

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 20

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 60

Amendment No. (req. for Amendments *)

Filing by NYSE American LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|--|---|--|--|--|---|
| 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"/> |
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| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
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Rule

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| <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) |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
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| Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/> |
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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> |
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| Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposes to amend Section 1003 of the NYSE American LLC Company Guide to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing.

Contact Information

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 * John | Last Name * Carey |
| Title * Senior Director | |
| E-mail * john.carey@ice.com | |
| Telephone * (212) 656-5640 | Fax |

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE American LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

| | |
|-------------------------------------|---------------------------|
| Date 09/26/2024 | (Title *) |
| By David De Gregorio (Name *) | Associate General Counsel |

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

| | |
|-------------------|--|
| David De Gregorio | Digitally signed by David De Gregorio Date: 2024.09.26 11:40:44 -04'00' |
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NYSEAMER-2024-60 19b4.docx

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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SR-NYSEAMER-2024-60 Exhibit 1.doc

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 Advanced 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 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

Add Remove View

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

SR-NYSEAMER-2024-60 Exhibit 5.doc

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE American LLC (“NYSE American” or the “Exchange”) proposes to amend Section 1003 of the NYSE American LLC Company Guide (“Guide”) to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

John Carey
Senior Director
NYSE Group, Inc.
(212) 656-5640

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

- (a) Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

It has been the Exchange's experience that listed companies occasionally change the focus of their operations from the business they were engaged in at the time of initial listing to a business line that is completely unrelated or that was not material at the time of its original listing. The Exchange is concerned that, in such circumstances, investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, a wholesale change in business operations may give rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The Exchange notes that, in some circumstances, there has been significant downward price movement subsequent to such a change in business focus, which resulted in significant investor losses and an inability to meet exchange continued listing standards.³

In light of the foregoing, the Exchange proposes to amend Section 1003 ("Application of Policies") of the Guide to add proposed Section 1003(i) ("Change in Primary Business Focus") providing that the Exchange may in its sole discretion subject a listed company to immediate suspension and delisting if that listed company has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The proposed rule text provides that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange. The Exchange will undertake the continued listing analysis and potentially take delisting action under the proposed provision regardless of whether the listed company complies with its obligation to provide written notification to the Exchange. Listed companies who would meet the requirements to provide written notification to the Exchange under the new provision but do not do so would be considered non-compliant with the notification requirement. Any company that the Exchange determines to be unsuitable for continued listing under Section 1203 of the Company Guide due to a change in its primary business focus will be subject to immediate suspension and delisting pursuant to Section 1009(a)(ii) and will not be eligible for the Plan provisions set forth in Section 1009 of the Guide. The Exchange notes that any company delisted under proposed Section 1003(h) will be entitled to avail itself of the due process rights provided by the appeal process set forth in Chapter 12.

The opening paragraph of Section 1003 states that companies that are noncompliant may utilize the cure periods set forth in Section 1009. The Exchange proposes to qualify this provision to clarify that companies are not eligible for the cure provisions if the text of the applicable provision in Section 1003 provides otherwise. This proposed change is to

³ For example, Bit Brother, a company listed on Nasdaq, initially focused on selling tea products but ultimately changed its business line to crypto. After three reverse splits, one of which was quite large (1000:1), the company was still unable to regain sustained compliance with listing standards. The stock was delisted from Nasdaq in February 2024. See <https://www.wsj.com/finance/stocks/as-trading-frenzies-grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b> (Feb 23, 2024).

distinguish the treatment of companies under proposed Section 1003(h) which would subject such companies to immediate suspension and delisting without recourse to the cure provisions in Section 1009.

Upon becoming aware of such a change in the company's primary business focus, by notification from the listed company or otherwise, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change. The Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. In conducting this analysis, the Exchange would take into consideration other changes that may have occurred in connection with the change in the company's primary business focus, including in all cases, but not limited to, any changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange notes that the additional factors enumerated in the proposed rule text are consistent with areas that would be part of any initial listing review and are therefore a necessary part of any consideration of whether the company would have been suitable for initial listing in the form it took after its change of primary business focus. As discussed above, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change. In addition, continued listing quantitative standards will continue to apply to a company that is being reviewed under the new standard just as with any company already listed on the Exchange.

The Exchange acknowledges that seeking to suspend and delist a company's stock under this revised rule would be an extraordinary action. The Exchange therefore anticipates seldom relying on this new discretionary authority, and only after thorough analysis of all relevant facts and circumstances.

The Exchange also notes that the proposal rule change is substantially similar to a recent amendment adopted by the NYSE to Section 802.01D of the NYSE Listed Company Manual that was approved by the Commission as consistent with the Act.⁴

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a

⁴ See Securities Exchange Act Release No. 100585 (July 24, 2024) (SR-NYSE-2024-21).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is consistent with the protection of investors to amend Section 1003 to provide the Exchange with the discretion to immediately commence suspension and delisting procedures with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The Exchange notes that investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, the Exchange is concerned that a listed company may change its business operations to a line of business that would have given rise to a concern about the suitability for listing of the company had it been in engaged in that line of business at the time of its application for listing. The Exchange notes that taking delisting action in such cases would be discretionary and that the Exchange would undertake such action only after a careful analysis of the company's suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. In making these determinations, the Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. The Exchange believes that the proposed requirement that any listed company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange will enable the Exchange to more systematically identify circumstances where it is necessary to consider the appropriateness for continued listing of such companies.

Finally, the Exchange also notes that a company that is subject to suspension and delisting under this new provision would be entitled to a review of the delisting determination under the procedures set forth in Part 12 of the Company Guide. The Exchange believes that this will provide, consistent with Section 6(b)(7) of the Act, a fair procedure for review of a suspension and delisting of a company under the new provision.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that there are several listing venues and that any company that the Exchange deemed unsuitable for continued listing under the proposed rule could apply for listing on one or more other exchanges.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change would not adversely affect investors or the public interest, but instead would protect investors and the public interest by enabling the Exchange to delist a company that has changed its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing if the Exchange believes this change in operations makes the company unsuitable for continued listing.

The Exchange further believes that the proposed rule change would not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that there are several listing venues and that any company that the Exchange deemed unsuitable for continued listing under the proposed rule could

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

apply for listing on one or more other exchanges and, consequently, the Exchange believes that it will impose no burden on either intramarket or intermarket competition.

The Exchange also notes that the proposal rule change is substantially similar to a recent amendment adopted by the NYSE to Section 802.01D of the NYSE Listed Company Manual that was approved by the Commission as consistent with the Act.⁹

Accordingly, the Exchange believes that this rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.¹⁰

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

The proposal is based on a recent amendment to Section 802.01D of the NYSE Listed Company Manual.¹²

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

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Proposed Rule Text

⁹ See note 4 *supra*.

¹⁰ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (concerning 17 CFR 200 and 241).

¹¹ *Id.*

¹² See note 4 *supra*.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEAMER-2024-60)

[Date]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change amending Section 1003 of the NYSE American LLC Company Guide to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 26, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 1003 of the NYSE American LLC Company Guide (“Guide”) to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing. The proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

It has been the Exchange's experience that listed companies occasionally change the focus of their operations from the business they were engaged in at the time of initial listing to a business line that is completely unrelated or that was not material at the time of its original listing. The Exchange is concerned that, in such circumstances, investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, a wholesale change in business operations may give rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The Exchange notes that, in some circumstances, there has been significant downward price movement subsequent to such a change in business focus, which resulted in significant investor

losses and an inability to meet exchange continued listing standards.⁴

In light of the foregoing, the Exchange proposes to amend Section 1003 (“Application of Policies”) of the Guide to add proposed Section 1003(i) (“Change in Primary Business Focus”) providing that the Exchange may in its sole discretion subject a listed company to immediate suspension and delisting if that listed company has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The proposed rule text provides that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange. The Exchange will undertake the continued listing analysis and potentially take delisting action under the proposed provision regardless of whether the listed company complies with its obligation to provide written notification to the Exchange. Listed companies who would meet the requirements to provide written notification to the Exchange under the new provision but do not do so would be considered non-compliant with the notification requirement. Any company that the Exchange determines to be unsuitable for continued listing under Section 1203 of the Company Guide due to a change in its primary business focus will be subject to immediate suspension and delisting pursuant to Section 1009(a)(ii) and will not be eligible for the Plan provisions set forth in Section 1009 of the Guide. The Exchange notes that any company delisted under proposed Section 1003(h) will be entitled to avail itself of the due process rights provided by the appeal process set forth in Chapter 12.

⁴ For example, Bit Brother, a company listed on Nasdaq, initially focused on selling tea products but ultimately changed its business line to crypto. After three reverse splits, one of which was quite large (1000:1), the company was still unable to regain sustained compliance with listing standards. The stock was delisted from Nasdaq in February 2024. See <https://www.wsj.com/finance/stocks/as-trading-frenzies-grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b> (Feb 23, 2024).

The opening paragraph of Section 1003 states that companies that are noncompliant may utilize the cure periods set forth in Section 1009. The Exchange proposes to qualify this provision to clarify that companies are not eligible for the cure provisions if the text of the applicable provision in Section 1003 provides otherwise. This proposed change is to distinguish the treatment of companies under proposed Section 1003(h) which would subject such companies to immediate suspension and delisting without recourse to the cure provisions in Section 1009.

Upon becoming aware of such a change in the company's primary business focus, by notification from the listed company or otherwise, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change. The Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. In conducting this analysis, the Exchange would take into consideration other changes that may have occurred in connection with the change in the company's primary business focus, including in all cases, but not limited to, any changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange notes that the additional factors enumerated in the proposed rule text are consistent with areas that would be part of any initial listing review and are therefore a necessary part of any consideration of whether the company would have been suitable for initial listing in the form it took after its change of primary business focus. As discussed above, the Exchange's Staff would conduct a thorough assessment of the company's suitability for continued listing in light of such change.

In addition, continued listing quantitative standards will continue to apply to a company that is being reviewed under the new standard just as with any company already listed on the Exchange.

The Exchange acknowledges that seeking to suspend and delist a company's stock under this revised rule would be an extraordinary action. The Exchange therefore anticipates seldom relying on this new discretionary authority, and only after thorough analysis of all relevant facts and circumstances.

The Exchange also notes that the proposal rule change is substantially similar to a recent amendment adopted by the NYSE to Section 802.01D of the NYSE Listed Company Manual that was approved by the Commission as consistent with the Act.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is consistent with the protection of investors to amend Section 1003 to provide the Exchange with the discretion to immediately commence suspension and delisting procedures with respect to a listed company that has changed its primary business focus

⁵ See Securities Exchange Act Release No. 100585 (July 24, 2024) (SR-NYSE-2024-21).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The Exchange notes that investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, the Exchange is concerned that a listed company may change its business operations to a line of business that would have given rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The Exchange notes that taking delisting action in such cases would be discretionary and that the Exchange would undertake such action only after a careful analysis of the company's suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. In making these determinations, the Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. The Exchange believes that the proposed requirement that any listed company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange will enable the Exchange to more systematically identify circumstances where it is necessary to consider the appropriateness for continued listing of such companies.

Finally, the Exchange also notes that a company that is subject to suspension and delisting under this new provision would be entitled to a review of the delisting determination under the procedures set forth in Part 12 of the Company Guide. The Exchange believes that this will provide, consistent with Section 6(b)(7) of the Act, a fair procedure for review of a suspension and delisting of a company under the new provision.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that there are several listing venues and that any company that the Exchange deemed unsuitable for continued listing under the proposed rule could apply for listing on one or more other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹² of the Act to determine whether the proposed rule change 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-60 on the subject line.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

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

All submissions should refer to file number SR-NYSEAMER-2024-60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-60 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

¹³ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

EXHIBIT 5

Added text underlined;
Deleted text in [brackets].

NYSE American LLC Company Guide

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Sec. 1003. APPLICATION OF POLICIES

The Exchange has adopted certain standards, outlined below, under which it will normally give consideration to suspending dealings in, or removing, a security from listing or unlisted trading. When an issuer falls below any of the continued listing standards, the Exchange will review the appropriateness of continued listing. The Exchange may give consideration to any action that an issuer proposes to take that would enable it to comply with the continued listing standards. The specific procedures and timelines regarding such proposals are set forth in Section 1009 unless otherwise provided below. However, the standards set forth below in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances in each case, suspend dealings in, or remove, a security from listing or unlisted trading when in its opinion such security is unsuitable for continued trading on the Exchange. Such action will be taken regardless of whether the issuer meets or fails to meet any or all of the standards discussed below.

* * * * *

(h) *Noncompliance with Section 811 (Erroneously Awarded Compensation).*

* * * * *

(i) *Change in Primary Business Focus*

The Exchange will give consideration to the delisting of a company that has changed its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. Any company that undertakes such a change in its primary business focus must promptly provide notice of such change in writing to the Exchange. The Exchange's assessment of the company's suitability for continued listing in light of such change will also take into consideration other changes that may have occurred in connection with the change in the company's primary business focus, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange will focus its analysis of the company's suitability for continued listing on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. Any company that the Exchange determines to be

unsuitable for continued listing due to a change in its primary business focus will be subject to immediate suspension and delisting pursuant to Section 1009(a)(ii) and will not be eligible for the Plan provisions set forth in Section 1009.

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