

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101619; File No. SR-NYSEAMER-2024-67)

November 14, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change 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

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

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

The Exchange proposes to amend 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. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

---

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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.<sup>4</sup>

---

<sup>4</sup> 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->

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. If the Exchange determines that a listed company is unsuitable for continued listing due to a change in its primary business focus, the Exchange will commence suspension and delisting procedures immediately in accordance with the procedures set out in Section 1010.<sup>5</sup> A listed company is not eligible to follow the procedures outlined in Section 1009 with respect to proposed Section 1003(h). 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

---

[grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b](#) (Feb 23, 2024).

<sup>5</sup> Section 1010(b) states that whenever the Exchange determines, in accordance with Section 1009 or otherwise, that a class of securities should be removed from listing (or unlisted trading) for reasons other than the reasons specified in 1010(a), it will follow the procedures contained in Part 12.

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.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> 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 to a new area of business that it was not engaged in at the time of its original listing or which was

---

<sup>6</sup> See Securities Exchange Act Release No. 100585 (July 24, 2024) (SR-NYSE-2024-21).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

---

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2024-67 on the subject line.

##### Paper Comments:

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

All submissions should refer to file number SR-NYSEAMER-2024-67. 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-2024-67 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.<sup>11</sup>

**Vanessa A. Countryman,**  
*Secretary.*

---

<sup>11</sup> 17 CFR 200.30-3(a)(12).