Although the proposed amendments to Rule G–3 and Rule G–8 would benefit, and be applied equally to, all individuals seeking to associate with municipal advisor firms and all such municipal advisor firms, the Commission believes that there are potential burdens on competition for small municipal advisor firms, and solo-practitioners in particular. However, as described below, the Commission believes that these potential burdens are mitigated.

First, the Commission believes that there is a potential burden on competition for solo-practitioners looking to establish a municipal advisor firm because, unlike larger firms, such solo-practitioners may not have developed CE materials addressing all of the prescribed subject matters necessary to meet the exemption's CE requirements. However, the Commission believes that this potential burden is mitigated because the MSRB has indicated that such firms would be able to utilize ''off-the-shelf content'' or widely available industry educational materials (to the extent such materials meet the requirements set forth in the proposed rule change), which would be a less burdensome approach than creating new CE materials.[103] The MSRB noted that sources of such educational materials may include industry trade associations, in addition to podcasts, webinars, and educational materials developed by the MSRB.[104]

Second, the Commission believes that there is a potential burden on competition for solo-practitioners and smaller municipal advisory firms because the new, criteria-based exemption would not extend to those seeking to associate and function in a municipal advisor principal capacity and, as noted above, Rule G–3(e)(iii) requires every municipal advisor firm to have at least one municipal advisor principal. Accordingly, individuals seeking to act as a municipal advisor principal (*e.g.,* a solo-practitioner) would still have to take and pass the Series 54 examination in order to engage in principal-level activities. As a result, although all firms would benefit from the proposed rule change for municipal advisor representatives, smaller municipal advisor firms and solo-practitioners in particular may experience a smaller benefit than larger municipal advisor firms.

The Commission believes that this potential burden is mitigated, however, because the MSRB has indicated that current Rule G–3(e)(ii)(C) permits solo-practitioners (or individuals associating or reassociating with a firm and designated as a principal) who are qualified as municipal advisor representatives to function as municipal advisor principals for up to 120 days before having to take and pass the Series 54 examination.[105] The MSRB noted that, in concert with the proposed rule change, these provisions would allow such individuals to start their own firm, requalify as municipal securities representatives without reexamination, and then qualify as municipal advisor principals.[106] As a result, all such persons, including those persons seeking to be solo-practitioners and seeking to associate with small (or larger) municipal advisor firms would be able to function in the principal-level capacity for several months before having to take and pass the Series 54 examination.[107]

Ultimately, municipal advisor principals are subject to additional regulatory standards given their supervisory, oversight, and management duties. The process of reexamination for municipal advisor principals helps to ensure that the specified level of competency and knowledge of the applicable securities laws and regulations, including MSRB rules, is sufficiently demonstrated.

For the foregoing reasons, the Commission finds that, consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(L)(iv) of the Act, the proposed rule change would not impact or impose any additional burdens on efficiency, competition, or capital formation that are not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, the Commission received one comment letter on the filing. The Commission believes that the MSRB, through its response, addressed the commenter's concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[108] that the proposed rule change (SR–MSRB–2023–05) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[109]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–20077 Filed 9–15–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98355; File No. SR–NYSEARCA–2023–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.3–O (Criteria for Underlying Securities) To Accelerate the Listing of Options on Certain IPOs

September 12, 2023.

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 August 31, 2023, NYSE Arca, Inc. (''NYSE Arca'' 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 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 Rule 5.3–O (Criteria for Underlying Securities). The proposed rule change is 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

[103] Notice, 88 FR at 49537.

[104] *Id.* at 49537 n.43.

[105] *Id.* at 49534 n.29; MSRB Letter at 3.

[106] Notice, 88 FR at 49534 n.29.

[107] The Commission believes this potential burden may also be mitigated, in part, because the MSRB represented that it anticipates publishing a compliance resource in close proximity to the compliance date of the rule which would highlight the regulatory obligations for municipal advisors (and dealers) with respect to professional qualification standards, CE requirements, and related registration matters. *See id.* at 49538; MSRB Letter at 3. In addition, in the Notice itself, the MSRB addressed the timing and sequence of satisfying the exemption's criteria, the filing of SEC Form MA–I (and SEC Form MA, as applicable), and the submission of the affirmation notification to the MSRB, including for solo-practitioners. *See* Notice, 88 FR at 49532–33; MSRB Letter at 2–3.

[108] 15 U.S.C. 78s(b)(2).

[109] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 purpose of the proposed rule change is to amend Rule 5.3–O (Criteria for Underlying Securities) (Criteria for Underlying Securities) (the ''Rule''). The Exchange is proposing a listing rule change that is substantially similar in all material respects to the proposal approved for NYSE American LLC (''NYSE American'').[4]

Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), NYSE American filed a proposed rule change, which was recently approved, to modify the standard for the listing and trading of options on ''covered securities'' to reduce the time to market in Rule 915 (Criteria for Underlying Securities).[5] At this time, the Exchange proposes to adopt an identical rule.

Rule 5.3–O(a) sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are ''covered securities,'' as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security'' or ''covered securities'').[6] Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least $3.00 per share 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 the underlying security (the ''three-day lookback period'').[7] Under the current rule, if an initial public offering (''IPO'') occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO'd security would then be eligible for trading on the Exchange on Friday (*i.e.,* within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities—well above the $3.00 per share threshold—that would obviate the need for the three-day lookback period. In this regard, NYSE American noted in its rule change that the Industry Working Group has recently identified proposed changes that would help options on covered securities that have a market capitalization of at least $3 billion based upon the offering price of its IPO come to market earlier.[8] The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.[9] The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO'd securities.[10]

Accordingly, the Exchange proposes to modify Rule 5.3–O to waive the three-day lookback period for covered securities that have a market capitalization of at least $3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (*i.e.,* not inclusive of the day of the IPO).[11] NYSE American noted in its rule change that it reviewed trading data for IPO'd securities dating back to 2017 and is unaware of any such security that achieved a market capitalization of $3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement.[12] Specifically, NYSE American stated in its rule change that it determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the $3 billion market capitalization/IPO offering price threshold. Options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, *i.e.,* none of these large IPOs closed below the $3.00/share threshold during its first three days of its trading.[13] As such, the Exchange believes the proposed capitalization threshold of $3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of $3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO'd security could then be eligible for trading on the Exchange on Wednesday (*i.e.,* starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days.

The Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner

[4] *See* Securities Exchange Act Release No. 98013 (July 27, 2023) 88 FR 50927 (August 2, 2023) (SR–NYSEAMER–2023–27) (Order Granting Approval of a Proposed Rule Change to Amend Rule 915 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPO).

[5] *See id. See* NYSE American Rule 915, Commentary .01(4)(a)(ii).

[6] Rule 5.3–O requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. *See* Rule 5.3–O(a)—(b).

[7] *See* Rule 5.3–O (a)(4)(A). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a ''covered security.'' *See* Rule 5.3–O (a)(4)(B).

[8] *See supra* note 4.

[9] While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

[10] *See* proposed Rule 5.3–O(a)(4)(A)(ii). To align the proposed rule with NYSE American Rule 915, the Exchange proposes two non-substantive changes: first, to number the existing and proposed criteria for covered securities as (i) and (ii) of paragraph (a)(4)(A); second, to delete now-extraneous text from proposed paragraph (a)(4)(A)(i), each of which change would add clarity and transparency to Exchange rules. *See* proposed Rule 5.3–O (a)(4)(A)(i). *See also* NYSE American Rule 915, Commentary .01(4)(a)(i).

[11] The Exchange acknowledges that the Options Listing Procedures Plan (or ''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 here: https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/options_listing_procedures_plan.pdf.* The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

[12] *See supra* note 4.

[13] *See supra* note 4.

without sacrificing investor protection. The Exchange represents that trading in IPO'd securities—like all other securities traded on the Exchange—is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.[14] The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[15] As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with its findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation Date

The Exchange will announce the effective date of the proposed change by Trader Update distributed to all OTP Holders, which will be no later than sixty-days after the effective date of this proposal.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed 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.

In particular, the Exchange believes the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities—well above the $3.00 per share threshold—that would obviate the need for the three-day lookback period. As noted above, NYSE American noted that it reviewed trading data for IPO'd securities dating back to 2017 and is unaware of an IPO'd security with a market capitalization of $3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement. The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.[19]

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner (*i.e.,* at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities—like all other securities traded on the Exchange—is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.[20] The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the $3.00/share threshold for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential concerns regarding possible manipulation or price stability.

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 anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket 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)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

[14] 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.

[15] *See supra* note 9.

[16] An ''OTP Holder'' refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing that has been issued an ATP. *See* Rule 1.1. An ''OTP'' is an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. *See id.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 9.

[20] 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.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

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.

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[24] the Commission may 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 proposal may become operative immediately upon filing. The Exchange requested the waiver, stating that the proposal harmonizes its rules to those of NYSE American to ensure fair competition among the options exchanges. Further, the proposed change would allow options on IPO'd securities to come to market sooner (*i.e.,* at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

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)[26] 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–NYSEARCA–2023–61 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–NYSEARCA–2023–61. 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–NYSEARCA–2023–61 and should be submitted on or before October 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

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[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] 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).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98361; File No. SR–MIAX–2023–33]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

September 12, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''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 is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.