

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-2018-09, and should be submitted on or before April 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82851; File No. SR-NYSEArca-2018-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5.3-O

March 9, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 6, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5.3-O (Criteria for Underlying Securities). 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

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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend Rule 5.3-O to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (each a "covered security"; collectively, "covered securities"). In particular, the Exchange proposes to modify Rule 5.3-(a)(4)(A), which currently requires that to list an option, the underlying covered security has to have a market price of at least \$3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation ("OCC") for listing and trading. The proposal would shorten the current "look back" period of five consecutive business days to three consecutive business days.<sup>4</sup> The Exchange does not intend to amend any other criteria in Rule 5.3-O. This proposed rule change is substantively identical to a recently-approved rule change by Nasdaq PHLX LLC ("Phlx"),<sup>5</sup> and would align Exchange listing rules with those of other options markets.

The Exchange acknowledges that the Options Listing Procedures Plan

("OLPP")<sup>6</sup> 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.<sup>7</sup> The proposed amendment would still comport with that requirement. For example, if an initial public offering ("IPO") occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four business days of an IPO becoming available instead of six business days (five consecutive days, plus the day the listing certificate is submitted to OCC).

At the time the options industry adopted the "look back" period of five consecutive business days, it was determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.<sup>8</sup> Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading in the underlying security and subsequent trading of options on the Exchange.<sup>9</sup>

<sup>6</sup> The OLPP (a/k/a the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include the Exchange; OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Inc.; Chicago Board Options Exchange, Inc.; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAx PEARL, LLC; Phlx; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; and NYSE American LLC.

<sup>7</sup> See OLPP at page 3.

<sup>8</sup> See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27).

<sup>9</sup> Such surveillance procedures generally focus on detecting securities trading subject to opening price

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> See proposed Rule 5.3-O(a)(4)(A) (providing that the market price per share of an covered security is "at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to [the OCC] for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded").

<sup>5</sup> See Securities Exchange Act Release No. 82474 (January 9, 2018), 83 FR 2240 (January 16, 2018) (SR-Phlx-2017-75) (Order approving amendment to Rule 1009 to modify the criteria for listing an option on an underlying covered security).

Furthermore, the Exchange notes that the regulatory program operated by and overseen by NYSE Regulation includes cross-market surveillances designed to identify manipulative and other improper trading that may occur on the Exchange and other markets. In particular, the Financial Industry Regulatory Authority ("FINRA"), pursuant to a regulatory services agreement and other arrangements, operates a range of cross-market equity and options surveillance patterns on behalf of the Exchange to identify a variety of potentially manipulative trading activities. These cross-market patterns incorporate relevant data from the Exchange, its affiliates (including the New York Stock Exchange), and markets not affiliated with the Exchange.

In addition, NYSE Regulation operates an array of surveillances to identify potentially manipulative trading of options on the Exchange and its affiliated markets. That surveillance coverage is initiated once options begin trading on the Exchange or an options exchange affiliated with the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by FINRA on behalf of the Exchange and NYSE Regulation's own monitoring for violative activity on the Exchange and its affiliated markets comprise a comprehensive surveillance program that is adequate to monitor for manipulation of options and their underlying equity securities that could occur during the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the Nasdaq Global Market (collectively, the "Named Markets"), as provided for in the definition of "covered security" from Section 18(b)(1)(A) of the 1933 Act.<sup>10</sup> Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a

manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. As it relates to IPOs, the Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-time patterns are active for the new security as soon as the IPO begins trading. The NYSE Regulation group, which provides such real-time surveillance on the Exchange and its affiliated markets, monitors trading activity in IPOs to see whether the new issue moves substantially above or below the public offering price in the first day or several days of trading.

<sup>10</sup> See 15 U.S.C. 77r(b)(1)(A).

Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count would generally not be known until T+2.<sup>11</sup> The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6-1(a) to adopt the shortened settlement cycle,<sup>12</sup> and the look back period of three consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.*, within three business days) and therefore the number of shareholders could be verified within three business days, thereby enabling options trading within four business days of an IPO (three consecutive business days, plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are able to provide these numbers within T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three

business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change would apply to all covered securities that meet the relevant criteria in Rule 5.3-O. Pursuant to Rule 5.3-O(a), the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange options transactions.<sup>13</sup> However, the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security.<sup>14</sup> As part of the established criteria, the issuer must be in compliance with any applicable requirements of the Act.<sup>15</sup> The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the \$3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three consecutive business day timeframe. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,<sup>18</sup> together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed

<sup>13</sup> See Rule 5.3-O(a)(1)-(6).

<sup>14</sup> *Id.*

<sup>15</sup> See Rule 5.3-O(a)(5).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See *supra* notes 13-15.

<sup>11</sup> The number of shareholders of record can be verified from large clearing agencies such as The Depository Trust and Clearing Corporation ("DTCC") upon the settlement date (*i.e.*, T+2).

<sup>12</sup> See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (release adopting amendment to securities transaction settlement cycle) (File No. S7-22-16). See also Exchange Act Release No. 78962 (Sep. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (release proposing amendment to securities transaction settlement cycle) (File No. S7-22-16).

criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.<sup>19</sup>

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change reduces the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

#### *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 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<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

<sup>19</sup> This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>22</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>23</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to implement the modified rule, which aligns with the rules of other options exchanges,<sup>24</sup> without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>25</sup>

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 (<http://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-NYSEArca-2018-16 on the subject line.

the proposed rule change, along with a brief description and the 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.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>24</sup> See *supra* note 5.

<sup>25</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### *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-NYSEArca-2018-16. 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 (<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-NYSEArca-2018-16, and should be submitted on or before April 5, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Proposed Collection; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

<sup>26</sup> 17 CFR 200.30-3(a)(12).