

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82737; File No. SR-NYSEAMER-2018-04)

February 16, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Listing Standard for Warrants in Section 105 of the NYSE American Company Guide

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2018, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 its listing standard for warrants as set forth in Section 105 of the NYSE American Company Guide (the “Company Guide”) to provide that any reduction in the exercise price of a listed warrant must be widely publicized and must continue in effect for at least 20 business days<sup>3</sup> (or such longer period as may be required under the tender offer rules of the Securities and Exchange Commission (“SEC” or “Commission”)) and otherwise comply with any other applicable tender offer regulatory provisions under the federal securities laws, including Section 13(e)<sup>4</sup> of the Act and Rule 13e-4<sup>5</sup> under the Act. The proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “business day” is used as defined in Rule 14d-1(g)(3) under the Act (17 CFR 240.14d-1(g)(3)).

<sup>4</sup> 15 U.S.C. 78m(e).

<sup>5</sup> 17 CFR 240.13e-4.

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

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

The Exchange proposes to amend its listing standard for warrants as set forth in Section 105 of the Company Guide to provide that any reduction in the exercise price of a listed warrant must be widely publicized and must continue in effect for at least 20 business days (or such longer period as may be required under the tender offer rules of the Securities and Exchange Commission ("SEC" or "Commission")) and otherwise comply with any other applicable tender offer regulatory provisions under the federal securities laws, including Section 13(e) of the Act and Rule 13e-4 under the Act.

Section 105 currently provides that the issuer of a listed warrant may reduce the exercise price of such warrant provided that in doing so it establishes a minimum period of ten business days within which such price reduction will be in effect.<sup>6</sup> The Exchange now proposes to amend this provision so that it will be consistent with the tender offer regulatory provisions applicable

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<sup>6</sup> Section 105 in its current form was approved in Securities Exchange Act Release No. 22777 (January 8, 1986); 51 FR 2613 (January 17, 1986).

under the federal securities laws and SEC rules.<sup>7</sup>

A reduction in the exercise price of publicly-traded warrants for a limited time period is deemed to be a tender offer by the SEC staff and is therefore subject to the requirements of the SEC's tender offer rules as set forth in Regulation 14E under the Act.<sup>8</sup> SEC Rule 14e-1(a)<sup>9</sup> requires that any tender offer subject to Regulation 14E be held open for at least 20 business days. SEC Rule 14e-1(b)<sup>10</sup> provides for certain circumstances in which a tender offer period must be extended beyond that initial 20 business day period. Rule 14e-1(c)<sup>11</sup> under the Act requires securityholders to be paid promptly after tendering their securities into a tender offer. In addition, all tender offers for listed warrants will be subject to Section 13(e) of the Act, Rule 13e-4 under the Act, Section 14(e)<sup>12</sup> of the Act, and Regulation 14E under the Act.

The Exchange proposes to require the issuer of any warrant which gives the issuer the right, at its discretion, to reduce the exercise price of the warrant for periods of time , or from time to time, to undertake to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules). In addition to ensuring compliance with applicable laws and regulations, the Exchange believes that the proposed 20 business day minimum notice requirement would ensure that warrant holders have a reasonable amount of time to consider the advisability of exercising

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<sup>7</sup> The proposed amendment will conform the rule to changes recently adopted by the NYSE in its own warrant listing standard. See Securities Exchange Act Release No. 82566 (SR-NYSE-2018-04) (January 22, 2018).

<sup>8</sup> 17 CFR 240.14e-1 et seq.

<sup>9</sup> 17 CFR 240.14e-1(a).

<sup>10</sup> 17 CFR 240.14e-1(b).

<sup>11</sup> 17 CFR 240.14e-1(c).

<sup>12</sup> 15 U.S.C. 78n(e).

their warrants during the period in which the reduced exercise price is in effect and that warrant holders will therefore not be under unreasonable pressure to make a hasty, ill-informed investment decision.

The Exchange proposes to require that any listed company that reduces the exercise price of listed warrants announce that fact in a manner consistent with the Exchange's policies with respect to the dissemination of material news as set forth in Sections 401 and 402 of the Company Guide. The Exchange believes that this requirement would give all warrant holders appropriate notice and the ability to avail themselves of the lower exercise price if they so desire.

The Exchange has interpreted the provision with respect to repricings in Section 105 broadly as restricting the taking of any other action which has the same economic effect as a reduction in the exercise price of the warrant.<sup>13</sup> For the avoidance of doubt, the Exchange now proposes to include a statement to that effect in the proposed amended rule text.

Section 105 currently provides that the repricing policy set forth therein will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established. The Exchange proposes to clarify this provisions by specifying that it relates specifically to regularly scheduled and specified changes in the exercise price that have been previously established at the time of original issuance of the warrants.

The Exchange also proposes to make revisions to Section 105 to update references to the names of the Exchange and the NASDAQ Stock Exchange to reflect their current names.

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<sup>13</sup> For example, the Exchange would view an exchange of common stock for outstanding warrants as a transaction restricted by the rule if the economic benefit to the warrant holder of participating in the exchange was effectively the same as the benefit to the holder of exercising the warrants at a reduced exercise price. Similarly, an increase in the number of shares for which a warrant is exercisable without a related increase in the warrant exercise price is economically equivalent to a reduction in the exercise price.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>14</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</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.

The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because: (i) the proposed requirement that the price reduction must stay in effect for 20 business days or such longer period as required by the SEC's tender offer rules would give the warrant holders a reasonable amount of time to consider the advisability of exercising their warrants during the period in which the reduced exercise price was in effect and warrant holders would therefore not be under unreasonable pressure to make a hasty, ill-informed investment decision; and (ii) the proposed requirement that any listed company that reduces the exercise price of listed warrants must announce that fact in a manner consistent with the Exchange's material news dissemination policies would give all warrant holders appropriate notice and the ability to avail themselves of the lower exercise price if they so desired.

The requirement that any warrant repricing under the proposed amendment must be held open for at least 20 business days (or such longer period as is required under the SEC's tender offer rules) and that the company must undertake to comply with applicable tender offer

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<sup>14</sup> 15 U.S.C. 78f(b).

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

regulatory provisions would ensure that any warrant repricing under the proposed amendment would be in compliance with Section 13(e) of the Act, Rule 13e-4 under the Act, Section 14(e) of the Act, and Regulation 14E under the Act.

The addition to the rule of language stating that the Exchange will apply its requirements with respect to warrant re-pricings to the taking of any other action that has the same economic effect as a reduction in the exercise price of a listed warrant is consistent with the Act as it simply codifies a longstanding interpretation of the rule by the Exchange.

The amendment to the rule to specify that the repricing provision is not applicable to regularly scheduled and specified changes in the exercise price that have been previously established at the time of original issuance of the warrants is a clarification of the rule that is consistent with the way it is currently implemented and is therefore non-substantive in nature. Similarly, the updating of the names used in the rule for NYSE American and the NASDAQ Stock Market is non-substantive in nature.

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 purpose of the Act. The purpose of the proposed rule change is to impose additional limitations on the circumstances under which listed companies may adjust the exercise price of listed warrants, including by requiring any such repricing to be conducted in a manner that is consistent with the SEC's tender offer rules. As such, the Exchange believes the proposed rule change does not impose any burden on competition.

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) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

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.

### 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-04 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> In addition, Rule 19b-4(f)(6)(iii) 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.

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-2018-04. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEAMER-2018-04, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).