

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98013; File No. SR-NYSEAMER-2023-27]

Self-Regulatory Organizations; NYSE American LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 915 (Criteria for Underlying Securities) To Accelerate the Listing of Options on Certain IPOs

July 27, 2023.

I. Introduction

On April 21, 2023, 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 NYSE American Rule 915 (Criteria for Underlying Securities) to reduce the time to market for the listing and trading of options on certain covered securities following their initial public offering (“IPO”). The proposed rule change was published for comment in the **Federal Register** on May 1, 2023. ³ One comment letter was received on the proposed rule change. ⁴

On June 13, 2023, pursuant to Section 19(b)(2) of the Act, ⁵ 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. ⁶ This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to modify Commentary .01(4)(a) of NYSE American Rule 915 to reduce the time for it to begin listing and trading options on certain covered securities following

their IPO. ⁷ NYSE American Rule 915 establishes requirements that underlying securities must meet in order for the Exchange to list and trade option contracts on them. Commentary .01 of that rule sets forth certain guidelines for the Exchange to consider in evaluating potential underlying securities.

One such guideline is a minimum market price per share that an underlying security must trade at before the Exchange can list options on it. ⁸ Specifically, Commentary .01(4)(a) to NYSE American Rule 915 requires the market price per share of an underlying covered security to have been at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on it (“three-day lookback period”). ⁹ Under the current rule, if an IPO occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. An option on the security would then be eligible for trading on the Exchange on Friday (*i.e.*, within four business days following the IPO inclusive of the day the listing certificate is submitted to OCC).

The Exchange proposes to waive the three-day lookback period in Commentary .01(4)(a) for certain covered securities following their IPO and accelerate the listing of options on such securities by up to two days. ¹⁰ As proposed, the Exchange would permit options to be listed and traded on a new IPO with a market capitalization of at least \$3 billion based upon its offering price starting on or after the second business day following the covered security’s IPO day (*i.e.*, not inclusive of

the day of the IPO). ¹¹ For example, under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion (based upon its offering price) occurs on a Monday, the Exchange could submit a listing certificate to OCC (to allow it to list and trade options on the IPO security) on Tuesday if all of the requirements for options listing are satisfied. Options on the IPO security could then list and begin trading on the Exchange on Wednesday (*i.e.*, starting on or after the second business day following the IPO day, not inclusive of the IPO day). In this way, the proposal could accelerate the listing and trading of options on IPO securities by up to two days.

III. Discussion and Commission’s Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. ¹² Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, ¹³ which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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.

As discussed above, the Exchange proposes to reduce the time to market for the listing and trading of options on underlying covered securities following their IPO if they have a market capitalization of at least \$3 billion based upon the offering price. By waiving the three-day lookback period for such covered securities in Commentary .01(4)(a), the proposed rule change could reduce the time to market of options on such securities by up to two days, as options on such securities

⁷ See 15 U.S.C. 77r(b)(1)(A) (defining “covered security”).

⁸ NYSE American Rule 915(a) requires that, for underlying securities to be eligible for options listing, such securities must be duly registered and be an “NMS stock,” as defined in Rule 600 of Regulation NMS under the Act, and be characterized by having a substantial number of outstanding shares which are widely held and actively traded. See NYSE American Rules 915(a)(1) and (2).

⁹ The Exchange states that the Options Listing Procedures Plan (“OLPP”) requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3, available at: https://incuocblobdev.blob.core.windows.net/media/theocc/media/clearing-services/services/options_listing_procedures_plan.pdf.

¹⁰ See Notice, *supra* note 3, 88 FR at 26635.

¹¹ See proposed Commentary .01(4)(a)(ii) to NYSE American Rule 915. The Exchange also proposes a non-substantive change to number the existing and proposed criteria for covered securities as (i) and (ii) of paragraph (4)(a). See proposed Commentary .01(4)(a)(i) and (ii) to NYSE American Rule 915.

¹² In approving this proposed rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97374 (Apr. 25, 2023), 88 FR 26634 (“Notice”).

⁴ See Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission (May 16, 2023), available at <https://www.sec.gov/comments/sr-nyseamer-2023-27/srnyseamer202327.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 97717, 88 FR 39895 (June 20, 2023).

would be permitted to be listed and traded starting on or after the second business day following the IPO (not including the day of the IPO) once all listing criteria are satisfied.

The proposed rule change would only waive the three-day lookback period for covered securities following their IPO if they have a substantial market capitalization of at least \$3 billion based upon their IPO offering price. According to the Exchange, based upon data from 2017 to present, all underlying securities with an IPO market capitalization of \$3 billion would have also met the \$3.00 market price per share three-day lookback period requirement.¹⁴

The Commission believes the proposed waiver of the three-day lookback period requirement is appropriate for underlying covered securities that have a market capitalization of at least \$3 billion based on the IPO offering price because those securities would likely satisfy the lookback requirement, in which case the minimum \$3.00 price test would be met. Further, the proposed market capitalization requirement of \$3 billion based on the IPO offering price would ensure an objective qualification process for the waiver that would prevent market participants from being able to influence whether an IPO security qualifies for the waiver through trading in the security, which could be a concern if the threshold price were based on the market price of the shares following the IPO. In accelerating the time to market for options on these types of large, and likely high profile IPOs, the proposal does not materially change the listing process for options, nor does it propose to change any other listing criteria.

In addition, the Exchange represents that trading in IPO securities is subject to surveillances administered by the Exchange and cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange that are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁵ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO securities.¹⁶ Vigilant surveillance can help deter and detect violations of Exchange rules and

the federal securities rules and regulations, and in so doing can help prevent fraudulent and manipulative acts and practices, and, in general, protect investors and the public interest.¹⁷

The Commission received one comment letter that recommended approval of the proposed rule change. The commenter asserted that the proposed rule change would "benefit both investors and the market by allowing for increased efficiency in portfolio and risk management while continuing to provide for investor protection."¹⁸

The Commission finds that the proposal to accelerate the listing and trading of options on certain covered securities following their IPO by up to two days if they have a market capitalization of at least \$3 billion based upon their IPO offering price, without modifying any other aspect of the options listing process, should facilitate transactions in securities. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act.¹⁹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NYSEAMER-2023-27), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98011; File No. SR-CboeEDGX-2023-050]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update its Fees Schedule

July 27, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 26, 2023, Cboe EDGX Exchange, Inc.

("Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.³ Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to EDGX Options Top, (ii) adopt a credit towards the monthly Distribution fees for EDGX Options Top, (iii) modify the EDGX Options Top

³ The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CboeEDGX-2023-017). On March 3, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-018. On March 10, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-021. On March 16, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-022. On May 15, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-037. On July 14, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-047. On July 26, 2023, the Exchange withdrew that filing and submitted this proposal.

¹⁴ See Notice, *supra* note 3, 88 FR at 26635.

¹⁵ See *id.* According to the Exchange, FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See *id.* at 26635, n.9.

¹⁶ See *id.* at 26635.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See *supra* note 4, at 2.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.