



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102220; File No. SR-NYSEAMER-2024-61]

Self-Regulatory Organizations; NYSE American LLC; Order Granting Approval of a Proposed Rule Change to Amend Section 1003 of the NYSE American LLC Company Guide to Provide for the Suspension and Delisting of Any Company that: (i) Has Effected One or More Reverse Stock Splits Over the Prior Two-Year Period with a Cumulative Ratio of 200 Shares or More to One; or (ii) Has Effectuated a Reverse Stock Split and the Effectuation of such Reverse Stock Split Results in the Company’s Security Falling Below any of the Continued Listing Requirements of Section 1003

January 16, 2025.

I. Introduction

On October 16, 2024, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Section 1003 of the NYSE American LLC Company Guide (“Company Guide”) to provide for the suspension and delisting of any listed company that (i) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) has effectuated a reverse stock split and the effectuation of such reverse stock split results in the company’s security falling below any of the continued listing requirements of Section 1003 of the Company Guide. The proposed rule change was published for comment in the Federal Register on November 4, 2024.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101457 (Oct. 29, 2024), 89 FR 87661 (“Notice”). Comments on the Notice are available at: <https://www.sec.gov/comments/sr-nyseamer-2024-61/srnyseamer202461.htm>.

On December 16, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Section 1003(f)(v) of the Company Guide (Low Selling Price Issues) currently provides that in the case of a listed common stock selling for a substantial period of time at a low price per share, the Exchange may suspend and delist a company if such company shall fail to effect a reverse split of such shares within a reasonable time after being notified that the Exchange deems such action to be appropriate under all the circumstances. In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors, including market conditions in general, the number of shares outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the issuer, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues.⁶

The Exchange proposes to amend Section 1003(f) of the Company Guide (Other Events) to add two circumstances relating to effectuating reverse stock splits under which the Exchange would immediately suspend and delist a listed company. First, proposed Section 1003(f)(vi) of the Company Guide would provide that if a listed issuer has effectuated one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one,

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 101929, 89 FR 104253 (Dec. 20, 2024) (designating February 2, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ See Section 1003(f)(v) of the Company Guide.

the Exchange would commence immediate suspension and delisting procedures in accordance with the procedures set out in Section 1010 of the Company Guide.⁷ In addition, proposed Section 1003(f)(vii) of the Company Guide would provide that if a listed issuer has effectuated a reverse stock split and the effectuation of such reverse stock split results in the company's security falling below any of the continued listing requirements of Section 1003 of the Company Guide,⁸ the Exchange would commence immediate suspension and delisting procedures in accordance with the procedures set out in Section 1010 of the Company Guide. In either case, the issuer would not be eligible to follow the procedures outlined in Section 1009 of the Company Guide.⁹

The Exchange states that many companies seek to address low selling price issues under Section 1003(f)(v) of the Company Guide by effectuating a reverse stock split.¹⁰ However, the Exchange has observed that some companies, typically those in financial distress or experiencing a prolonged operational downturn, engage in a pattern of repeated reverse stock splits.¹¹ The Exchange states that such behavior is often indicative of deep financial or operational distress within such companies rendering them inappropriate for trading on the Exchange for investor protection reasons.¹² The Exchange states that it has observed that the challenges facing such companies, generally, are not temporary and may be so severe that a company is not likely to

⁷ Part 12 of the Company Guide provides that companies may seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange.

⁸ Section 1003 of the Company Guide sets forth certain quantitative requirements for continued listing on the Exchange, including criteria relating to stockholders' equity, market capitalization, and number of shareholders. Section 1003 of the Company Guide also sets forth certain non-quantitative requirements for continued listing on the Exchange, such as maintaining an effective registration under the Act.

⁹ Section 1009 of the Company Guide sets forth specific procedures for listed companies that are identified as being below the continued listing criteria. In general, Section 1009 of the Company Guide provides that if the Exchange identifies a company as being below the Exchange's continued listing criteria, the Exchange will notify the company within 10 business days and provide the company with an opportunity to submit a plan to regain compliance with the continued listing standards within 18 months. If the company does not submit a plan within the specified deadline, or if the Exchange does not accept the plan, the Exchange will initiate delisting procedures. If the Exchange accepts the plan, the Exchange will review the company on a quarterly basis for compliance with the plan.

¹⁰ See Notice at 878661-62.

¹¹ See id. at 87662.

¹² See id.

remain compliant with Exchange listing standards after curing its low selling price by means of a reverse stock split.¹³ Accordingly, the Exchange states the proposal protects investors and the public interest by immediately commencing suspension and delisting procedures with respect to any listed company that (i) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) conducts a reverse stock split that causes the company to fall below any of the continued listing requirements of Section 1003 of the Company Guide.¹⁴ The Exchange states that the proposal enhances the Exchange's listing requirements and would limit the ability of listed companies with a history of having a low stock price to use reverse stock splits to remain qualified for listing.¹⁵

The Exchange also states that the proposal is consistent with the provisions of Section 1003(f)(v) of the Company Guide related to common stock selling for a substantial period of time at a low price,¹⁶ as well as with the Exchange's consistent policy that it would immediately suspend and delist a listed company if the company effects a reverse stock split to cure a low selling price issue under Section 1003(f)(v) of the Company Guide and the company would fall below another quantitative continued listing standard as a direct result of effecting that reverse stock split.¹⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposed rule change is

¹³ See id. The Exchange further states that the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons within a short period of time. See id.

¹⁴ See id.

¹⁵ See id.

¹⁶ See supra note 6 and accompanying text.

¹⁷ See id. at 87661.

¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act,¹⁹ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and with Section 6(b)(7) of the Act,²⁰ which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

The development and enforcement of meaningful listing standards²¹ for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²²

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78f(b)(7).

²¹ The Commission notes that this reference to “listing standards” is referring to both initial and continued listing standards.

²² See, e.g., Securities Exchange Act Release Nos. 101271 (Oct. 7, 2024), 89 FR 82652, 82653 n.23 and accompanying text (Oct. 11, 2024) (SR-NASDAQ-2024-029) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Modify the Application of Bid Price Compliance Periods); 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ-2020-001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below \$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ-2019-089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been

The Exchange's proposal would provide that the Exchange would immediately commence suspension and delisting procedures with respect to a listed company that effectuates a reverse stock split in certain circumstances. Specifically, proposed Sections 1003(f)(vi) and (vii) of the Company Guide would provide for the immediate suspension and delisting of any listed company that (i) has effectuated one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) has effectuated a reverse stock split and the effectuation of such reverse stock split results in the company's security falling below any of the continued listing requirements of Section 1003 of the Company Guide.

The Exchange's proposal is reasonably designed to enhance its continued listing standards, thereby protecting investors and the public interest. In particular, the proposal is reasonably designed to curtail the use of reverse stock splits to inappropriately delay delisting and thereby allow a company's security to remain listed on the Exchange for an extended period despite being inappropriate for trading on the Exchange and not being able to maintain compliance with the Exchange's listing standards. As discussed above, the Exchange states that engaging in a pattern of repeated reverse stock splits is often indicative of deep financial or operational distress that renders a company inappropriate for trading on the Exchange for investor protection reasons.²³ The Exchange can reasonably conclude from its experience that a listed company that has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one, or a listed company that effects a reverse stock split that results in the company being unable to maintain compliance with the continued listings requirements of Section 1003 of the Company Guide, indicates serious difficulties within such company that are likely to put continued downward pressure on the stock price, such that the company is less likely to maintain or regain compliance with the continued listing standards.

approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained.”).

²³ See Notice at 87662.

In this respect, the proposal is appropriately targeted to those listed companies' securities that are more likely to have serious recurrent issues in regaining and maintaining compliance with the Exchange's continued listing standards.

The Exchange's proposal is reasonably designed to further investor protection by limiting the ability of listed companies with a history of having a low stock price to use reverse stock splits to remain qualified for listing.²⁴ The Exchange states that it has observed that the challenges facing such companies generally are not temporary and may be so severe that a company is not likely to remain compliant with Exchange listing standards after curing its low selling price by means of a reverse stock split.²⁵ In addition, the Exchange states that the price concerns with such companies can be a leading indicator of other listing compliance concerns, and that these companies often become subject to delisting for other reasons within a short period of time.²⁶ Further, the continued listing of low-priced securities raises concerns that these securities may not have sufficient public float, investor base, and trading interest to promote fair and orderly markets and relatedly may have heightened susceptibility to manipulation. Given these concerns, the Exchange's proposal to immediately suspend and delist a company that effectuates a reverse stock split in the circumstances described above is appropriate and consistent with Section 6(b)(5) of the Act.

While the Commission recognizes that the Exchange delisting process is in part designed to allow listed companies experiencing temporary financial and/or business issues to regain compliance with continued listing standards, the proposal reasonably balances the intent of the delisting process with the need to prevent companies from taking advantage of the delisting process for an extended period of time despite being inappropriate for trading on the Exchange

²⁴ See id.

²⁵ See id.

²⁶ See id.

and not being able to comply with Exchange standards for continued listing, which is contrary to the goal of protecting investors and the public interest.

The proposed rule change is also consistent with Section 6(b)(7) of the Act³² in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered. A listed company whose securities are subject to immediate suspension and delisting under the proposal would still be able to seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange as set forth in Part 12 of the Company Guide. Accordingly, the proposal is appropriate in light of the need to protect investors and the public interest and the Exchange's process for review of a delisting determination will continue to provide a fair procedure for the review of delisting determinations in accordance with Section 6(b)(7) of the Act.

In sum, the Exchange's proposal appropriately identifies securities listed on its market that are more likely to have serious recurrent issues in regaining and maintaining compliance with the Exchange's continued listing standards, and proposes reasonable changes to shorten the time that such non-compliant securities can remain trading on the Exchange, thereby protecting investors and the public interest in accordance with Section 6(b)(5) of the Act,²⁷ while at the same time maintaining a fair procedure for affected companies to seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange in accordance with Section 6(b)(7) of the Act.²⁸ For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act.²⁹

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(7).

²⁹ The Commission received one comment letter on the proposal that was generally supportive. See Letter from Melody Brand, dated Dec. 16, 2024.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NYSEAMER-2024-61), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

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³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).