.1 Power of Attorney (included on signature page) (previously filed)

\* Filed herewith.

II-3

**Item 17. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i), (ii), and (iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the Registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering



of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions set forth or described in Item 15 of this registration statement, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

II-4

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in Miami, Florida on March 6, 2018.

**NET ELEMENT, INC.**

By: /s/ Jonathan New

Name: Jonathan New

Title: Chief Financial Officer

**POWER OF ATTORNEY**

The officers and directors of Net Element, Inc. whose signatures appear below, hereby constitute and appoint Jonathan New and Oleg Firer, and each of them severally, their true and lawful attorney-in-fact and agent, with full power of substitution, with power to act alone, to sign and execute on behalf of the undersigned any and all amendments to this Registration Statement on Form S-3, including post-effective amendments and any Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act"), and each of the undersigned does hereby ratify and confirm all that said attorney-in-fact and agent, or his substitutes, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-3 has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Oleg Firer Oleg Firer	Chief Executive Officer and Director (Principal Executive Officer)	March 6, 2018
/s/ Jonathan New Jonathan New	Chief Financial Officer (Principal Financial Officer; Principal Accounting Officer)	March 6, 2018
*	Director	March 6, 2018

Explanation of Responses:

Kenges Rakishev

\* Director March 6, 2018

Howard Ash

\* Director March 6, 2018

James Caan

\* Director March 6, 2018

Drew Freeman

/s/ Jonathan New

Jonathan New, as attorney-in-fact

March 6, 2018