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–OCC–2026–012 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–OCC–2026–012. 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 such filing will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.* 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–OCC–2026–012 and should be submitted on or before December 10, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–23547 Filed 11–18–26; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106893; File No. SR–NYSEAMER–2026–17]

Self-Regulatory Organizations; NYSE American LLC; Order Approving a Proposed Rule Change To Amend Sections 1003 and 1009 of the NYSE American Company Guide

November 13, 2026.

I. Introduction

On March 6, 2026, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 Sections 1003 and 1009 of the NYSE American Company Guide (''Company Guide'') to establish that an issuer must maintain a certain market capitalization in order to remain listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 20, 2026.[3] On April 29, 2026, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to take action on the proposed rule change.[5] On June 2, 2026, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On September 14, 2026, the Commission issued a notice of designation of a longer period of time for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[8] The Commission received several comment letters, which are addressed below.[9] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Section 1003 of the Company Guide sets forth minimum quantitative and qualitative continued listing standards for securities listed on the Exchange.[10] Currently, Section 1003(b)(i) of the Company Guide enumerates circumstances where the Exchange will consider suspension and delisting of a class of common stock because of a sufficiently limited distribution of shares.[11] Section 1003(b)(i) of the Company Guide does not contain a minimum market capitalization requirement.[12]

The Exchange states that it has noticed a recent increase in companies that have a very small market capitalization.[13] According to the Exchange, an issuer with a small market capitalization is potentially susceptible to manipulation and more likely to experience trading volatility in its shares because, at smaller sizes, less capital is required to undertake manipulative trading activity.[14] Therefore, the Exchange proposes to amend Section 1003 of the Company Guide to require an issuer to maintain a certain market capitalization in order to remain listed on the Exchange.[15]

Specifically, the Exchange proposes to adopt new Section 1003(b)(i)(D) of the Company Guide to specify that if an issuer's class of common stock is determined to have average market capitalization over a consecutive 30 trading-day period of less than $5 million, the Exchange will immediately suspend trading and commence delisting proceedings with respect to such security in accordance with the procedures in Section 1010 of the Company Guide.[16] This order refers to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 105036 (Mar. 17, 2026), 91 FR 13645 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 105334, 91 FR 24023 (May 4, 2026). The Commission designated June 18, 2026, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change. *See id.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 105597, 91 FR 34263 (June 5, 2026).

[8] *See* Securities Exchange Act Release No. 106348, 91 FR 58947 (Sept. 17, 2026). The Commission designated November 15, 2026, as the date by which the Commission must issue an order approving or disapproving the proposed rule change. *See id.*

[9] Comments received on the proposed rule change are available at: *https://www.sec.gov/rules-regulations/public-comments/sr-nyseamer-2026-17.*

[10] *See* Notice, *supra* note 3, at 13645. Specifically, the Exchange stated that Section 1003 of the Company Guide requires issuers of common stock to maintain certain quantitative minimum standards related to stockholders' equity, publicly held shares, public shareholders, and aggregate market value of publicly held shares. In addition, Section 1003 of the Company Guide sets forth qualitative continued listing standards related to, among other things, operations contrary to public interest and reduction of operations. *See id.*

[11] *See id. See also* Section 1003(b) of the Company Guide.

[12] *See* Notice, *supra* note 3, at 13645.

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.* For purposes of Section 1003 of the Company Guide, market capitalization includes the total common stock outstanding (excluding treasury shares) as well as any common stock that would be

average market capitalization for an issuer's class of common stock over a consecutive 30 trading-day period of $5 million as the ''Minimum Market Capitalization Criteria.'' The Exchange also proposes that an issuer that falls below the Minimum Market Capitalization Criteria would not be eligible to follow the procedures to regain compliance outlined in Section 1009 of the Company Guide.[17] The Exchange further proposes to amend Section 1009 of the Company Guide to add to the list of continued listing standards for which noncompliance does not entitle the issuer to a compliance period a reference to proposed Section 1003(b)(i)(D) of the Company Guide.[18] The Exchange states that all issuers would retain the right to appeal an Exchange delisting decision.[19]

The Exchange states that, in its experience, an issuer with a sustained market capitalization below $5 million is likely to be financially distressed and is increasingly susceptible to manipulation due to its small size.[20] The Exchange also states that having a market capitalization below $5 million is frequently a leading indicator that an issuer has other financial concerns that often require a substantial amount of regulatory oversight, and accordingly, the Exchange does not believe that an issuer fitting this profile is appropriate for continued listing on the Exchange.[21] Further, the Exchange states that, in its experience, a company trading at a sustained market capitalization below $5 million is unlikely to regain financial stability and it is therefore appropriate to subject the company to immediate suspension and delisting.[22]

The Exchange states that the proposal would become effective immediately upon Commission approval.[23]

III. Discussion and Commission Findings

The Commission has given careful consideration to the Exchange's proposal and all comments submitted to determine whether the proposal is consistent with the Act and the rules and regulations issued thereunder. Under Section 19b(2)(C) of the Act, the Commission must approve the proposed rule change of a self-regulatory organization (''SRO'') if the Commission finds that the proposed rule change is consistent with the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.[24]

For the reasons discussed herein, the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to national securities exchange. In particular, the Commission finds that the record before the Commission demonstrates that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[25] More specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] which requires, among other things, 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 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[27] which requires, among other things, that the rules of an exchange provide fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[28] which requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has consistently recognized that the development and enforcement of meaningful listing standards [29] by an exchange is of critical importance to financial markets and the investing public.[30] Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets.[31] Those listing standards are informed by an exchange's regulatory and commercial considerations and the Act provides exchanges with discretion, subject to the requirements of the Act, to set those standards as they see fit with the understanding that not all companies will meet those standards initially or over time. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[32] The imprimatur of listing on a particular exchange correlates to investors' expectations that the listed issuer meets the standards set by the exchange and that the exchange has used its judgment regarding the level at which to set those standards.[33]

issued upon conversion of another outstanding equity security, if such other security is a ''substantial equivalent'' of common stock. *See* footnote to Section 1003 of the Company Guide.

[17] *See* Notice, *supra* note 3, at 13645.

[18] *See id.* at 13646. *See also* proposed Section 1009(a)(ii) of the Company Guide.

[19] *See* Notice, *supra* note 3, at 13646. *See also* Part 12 of the Company Guide (setting forth the procedures for appealing an Exchange delisting decision).

[20] *See* Notice, *supra* note 3, at 13645.

[21] *See id.* at 13645–6.

[22] *See id.* at 13646.

[23] *See id.*

[24] 15 U.S.C. 78s(b)(2)(C).

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

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(7).

[28] 15 U.S.C. 78f(b)(8).

[29] This reference to ''listing standards'' refers to both initial and continued listing standards.

[30] *See, e.g.,* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17).

[31] *See, e.g.,* Securities Exchange Act Release Nos. 105494 (May 14, 2026), 91 FR 29183 (May 19, 2026) (SR–NASDAQ–2025–069); 105603 (Jun. 3, 2026), 91 FR 34675 (Jun. 8, 2026) (SR–NASDAQ–2026–009); 106134 (Aug. 14, 2026), 91 FR 53436 (Aug. 18, 2026) (SR–NYSEAMER–2025–72) (''Minimum Bid Price Proposal''); 10633 (Aug. 14, 2026), 91 FR 53458 (Aug. 18, 2026) (NYSE–2025–43). In these releases, the Commission also stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

[32] *See, e.g.,* Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR–NASDAQ–2020–001); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR–NASDAQ–2019–089). *See also* Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR–NYSE–2017–31) (stating that ''[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market'' and that ''[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue . . . so that fair and orderly markets can be maintained'').

[33] *See* Securities Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895, 45899 (Aug. 29, 1997) (SR–NASD–97–16) (finding Nasdaq's proposal to raise its listing standards consistent with the Act because the proposal ''reflects the NASD's judgment that it wants only higher quality companies to avail themselves of the Nasdaq marketplace, and the imprimatur that such inclusion confers'' and the increased standards ''are directly related to the NASD's intended goals of enhancing its listing standards'').

The Exchange's proposal is reasonably designed to enhance the Exchange's continued listing standards. The proposal will accelerate the timeframe within which the Exchange will delist an issuer's class of common stock in instances where the security is below the Minimum Market Capitalization Criteria and result in immediate suspension from trading on the Exchange.[34] Such issuers will not be eligible to receive a cure or compliance period before receiving an Exchange delisting decision. The Exchange states that a company with a sustained market capitalization below $5 million is likely to be financially distressed and is more susceptible to market manipulation.[35]

As discussed further below, a few commenters stated that the proposal is inadequate because it failed to conduct certain analyses that the Commission would generally conduct for its own rulemaking, such as a cost-benefit analysis and an analysis of the combined effect of the proposal together with pending proposals from other exchanges.[36] When submitting a proposed rule change, an SRO is subject to the requirements of Section 19 of the Act,[37] Rule 19b–4 thereunder,[38] and Form 19b–4,[39] which are not the same requirements that apply when the Commission proposes new or amended Federal securities rules and regulations. There presently are 29 registered national securities exchanges[40] that operate trading venues. As private commercial enterprises, the Act provides exchanges with a considerable degree of discretion to operate. This proposal is about listing standards, which the Federal securities laws do not prescribe. Rather, the securities laws leave the establishment of listing standards to the individual exchanges, which have broad discretion to establish such standards as they, in their expertise and judgment, see fit, subject to the requirements of Section 6 of the Act.[41] Those requirements do not include that an exchange conduct a cost-benefit analysis or analyze the effects of its proposals when considered in combination with the proposals or rules of its competitors. Nor does the Act require the Commission to perform such analyses when considering an exchange proposal.

Two commenters expressed support for the Exchange's proposal.[42] One commenter stated that the proposal is a direct response to widespread concerns over the growth of manipulative trading schemes in highly speculative, low priced securities listed on exchanges, which harms investors and undermines confidence in the fairness and efficiency of U.S. equity markets.[43] This commenter stated that the proposal ''supports market integrity and protects investors, strengthens U.S. financial markets, and is clearly consistent with the Exchange Act.'' [44] This commenter further stated that the trend of ''highly speculative, low priced securities listing on exchanges in recent years,'' and the accompanying growth in manipulative trading schemes, are ''directly linked to current listing standards being insufficient and susceptible to circumvention.'' [45] This commenter stated that actions taken thus far by regulators in response ''have yet to stem the tide,'' therefore the commenter has urged the listing exchanges to enhance their continued listing requirements.[46]

Another commenter stated that the Exchange's proposal is a ''meaningful enhancement to its continued listing standards'' and is aligned with its duties as an SRO to design and enforce ''meaningful listing standards that ensure listed companies have sufficient public float, investor base, and trading interest to support fair and orderly markets.'' [47] This commenter stated the number of low-priced securities on U.S. exchanges has grown materially in recent years and that these securities exhibit ''structural fragilities'' such as ''thin trading, wider spreads, limited and unstable investor interest, and heightened vulnerability to promotion driven price spikes.'' [48] This commenter further stated that these ''characteristics make such securities disproportionately associated with manipulative schemes, including pump and dumps, ramp and dumps, serial reverse splits, wash trading, and other volume manufacturing tactics that distort price discovery and expose retail investors to significant harm.'' [49] This commenter stated that approving the proposal would address the specific risks that the Exchange has documented.[50]

Other commenters raised concerns regarding the proposed rule change.[51] Specifically, one commenter stated that the proposal does not provide empirical evidence in support of the proposed $5 million market capitalization threshold, such as evidence demonstrating that issuers below the proposed threshold present a systemic problem warranting categorical intervention.[52] This commenter stated that ''[i]f fraud or

[34] *See* Section 1009(b) of the Company Guide (providing that a listed company receiving a deficiency notification for continued listing standards is granted a compliance period of up to 18 months from the receipt of the deficiency letter, subject to certain conditions).

[35] *See supra* note 20 and accompanying text.

[36] *See infra* Section III.C (Comments Regarding the Need for the Proposed Rule Change).

[37] 15 U.S.C. 78s.

[38] 17 CFR 240.19b–4.

[39] 17 CFR 249.819.

[40] *See* list of current national securities exchanges at: *https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges.*

[41] 15 U.S.C. 78s. *See supra* notes 32–33.

[42] *See* Letters from Stephen John Berger, Managing Director, Global Head of Regulatory Policy, Citadel Securities, dated Aug. 24, 2026 (''Citadel Letter''); Katie Kolchin, CFA, Managing Director, Head of Equity & Options Market Structure, and Gerald O'Hara, Vice President & Assistant General Counsel, SIFMA, dated Sept. 3, 2026 (''SIFMA Letter'').

[43] *See* Citadel Letter at 1.

[44] *Id.* In support of its position that the proposal is consistent with the Act, the commenter cites to prior Commission orders approving enhanced listing standards. *See id.* at 3.

[45] *Id.* at 1 (highlighting ''repeated reverse stock splits to prop up share prices, superficial corporate reorganization, and protracted appeals and cure periods'' as means to circumvent listing standards).

[46] *See id.* at 2 (noting the creation of a Commission task force and Commission suspension of trading in numerous listed companies, as well as review by the Financial Industry Regulatory Authority (''FINRA'') of the firms involved in these companies' public offerings, as actions taken by regulators).

[47] SIFMA Letter at 1–2.

[48] *See id.* at 2.

[49] *Id.*

[50] *See id.*

[51] *See* Letters from Marc Indeglia, The Small Public Company Coalition, dated June 26, 2026 (''SPCC Letter I''); Lucosky Brookman LLP, dated June 27, 2026 (''Lucosky Letter''); Marc Indeglia, The Small Public Company Coalition, dated June 26, 2026 (''SPCC Letter II''); Marc Indeglia, The Small Public Company Coalition, dated July 10, 2026 (''SPCC Letter III''). One commenter attached a comment letter that it had submitted to the Commission regarding a separate proposed rule change filed by the Exchange to immediately suspend trading in and delist a security if its closing price is below $0.25 on any trading day (''Minimum Bid Price Criteria''). *See* Letter from Small Public Company Coalition, dated Mar. 12, 2026 (attached as Exhibit 2 to SPCC Letter I) (''SPCC March Letter''). *See also* Minimum Bid Price Proposal. This commenter also attached a comment letter that it had submitted to the Commission regarding a separate proposed rule change filed by another national securities exchange to immediately suspend trading in and delist a company's security if the company's market value of listed securities falls below $5 million for 30 consecutive business days (''Nasdaq MVLS Proposal''), along with letters submitted by other commenters on that proposal. *See* Letter from Small Public Company Coalition, dated Feb. 19, 2026 (attached as Exhibit 3 to SPCC Letter I); and Letters from Autonomix Medical, Inc., dated Feb. 19, 2026 (''Autonomix Letter''); HeartSciences, Inc., dated. Feb. 19, 2026 (''HeartSciences Letter''); Imunon, Inc., dated Feb. 18, 2026 (''Imunon Letter''); MacKenzie Realty Capital, Inc., dated Feb. 19, 2026 (''MacKenzie Realty Letter''); Edible Garden AG Incorporated, dated Feb. 19, 2026 (''Edible Garden Letter''); IP Strategy Holdings, Inc., dated Feb. 18, 2026 (''IP Strategy Letter''); Donohoe Advisory Associates LLC, dated Feb. 19, 2026 (''Donohoe Letter'') (attached as Exhibit 4 to SPCC Letter I). *See also* Securities Exchange Act Release No. 105971 (July 22, 2026), 91 FR 46995 (July 27, 2026) (SR–NASDAQ–2026–004) (proposal pending before the Commission pursuant to petitions for review).

[52] *See* SPCC Letter I at 3–4. *See also* IP Strategy Letter at 10–11.

manipulation risk is disproportionately concentrated among identifiable issuer profiles, a targeted, risk-based response focused on those characteristics would be more precise and far less damaging than a blanket market-capitalization trigger applied to all issuers regardless of domicile, governance structure, or compliance history.'' [53]

The Commission's data analysis, discussed in more detailed below, supports approval of the Exchange's proposal. Specifically, the Commission's analysis supports the Exchange's statement that there is an increasing trend of companies that have a very small market capitalization and that companies with a sustained market capitalization below $5 million are unlikely to regain financial stability.[54] As discussed further below, in the Commission's view, securities with smaller market capitalization may be more susceptible to manipulation.[55] The continued listing of securities with a market capitalization below $5 million raises concerns that these securities may have heightened susceptibility to manipulation while trading on the Exchange for an extended period. Accordingly, the Exchange's proposal to immediately suspend and delist companies that fail to comply with the Minimum Market Capitalization Criteria is reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[56]

As part of the Commission's consideration of the proposed Minimum Market Capitalization Criteria, the Commission analyzed stock price and delistings data for companies listed on The Nasdaq Stock Market LLC (''Nasdaq'') and on NYSE American from 2006 to 2025.[57] The results of the Commission's analysis show that the number of issuers whose average market capitalization over a consecutive 30 trading-day period would have fallen below $5 million (''Market Capitalization Analysis Threshold''),[58] increased sharply from 5 issuers in 2021 to 176 issuers in 2023.[59] Although the numbers decreased to 159 issuers in 2024, and 110 issuers in 2025, the 2024 and 2025 numbers are still higher than during the rest of the sample period, apart from 2008.

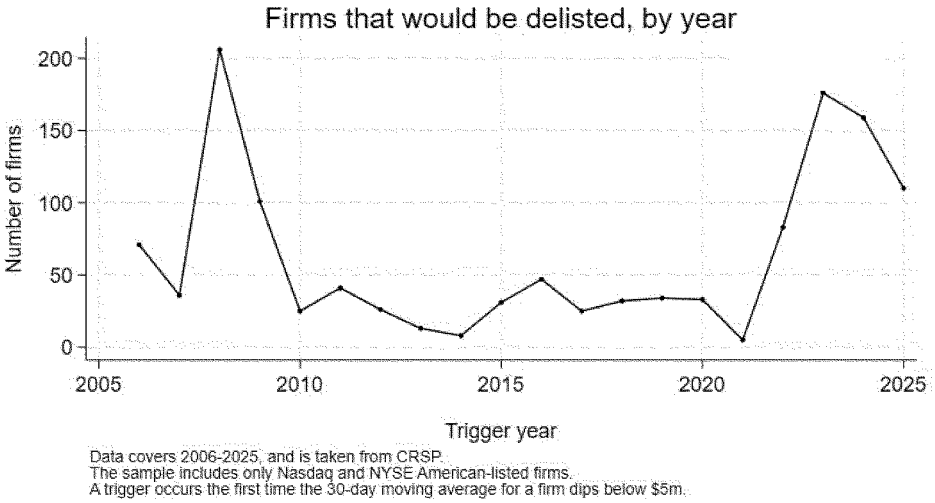


Figure 1. Number of Nasdaq and NYSE American issuers that would have been delisted pursuant to the Market Capitalization Analysis Threshold, by year.

[53] SPCC Letter I at 13–14.

[54] *See supra* notes 13 and 22.

[55] *See supra* notes 78–81 and accompanying text.

[56] 15 U.S.C. 78f(b)(5).

[57] The stock price data, which is at the security level, was sourced from Center for Research in Security Prices (''CRSP'') and accessed through Wharton Research Data Services. This data covers the time period from 2006 to 2025. The data provider calculated the daily market capitalization of each security by multiplying the closing price by the number of shares outstanding. If a closing trade was not available, the closing price was calculated as the midpoint of the best bid and ask quotes at the end of the regular trading session. The Commission analyzed the stock price data at the company level, excluded non-corporate issuers, and only kept issues of common equity (including American Depositary Receipts). The total equity market capitalization of each company was obtained by aggregating the market capitalization of each of the company's issues. The delistings data was sourced from CRSP. The delisting analysis included only cases where the listing exchange dropped the issue (*i.e.,* it excluded cases where an issue was delisted due to a merger, exchange or liquidation). If a company was delisted from an exchange, re-listed, and then was delisted again, only the first delisting event for the company was included in the analysis.

[58] The proposed Minimum Market Capitalization Criteria has a definition closely related to the Market Capitalization Analysis Threshold used in this analysis. The terms differ in that the Market Capitalization Analysis Threshold is based on the number of shares outstanding, as described in note 63, whereas the Minimum Market Capitalization Criteria is based on the total common stock outstanding (excluding treasury shares), as well as any common stock that would be issued upon conversion of another outstanding equity security, if such other security is a ''substantial equivalent'' of common stock. *See supra* note 16 and accompanying text. While counting the number of shares of common stock that would be issued upon conversion, consistent with the definition of the Minimum Market Capitalization Criteria, may influence the quantitative findings in the analysis, the Commission did not attempt to include such details due to the lack of readily available data on such share counts.

[59] Figure 1 and Figure 2 compare the number of issuers that would have been delisted pursuant to the Market Capitalization Analysis Threshold (number of firms) against the year in which the delisting would have taken place (trigger year). Figure 1 includes data on Nasdaq or NYSE American issuers; and Figure 2 only includes data on NYSE American issuers. If an issuer fell below the Market Capitalization Analysis Threshold multiple times during the sample period, both analyses kept only the first of such dates.

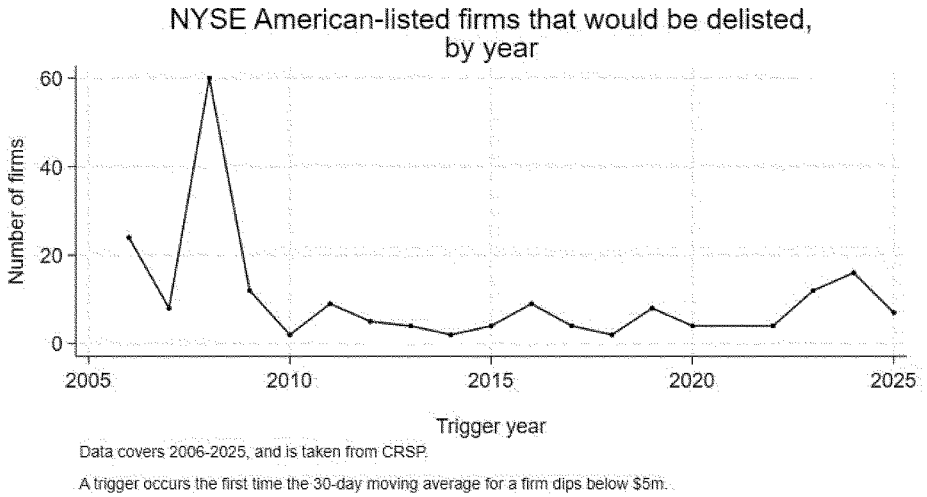


Figure 2. Number of NYSE American issuers that would have been delisted pursuant to the Market Capitalization Analysis Threshold, by year..

In addition, the Commission analyzed the relationship between securities whose average market capitalization over periods ranging between 30 and 90 trading days fell below thresholds between $1 million and $50 million, and their average market capitalization after 180 calendar days of first crossing the market capitalization threshold.[60] According to the analysis, regardless of the market capitalization threshold or time parameter selected, the median market capitalization after 180 days is below the specific market capitalization threshold. This result generally holds true for the Market Capitalization Analysis Threshold (*i.e.,* a consecutive 30 trading-day average market capitalization below $5 million) over the sample period.[61] 59% of the issuers that fell below the Market Capitalization Analysis Threshold had an average market capitalization of under $5 million after 180 days, with a median valuation of $4.1 million. The results show that, in general, issuers that fell below the Market Capitalization Analysis Threshold tend to stay below such threshold for an extended period of time. Accordingly, the Exchange's use of the Market Capitalization Analysis Threshold provides a reasonably designed standard for the Exchange to use when making assessments of compliance with its continued listing standards.

TABLE 1—MARKET CAPITALIZATION OF ISSUERS 180 CALENDAR DAYS AFTER CROSSING THE VARIOUS MARKET CAPITALIZATION THRESHOLDS AND DURATION

Market cap threshold ($, 000's)	Days of moving average	Companies that would have been delisted	Market capitalization of companies 180 calendar days after crossing the threshold ($, 000's)				
			Sample statistics:				
			Average	P25	P50	P75	P90
$50,000	30	4,567	$41,304	$16,541	$31,026	$47,743	$74,347
20,000	30	3,170	20,591	7,661	13,315	21,027	36,877
10,000	30	2,220	14,342	4,195	7,257	11,957	20,813
7,000	30	1,718	10,228	3,178	5,243	9,018	16,898
5,000	30	1,261	9,262	2,397	4,142	7,082	13,415
3,000	30	727	8,231	1,651	2,745	5,050	9,754
1,000	30	122	7,492	537	908	2,762	7,993
50,000	60	4,398	38,816	15,656	29,211	45,515	70,176
20,000	60	2,979	19,379	6,996	12,660	20,162	34,175
10,000	60	2,003	11,222	3,867	6,579	11,176	19,684
7,000	60	1,480	10,366	2,891	4,964	8,182	14,988
5,000	60	1,059	8,264	2,199	3,831	6,423	11,468
3,000	60	570	8,539	1,480	2,527	4,708	9,759

[60] Table 1 analyzes two variables: market capitalization thresholds ranging from $1 million to $50 million, and the number of consecutive trading days over which the average market capitalization is calculated. Table 1 shows the corresponding number of issuers that would have fallen below the specific market capitalization threshold and specific duration, and their average and percentile distribution of average market capitalization after 180 calendar days. For example, the sample for the first row includes the 4,567 issuers that would have been delisted under a rule with a 30 consecutive trading-day average market capitalization of $50 million. The 180-day window reflects a cure period that may be available for many failures to satisfy continued listing requirements, including under Section 1007 (late SEC filings) of the Company Guide. If the market capitalization for a company is not available at the end of the 180-day window—either because the company was delisted or because the data did not include 2026—then the last market capitalization in the window is used.

[61] Figure 3 shows the percentile distribution of average market capitalization 180 days after issuers first cross the Market Capitalization Analysis Threshold by the 25th percentile (P25), the median (P50), and the 75th percentile (75) against the year such issuers first cross the Market Capitalization Analysis Threshold.

TABLE 1—MARKET CAPITALIZATION OF ISSUERS 180 CALENDAR DAYS AFTER CROSSING THE VARIOUS MARKET CAPITALIZATION THRESHOLDS AND DURATION—Continued

Market cap threshold ($, 000's)	Days of moving average	Companies that would have been delisted	Market capitalization of companies 180 calendar days after crossing the threshold ($, 000's)				
			Sample statistics:				
			Average	P25	P50	P75	P90
1,000	60	78	8,729	537	868	2,410	4,735
50,000	90	4,251	37,582	14,801	28,102	44,967	68,157
20,000	90	2,805	20,694	6,465	11,994	19,233	32,756
10,000	90	1,800	11,060	3,651	6,420	10,799	19,431
7,000	90	1,310	9,041	2,762	4,709	7,770	14,920
5,000	90	933	9,019	2,154	3,654	6,527	11,831
3,000	90	464	8,535	1,448	2,486	4,495	10,066
1,000	90	53	7,240	479	867	1,876	7,859

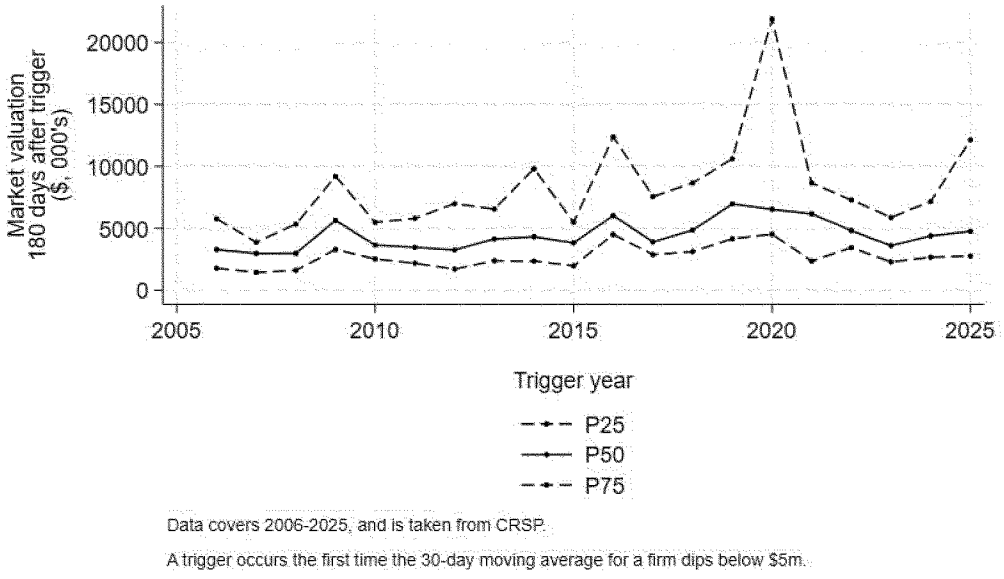


Figure 3. Percentile distribution of market capitalization 180 days after issuers first crossed the Market Capitalization Analysis Threshold.

The Commission's analysis also shows that issuers that fell below the Market Capitalization Analysis Threshold had a high likelihood of being delisted for reasons that indicate a failure to comply with other quantitative continued listing requirements.[62] Historically, when an issuer fell below the Market Capitalization Analysis Threshold and was later delisted, such delisting, at the median, occurred 230 days later, and at the 75th percentile, 621 days later.[63]

[62] The analysis, as shown in Figure 4, compared the fraction of issuers on NYSE American who were subsequently delisted after dropping below the Market Capitalization Analysis Threshold against the year such companies fell below the Market Capitalization Analysis Threshold. The analysis only took into account delistings by the Exchange, and excluded delistings by mergers and acquisitions, liquidations, and exchanges. *See* CRSP US DATABASES DATA DESCRIPTIONS GUIDE FOR CRSPACCESS (FIZ) (2026) at 247–250, *available at https://indexes.morningstar.com/docs/guide/crsp-us-stock-databases-data-descriptions-guide-for-crspaccess-fiz?isRdp=true* for the available delisting codes. In the sample described in note 63, *supra,* the following five codes represent over 75% of delistings that occurred after dropping below the Market Capitalization Analysis Threshold: ''does not meet exchange's financial guidelines for continued listing,'' ''insufficient capital, surplus, and/or equity,'' ''price fell below acceptable level,'' ''bankruptcy, declared insolvent,'' and ''delinquent in filing, non-payment of fees.'' Approximately 18% of the delistings occurred at the request of the issuer—*e.g.,* the issue moved to the over-the-counter (''OTC'') market voluntarily—and the delisting code does not indicate whether or not the issuer was in compliance with listing requirements at the time of delisting; however, most of these voluntary delistings occurred when the stock price was below $1, indicating difficulty complying with minimum price standards.

[63] The relationship between an issuer crossing the Market Capitalization Analysis Threshold and subsequently being delisted weakened over time. One reason for the weakened relationship may be the amount of time that the delisting and hearings process takes (*i.e.,* some companies that fell out of compliance with continued listing requirements in the later portion of the time period analyzed may ultimately be delisted based on these deficiencies, but remain listed at this time). *See, e.g.,* Section 1009 of the Company Guide (providing companies with an opportunity to submit a plan to come back into compliance with continued listing standards).

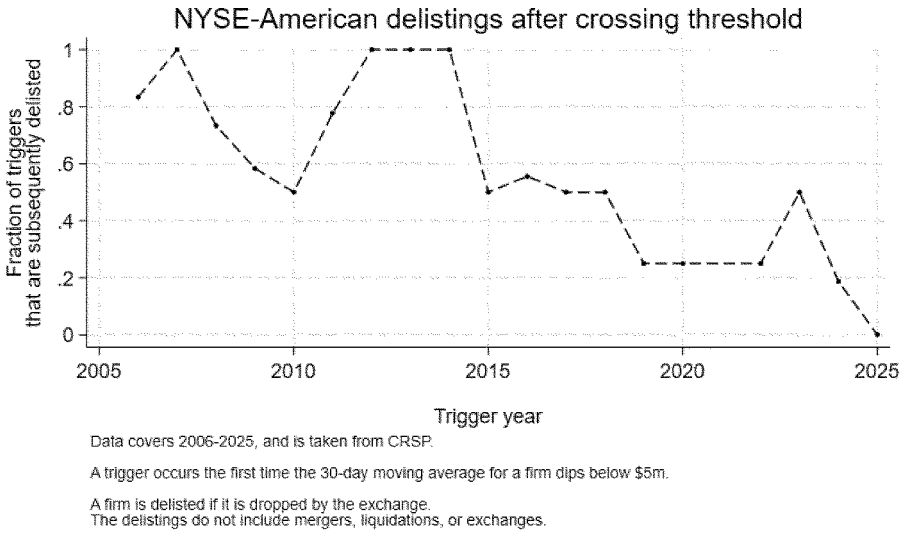


Figure 4. Fraction of NYSE American issuers that were subsequently delisted after first crossing the Market Capitalization Analysis Threshold.

Finally, the Commission's analysis indicates a fundamental tradeoff inherent in selecting a threshold for delisting: a more stringent threshold (*i.e.,* higher average market capitalization or shorter duration over which that average is calculated) would capture issuers that will eventually be delisted for other reasons, but also implicate issuers that otherwise would have remained above the threshold and stayed listed.[64]

TABLE 2—DELISTING OUTCOMES OF ISSUERS CROSSING THE VARIOUS MARKET CAPITALIZATION THRESHOLDS AND TIME DURATIONS, BETWEEN 2006 AND 2025

Market cap threshold ($,000's)	Days of moving average	Companies that would have been delisted	Expedited delistings	False positives	False negatives	False positives as a fraction of companies that would have been delisted (%)
50,000	30	4,567	1,724	2,845	266	62
20,000	30	3,170	1,470	1,700	520	54
10,000	30	2,220	1,119	1,103	871	50
7,000	30	1,718	881	840	1,109	49
5,000	30	1,261	661	601	1,329	48
3,000	30	727	375	352	1,615	48
1,000	30	122	75	47	1,915	39
50,000	60	4,398	1,676	2,726	314	62
20,000	60	2,979	1,396	1,585	594	53
10,000	60	2,003	992	1,011	998	50
7,000	60	1,480	752	729	1,238	49
5,000	60	1,059	538	521	1,452	49
3,000	60	570	287	284	1,703	50
1,000	60	78	50	28	1,940	36
50,000	90	4,251	1,633	2,624	357	62
20,000	90	2,805	1,315	1,495	675	53
10,000	90	1,800	887	917	1,103	51
7,000	90	1,310	657	656	1,333	50
5,000	90	933	452	482	1,538	52
3,000	90	464	223	241	1,767	52
1,000	90	53	34	19	1,956	36

[64] The Commission conducted analysis on false positives (issuers falling below the Market Capitalization Analysis Threshold, but were never delisted), and false negatives (issuers never falling below the Market Capitalization Analysis Threshold, but were delisted), as shown in Table 2. Similar to Table 1, Table 2 analyzes two variables: average market capitalization thresholds ranging from $1 million to $50 million, and the number of consecutive trading days over which the average market capitalization is calculated. Table 2 shows the corresponding number of issuers that would have been delisted based on the specific average market capitalization threshold and specific duration, issuers that would have failed to meet the relevant average market capitalization threshold and duration and were subsequently delisted (*i.e.,* expedited delistings), false positives, and false negatives. Table 2 shows a mechanical inverse relationship between false positives and false negatives. As the thresholds become more stringent (*i.e.,* higher average market capitalization or shorter duration), the number of false positives generally increases.

The Minimum Market Capitalization Criteria threshold of $5 million is substantially lower than the market capitalization initial listing standard threshold on NYSE American.[65] For example, the total value of market capitalization required in applicable standards for *initial listing* is at least $50 million.[66] Similarly, the Minimum Market Capitalization Criteria threshold is substantially lower than the average global market capitalization threshold for the existing *continued listing* standard thresholds on NYSE American.[67] The average global market capitalization standard for continued listing requires at least $50 million for a consecutive 30 trading-day period.[68] Accordingly, a company persistently and consistently trading at levels below an average $5 million market capitalization for approximately six calendar weeks (*i.e.,* 30 trading days) would be trading significantly below such initial and continued listing requirements for NYSE American-listed companies, raising questions about the company's suitability for continued listing on NYSE American. Further, it is likely that a company that substantially declines from the market capitalization at which it initially listed on NYSE American to the average $5 million market capitalization level will most likely find itself in that position without surprise and, accordingly, will have had the opportunity to raise capital, explore business opportunities, or explore other options to increase assets, reduce liabilities, and increase revenues before crossing the average $5 million market capitalization threshold and remaining below that level for a consecutive 30 trading days.[69]

The Exchange has identified risks pertaining to securities with a market capitalization below $5 million, including a heightened susceptibility to manipulation. The results of the Commission's analysis support approval of the Exchange's proposal to impose the Minimum Market Capitalization Criteria. The increased number of securities with an average market capitalization over a consecutive 30 trading-day period below $5 million in recent years, along with the significant likelihood that such securities will eventually be delisted, warrants the Exchange's consideration of the continued listing of securities with a low level of market capitalization.[70] Moreover, when securities fall below an average market capitalization of $5 million for a consecutive 30 trading-day period, there is a significant likelihood that they will continue to have an average market capitalization below $5 million for another 180 calendar days, which is a significant period of time.[71] While the delisting process sometimes affords companies experiencing truly temporary financial or business issues a cure period for them to regain compliance with continued listing standards, they necessarily prolong the delisting process which also prolongs the exposure of investors to potential harm for a company that ultimately is likely to be delisted. The Exchange's proposed $5 million market capitalization threshold and 30-day time parameter reflects a reasonably balanced approach for a continued listing requirement that provides companies with time to recover from short-term unexpected declines without prolonging the delisting process.

In the Commission's view, securities with a small market capitalization may be more prone to manipulation.[72] When a security has a smaller market capitalization, the cost required to accumulate a position that is large enough to influence the price of the security is reduced. Accordingly, a would-be manipulator may find it less costly to manipulate the price of the security. Thus, the continued listing of companies with small market capitalization raises concerns that these securities may have heightened susceptibility to manipulation. These concerns are exacerbated if companies with low market capitalization lack sufficient natural trading interest that could otherwise mitigate the susceptibility to manipulation by promoting fair and orderly markets in the security. The Commission, certain exchanges, and FINRA have allocated resources to identify and address manipulation in securities of companies with small market capitalization.[73] Despite these efforts, the Exchange's concerns about the potential for manipulation persist.[74] Manipulative schemes that target the securities of companies with small market capitalization, like ''ramp and dump'' and ''pump and dump,'' are often identified and responded to after the fact. The Exchange's proposal represents a reasonable approach to address concerns that companies with a persistent (*i.e.,* at least 30 consecutive trading days) market capitalization below $5 million may be susceptible to types of manipulation that result in harm to investors. The immediate suspension and delisting of these securities with a small market capitalization, as measured by considering average market capitalization over a consecutive 30 trading-day period, is designed to prevent fraudulent and manipulative acts and practices, and more broadly, the rule is reasonably designed to promote just and equitable principles of trade and to protect investors and the public interest.[75]

The proposal is reasonably designed to enhance the Exchange's listing standards by immediately suspending trading and commencing delisting proceedings for securities that fall below the Minimum Market Capitalization Criteria, which facilitates the continued listing of securities of issuers that are financially sound. As noted above, the imprimatur of listing on a particular exchange correlates to investors' expectations that the listed issuer meets certain standards set by the exchange and that a listing exchange will use its judgment regarding the level at which to set those standards. Those standards are informed by an exchange's regulatory and commercial considerations and exchanges have discretion, subject to the requirements of the Act, to set those standards as they see fit.

Moreover, the addition of the Minimum Market Capitalization Criteria is not unfairly discriminatory because

[65] *See, e.g.,* NYSE American Company Guide, *available at https://nyseamericanguide.srorules.com/company-guide.*

[66] *See* Section 101(c)(2) and (d)(1) of the Company Guide.

[67] *See, e.g., supra* note 71.

[68] *See* Section 1003(a) of the Company Guide.

[69] *See also infra* note 136, and accompanying text.

[70] *See* Figure 1, Figure 2, and Figure 4. *See supra* notes 20–21 and accompanying text.

[71] *See* Table 1. In addition, the Commission's analysis demonstrates that there is an inherent tradeoff to be made when selecting a numerical threshold for a continued listing requirement between eliminating those companies that are the intended target and providing increased flexibility for listed issuers. *See* Table 2 and Figure 3.

[72] This view supports the Exchange's statements that an issuer with a small market capitalization is potentially or increasingly susceptible to manipulation. *See supra* notes 14 and 20 and accompanying text. *See also supra* notes 48–56 and accompanying text.

[73] For example, the Commission has issued temporary 12(k) suspensions of trading in securities in response to potential manipulation in the last year. *See, e.g.,* Securities Exchange Act Release Nos. 104112 (Sept. 26, 2025) (Smart Digital Group Limited), 104113 (Sept. 26, 2025) (QMMM Holding Limited), 104163 (Oct. 3, 2025) (Etoiles Capital Group Co., Ltd.), 104164 (Oct. 3, 2025) (Platinum Analytics Cayman Limited), 104165 (Oct. 3, 2025) (Pitanium Limited), 104166 (Oct. 8, 2025) (Empro Group Inc.), 104167 (Oct. 8, 2025) (NusaTrip Incorporated), 104168 (Oct. 16, 2025) (Premium Catering (Holdings) Limited), 104169 (Oct. 22, 2025) (Robot Consulting Co., Ltd.), 104176 (Nov. 11, 2025) (Charming Medical Limited), 104317 (Dec. 4, 2025) (Magnitude International Ltd), 104613 (Jan. 14, 2026) (JM Group Limited), 104763 (Feb. 1, 2026) (TechCreate Group Ltd.), 105675 (June 11, 2026) (Happy City Holdings Limited), 106668 (Oct. 14, 2026) (TJGC Group Limited).

[74] *See supra* note 13 and accompanying text.

[75] *See* 15 U.S.C. 78f(b)(5).

the proposed standard is reasonably tailored to the Exchange's goal of addressing the risks that it has identified with respect to securities with a small market capitalization. The $5 million market capitalization threshold will provide for a level of market capitalization below which there may be a heightened susceptibility to manipulation and difficulties maintaining fair and orderly markets in these securities. And the requirement that a security have an average market capitalization over a consecutive 30 trading-day period of less than $5 million before being subject to immediate suspension and delisting will target instances where securities have demonstrated a significant longevity of these risks. Therefore, the Commission finds that the Exchange's proposal to immediately suspend and delist companies that fail to comply with the Minimum Market Capitalization Criteria is reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[76]

A. Comments Regarding the Minimum Market Capitalization Criteria

One commenter stated that issuers with a sustained market capitalization below $5 million ''is often a leading indicator of broader financial and compliance concerns that demand disproportionate regulatory oversight and pose significant risks to investors, who generally view companies that meet the requirements to be listed on an exchange as more financially sound and less risky than OTC securities.'' [77] This commenter stated that a bright line continued listing threshold of $5 million in market capitalization ''provides an objective, quantitative marker that is reasonably related to initial listing standards and appropriately identifies companies whose ongoing exchange listing, after failing to meet this threshold for 30 consecutive trading days, is no longer consistent with maintaining fair, orderly, and efficient markets.'' [78] This commenter further stated that the Exchange's proposal to utilize an average market capitalization threshold as measured over a consecutive 30 trading-day period would ''reduce[] the risk of gaming the threshold through short term price spikes and better reflect[] the sustained market value of the issuer.'' [79]

Several commenters stated that the proposed Minimum Market Capitalization Criteria could result in the delisting of companies based on broader market- or sector-wide conditions that may cause temporary fluctuations that are not related to their underlying business or financial condition.[80] Commenters also raised concerns that the proposal would disproportionately burden microcap and emerging growth issuers.[81] One commenter stated that the proposed rule disproportionately impacts microcap and emerging growth issuers because these types of issuers ''frequently experience temporary fluctuations in market capitalization resulting from broader market conditions, financing cycles, sector-specific developments, and investor sentiment rather than long-term business performance.'' [82]

Another commenter stated that the Exchange does not demonstrate that the $5 million market capitalization threshold ''is a reliable predictor of sustained financial distress, manipulation risk, or future non-compliance with existing listing standards.'' [83] This commenter attached a report by Professor Craig M. Lewis that presents an empirical study raising concerns that the proposal may prematurely delist companies that would otherwise regain compliance.[84] The Lewis Report analyzed approximately 190 companies that fell below the $5 million average market capitalization threshold between 2006 and 2025, and concluded that ''a temporary decline below the $5 million average market capitalization threshold does not reliably predict business failure or inevitable delisting.'' [85] The Lewis Report stated that of the 190 companies that would have been delisted based on the proposal, 64% recovered at least once above the $5 million threshold during the time period studied, 28% of the 190 companies have not been not delisted, and 37 companies are still trading with market capitalizations above $5 million, representing an average market capitalization of $61.6 million.[86]

One commenter stated that these arguments opposing the adoption of a $5 million continued listing threshold ''rest on a misunderstanding of the purpose of continued listing standards and do not undermine the investor protection rationale supporting NYSE American's proposal.'' [87] This commenter stated that listing standards are designed to protect investors and maintain fair, orderly, and efficient markets, ''not to maximize issuer survival or ensure uninterrupted access to exchange listing.'' [88] This commenter also stated that whether a subset of issuers recover does not negate that periods below $5 million in market capitalization are linked to ''thin liquidity, elevated spreads, heightened volatility, and disproportionate susceptibility to manipulative trading activity,'' which are conditions that exchanges must address through risk-based listing standards.[89] This commenter also raised concerns regarding a reliance on backward-looking data, arguing that ''[c]ontinued listing standards must operate ex ante, based on observable risk indicators'' rather than ''ex post based on whether a company eventually stabilizes.'' [90] Finally, this commenter asserted that the Act's framework relies on exchanges ''to set and refine listing standards based on front line surveillance of trading activity, issuer behavior, and market quality.'' [91]

In response to commenters, the Exchange states that the Minimum Market Capitalization Criteria is a ''measured approach to address concerns about volatility and potential manipulation in low priced stocks.'' [92] According to the Exchange, ''microcap stocks are more susceptible to manipulation because it necessarily requires a smaller capital investment to

[76] 15 U.S.C. 78f(b)(5).

[77] SIFMA Letter at 3.

[78] *Id.*

[79] *Id.*

[80] *See* Lucosky Letter at 3–5; SPCC Letter I at 8, 19. *See also* Imunon Letter; MacKenzie Realty Letter at 2; IP Strategy Letter at 2, 7; Donohoe Letter at 4.

[81] *See* Lucosky Letter at 4; SPCC Letter I at 8.

[82] Lucosky Letter at 4. *See also* IP Strategy Letter at 9.

[83] SPCC Letter I at 5. *See also* IP Strategy Letter at 8–9.

[84] *See* SPCC Letter I at 6 (stating that an empirical analysis indicates that ''the proposed rule would have unnecessarily removed dozens of companies that ultimately stabilized, saw their market capitalization increase, and continued operating successfully''). *See also* NYSE American's Proposed Minimum Market Capitalization Continued Listing Requirement, Craig M. Lewis, Ph.D., dated Apr. 10, 2026 (attached as Exhibit 1 to SPCC Letter I) (''Lewis Report'').

[85] *See* Lewis Report, paragraph 5. *See also* SPCC Letter I at 5–6; SPCC Letter II at 2.

[86] *See* Lewis Report, paragraph 6. *See also* SPCC Letter I at 5–6; SPCC Letter II at 2.

[87] SIFMA Letter at 4.

[88] *Id.* at 5.

[89] *See id.*

[90] *Id.*

[91] *Id.*

[92] Letter from Patrick J. Troy, Senior Director and Associate General Counsel, New York Stock Exchange, dated Sept. 9, 2026 (''Exchange Letter''), at 1.

transact in a substantial percentage of a microcap issuer's securities, thereby opening the door to a wider range of potential bad actors.'' [93] The Exchange states that, based on the Lewis Report, while only 28% of the companies that fell below the Minimum Market Capitalization Criteria remain listed today on the Exchange, 72% of such companies are no longer listed on the Exchange, and this data is consistent with the Exchange's historical observation that companies falling below the $5 million average market capitalization standard frequently face additional financial challenges that require a substantial amount of regulatory oversight and make them unsuitable for public market trading.[94] The Exchange further states that its proposal is not premised on the notion that a company with an average market capitalization below $5 million is without value and instead is seeking to address problematic trading in extremely small companies, which are frequently below other Exchange listing standards.[95]

While the overall conclusion of the Lewis Report is that the Exchange's proposal to immediately suspend trading and commence delisting proceedings for securities that fail to comply with the Minimum Market Capitalization Criteria may result in delisting of companies that later recover and that some of those companies may otherwise have remained listed on the Exchange, the possibility of a meaningful recovery is not indicative that the Exchange would be acting unreasonably in determining to delist such a security, and ultimately is not determinative that the proposed rule change is inconsistent with the Act. Both the Commission's analysis and the Lewis Report agree that a significant number of companies that fell below an average market capitalization over a consecutive 30 trading-day period of $5 million did not recover.[96] Moreover, as discussed above, the Commission's analysis shows that 59% of the companies that fell below the Market Capitalization Analysis Threshold had an average market capitalization over a consecutive 30 trading-day period under $5 million after 180 days.[97] Even if some of the companies that remained below $5 million average market capitalization after 180 days eventually recovered, this analysis indicates that such companies persisted with an average market capitalization below $5 million for an extended period of time. The Commission interprets these results as indicating that, similarly, companies that fall below the Minimum Market Capitilization Criteria would likely remain below that threshold for an extended period of time.[98] Given the risks that securities with a small market capitalization have heightened susceptibility to manipulative trading activity, which could be exacerbated by a lack of trading interest sufficient to promote fair and orderly markets, the Commission finds that it is not unfairly discriminatory and is consistent with Section 6(b)(5) of the Act's requirements that the rules of the Exchange prevent fraud and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest for the Exchange to immediately suspend trading and commence delisting proceedings for securities that fall below the Minimum Market Capitalization Criteria.[99]

One commenter expressed concern that factors influencing trading price, and in turn market capitalization, ''may fluctuate significantly over relatively short periods without any corresponding change in the issuer's underlying business, financial condition, governance, or compliance with other continued listing standards.'' [100] Further, this commenter stated ''a bright-line $5 million market capitalization requirement creates a framework in which immediate suspension and delisting may be triggered by temporary market dislocations rather than meaningful deterioration in an issuer's suitability for continued exchange listing,'' [101] and that the proposed 30 trading-day measurement period is not meaningful in distinguishing between such temporary market dislocations from sustained issuer deficiencies.[102] Another commenter stated that ''the proposal creates a cliff effect: issuers trading anywhere near the threshold will face persistent delisting risk based on ordinary market volatility.'' [103] In addition, commenters stated that a company's market capitalization can be impacted by directional pressure exerted by opportunistic traders and short sellers.[104]

Several commenters expressed concern that the ''rigid, time-bound'' $5 million average market capitalization threshold could create incentives for manipulative trading activity and market abuse, contrary to the Act's goals of preventing fraud and manipulation.[105] In particular, commenters stated the mechanical trigger could incentivize coordinated short selling pressure that could force a company below the $5 million market capitalization threshold for long enough to trigger delisting.[106] One commenter stated that the trigger itself would cause downward price pressure because investors will discount issuers trading near the threshold, lenders would assign additional risk premiums or tighter covenants, and counterparties may hesitate to transact.[107]

One commenter stated that the concerns that automatic delisting could create a ''cliff effect'' or incentivize strategic short selling ''do not reflect actual market dynamics.'' [108] This commenter stated that exchanges already use ''bright line, quantitative triggers—such as bid price, public float, and market value of publicly held shares requirements—without evidence of systemic cliff effects or widespread manipulation designed to force delisting.'' [109] This commenter further stated that ''sustaining depressed prices for 30 consecutive trading days requires significant capital and is constrained by market maker liquidity provision, natural buying interest, and existing anti

[93] *Id.* at 2.

[94] *See id.*

[95] *See id.* at 2–3.

[96] *See* Table 1 and surrounding discussion, and *supra* note 92.

[97] *See* Table 1 and surrounding discussion.

[98] While the Commission agrees with the commenter that raised concerns about a reliance on backward-looking data rather than observable risk factors (*see supra* note 96 and accompanying text), the Commission's data analysis helps to validate the Exchange's statements and informs the Commission's view of how securities with small market capitalization may behave in the future, thereby supporting the Commission's statutory findings.

[99] 15 U.S.C. 78f(b)(5).

[100] Lucosky Letter at 3 (stating that the trading price of securities ''is influenced by numerous external factors, including macroeconomic conditions, sector-specific trends, liquidity constraints, interest rate movements, institutional portfolio reallocations, and investors sentiment''). *See also* Mackenzie Realty Letter at 1; Donohoe Letter at 2 and 4; IP Strategy Letter at 2.

[101] Lucosky Letter at 3. *See also* Nasdaq's Proposed Amended Listing Requirements, Craig M. Lewis, Ph.D., dated Feb. 19, 2026 (attached as Exhibit A to SPCC Letter I) (''Lewis February Report''), at paragraph 21; SPCC March Letter at 18–19.

[102] Lucosky Letter at 5.

[103] SPCC Letter I at 7.

[104] *See* Lucosky Letter at 3–4; SPCC Letter I at 11; SPCC Letter II at 3.

[105] *See* SPCC Letter II at 3; SPCC Letter I at 11; Lucosky Letter at 3–4.

[106] *See* SPCC Letter I at 11; SPCC Letter II at 3; Lucosky Letter at 3–4. *See also* Imunon Letter; MacKenzie Realty Letter at 2; IP Strategy Letter at 3–4; Donohoe Letter at 2. Commenters also stated that the threat of delisting may contribute to and encourage further downward price pressure and incentivize opportunistic trading behavior. *See* Donohoe Letter at 2; IP Strategy Letter at 3 and 5; HeartSciences Letter at 2.

[107] *See* SPCC Letter I at 8–9. *See also* IP Strategy Letter at 3.

[108] *See* SIFMA Letter at 5.

[109] *Id.*

manipulation rules.'' [110] Another commenter stated that commenters that oppose the proposal are ''unable to explain'' why the Exchange should be prohibited from setting a $5 million market capitalization listing requirement when that level is far below the $15 million minimum market capitalization imposed by its affiliate, the New York Stock Exchange, and based on its direct experience regarding trading activity on the Exchange.[111]

In response to commenters, the Exchange states that minimum market capitalization continued listing standards have existed for many years—for example, the New York Stock Exchange requires that listed companies maintain a minimum average market capitalization of at least $15 million over a consecutive 30 trading-day period—and the Exchange is not aware that they have had an outsized detrimental effect on listed companies.[112]

Market capitalization, as a combination of the quantity of total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security, if such other security is a ''substantial equivalent'' of common stock,[113] and their market value, is a reasonable measure to be used in a quantitative listing standard to determine whether a company should continue to be listed on the Exchange because it provides an indication of the issuer's size and how the market values the issuer's securities. The Exchange and other national securities exchanges rely on market capitalization or other measures of market value in existing initial and continued listing standards.[114] While commenters expressed concern that the Minimum Market Capitalization Criteria would create an incentive for opportunistic trading behavior, or for bad actors to manipulate the price of a company's securities to trigger automatic suspension and delisting (including that the consecutive 30 trading-day period may contribute to this risk), commenters have not provided any data showing that similarly structured, existing listing requirements based on market capitalization or other quantitative metrics have created such incentives. Moreover, the requirement to immediately suspend trading and commence delisting proceedings for securities that fall below $5 million average market capitalization over a consecutive 30 trading-day period would help mitigate the risk of actual opportunistic or manipulative activities in securities that may have a heightened susceptibility to manipulative trading activity. Therefore, the Commission finds that the Exchange's proposal to immediately suspend trading and commence delisting proceedings for securities that fail to comply with the Minimum Market Capitalization Criteria is reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.[115]

B. Comments Regarding the Lack of a Cure Period or Exchange Discretion

One commenter raised concerns about the proposal's absence of a cure period that would allow companies that fall below the Minimum Market Capitalization Criteria to regain compliance before being delisted.[116] In particular, this commenter stated that the Exchange had not explained why the proposal lacks a cure period while the Exchange affords cure periods and discretionary review for other continued listing deficiencies, such as where a company's aggregate market value of publicly-held shares is less than $1 million for more than 90 consecutive days.[117] Another commenter stated that the Exchange has historically maintained discretion in administering its continued listing standards in a manner that allows individual circumstances to be considered and that preserving Exchange discretion would better serve investors.[118] Another commenter raised concerns about the lack of discretion on the part of the Exchange in administering the Minimum Market Capitalization Criteria based on facts and circumstances.[119] For example, according to the commenter, an issuer experiencing long-term operation deterioration may be distinguishable from an issuer that is experiencing temporary market dislocation or a pending financing transaction.[120] This commenter stated that the proposal would largely eliminate the Exchange's ability to exercise judgement developed from decades of experience evaluating whether individual issuers remain suitable for continued listing.[121]

One commenter, however, stated that ''protracted appeals and cure periods'' are among the factors that can make listing standards ''susceptible to circumvention.'' [122] Another commenter stated that the proposal's immediate suspension and delisting requirement ''appropriately recognizes that, at such low market capitalization levels over an extended period, the challenges facing these companies are generally not temporary and are unlikely to be resolved within a conventional compliance period.'' [123] This commenter also stated that continued listing of such issuers can impair the Exchange's ability to maintain fair and orderly markets by making it more difficult for market makers to provide stable liquidity and for investors to rely on the exchange listing as a signal of issuer quality.[124]

In response to commenter concerns about eliminating Exchange discretion, the Exchange states that ''transparent bright-line rules . . . enable investors to

[110] *Id.*

[111] *See* Citadel Letter at 3.

[112] *See* Exchange Letter at 3 (citing Section 802.01B of the NYSE Listed Company Manual).

[113] *See supra* note 16.

[114] Existing Exchange rules include market capitalization as a component of an initial or continued listing requirement. *See* Sections 101(c)(2), 101(d)(1), and 1003(a)(1) of the Company Guide. In addition, the New York Stock Exchange (''NYSE'') will promptly initiate suspension and delisting procedures if a listed company has an average global market capitalization over a consecutive 30 trading-day period of less than $15 million. *See* Section 802.01B of the NYSE Listed Company Manual. *See also, e.g.,* Section 102.01C of the NYSE Listed Company Manual (utilizing global market capitalization in initial listing requirements); Nasdaq Rules 5505(b)(2)(A), 5505(b)(4)(A), and 5550(b)(2) (utilizing market value of listed securities in initial and continued listing requirements); TXSE Rules 16.310(c)(2) and 16.320(b)(2) (utilizing global market capitalization in initial and continued listing requirements). The Commission is not aware of any widespread concerns that the existing continued listing requirements that utilize market capitalization or similar metrics have caused an increase in opportunistic or manipulative trading.

[115] *See* 15 U.S.C. 78f(b)(5).

[116] *See* SPCC Letter I at 15. *See also* Autonomix Letter at 2.

[117] *See id.* (citing Section 1003(b)(i)(C) of the Company Guide and stating that the Exchange could provide a meaningful cure period, as it does for other continued listing standards); SPCC Letter II at 5–6. This commenter also stated that ''[b]y mandating automatic and immediate delisting for companies whose 30-day average market capitalization falls below $5 million, without any cure period, pre-deprivation process, or discretion, the rule reduces any subsequent appeal to a ministerial exercise regarding whether the company's 30-day average market capitalization did or did not fall below the threshold,'' and that there is not a ''meaningful opportunity to be heard'' on whether circumstances demonstrate that ''immediate delisting is unwarranted.'' SPCC Letter II at 5. The proposed rule change does not restrict the issues that the Exchange may consider in connection with any appeal of a delisting determination, as discussed further below.

[118] *See* Lucosky Letter at 3.

[119] *See id.* at 3, 5.

[120] *See id.* at 3.

[121] *See id.* at 5.

[122] *See* Citadel Letter at 1.

[123] SIFMA Letter at 3.

[124] *See id.* at 3.

clearly evaluate and understand an issuer's listing status.'' [125] The Exchange also states that continued listing requirements on the Exchange related to minimum price, stockholders' equity, and filing of periodic reports all mandate ''non-discretionary regulatory action'' for issuer noncompliance.[126] The Exchange further states that ''[o]bjective application of listing rules promotes predictability and transparency which benefits issuers and investors alike.'' [127]

In addition, the Exchange states that it disagrees that the proposal does not account for temporary market downturns.[128] The Exchange states that the Minimum Market Capitalization Criteria is calculated over a consecutive 30 trading-day period (*i.e.,* at least six weeks of trading activity), thus covering only companies with a prolonged period of noncompliance with the proposed rule.[129] The Exchange also states that it proactively engages with companies whose average market capitalization falls below $15 million over 30 trading days, and therefore companies would receive meaningful advance notice of their potential noncompliance with the proposed rule.[130]

While the Commission acknowledges that Exchange rules provide for a cure period for noncompliance with certain continuing listing standards, other Exchange rules provide that the Exchange will immediately suspend trading and commence delisting proceedings, without a cure period, for violation of other continued listing standards.[131] The Exchange's practice of engaging with companies when their average market capitalization falls below $15 million over 30 trading days, along with the Minimum Market Capitalization Criteria's use of an average market capitalization over a consecutive 30 trading-day period, will provide listed companies with a period of time within which to raise their average market capitalization before they fall below the Minimum Market Capitalization Criteria. The requirement's focus on a consecutive 30 trading-day period also means that a security would have a small market capitalization for a prolonged period of time before being subject to immediate suspension of trading and commencement of delisting proceedings.

The Exchange has proposed to immediately suspend and delist companies that fall below the Minimum Market Capitalization Criteria, without any opportunity to cure, based on concerns that such companies have a heightened susceptibility to manipulation.[132] The decline of a company's average market capitalization below the Minimum Market Capitalization Criteria may be indicative of serious difficulties within such company that are likely to continue to put downward pressure on the stock price. As discussed above, according to the Commission's analysis, 59% of the issuers that fell below $5 million market capitalization continued to have a market capitalization under $5 million after 180 days, with the median market capitalization under $4.1 million. The Commission's analysis indicates that the likelihood of companies regaining $5 million market capitalization within 180 days after failing to comply with such market capitalization threshold is limited.[133] Accordingly, the Commission expects that a significant number of companies that fall below the Minimum Market Capitalization Criteria either will not recover or will persist with an average market capitalization for a prolonged period of time. Companies that remain below the Minimum Market Capitalization Criteria may have heightened susceptibility to manipulative trading activity, as discussed above, and requiring their delisting is consistent with the goal of protecting investors and the public interest. Thus, the Exchange's proposal is reasonably designed to protect investors by preventing the prolonged trading of companies with a small market capitalization that may be more susceptible to fraud and manipulation and seeks to help ensure that only financially sound issuers remain listed on the Exchange. Therefore, the Commission finds that the Exchange's proposal to immediately suspend trading and commence delisting proceedings for securities that fail to comply with the Minimum Market Capitalization Criteria is reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.[134]

The proposal is also consistent with Section 6(b)(7) of the Act in that, while the Exchange will immediately suspend trading and commence delisting proceedings without a cure period when an issuer's securities fall below the Minimum Market Capitalization Criteria, Exchange rules will continue to provide a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered.[135] As discussed above, existing Exchange rules provide for immediate suspension of trading and commencement of delisting proceedings, without a cure period, when a security is out of compliance with continued listing requirements.[136] Pursuant to the Exchange's proposal, a listed company whose security is subject to immediate suspension of trading and the commencement of delisting proceedings after falling below the Minimum Market Capitalization Criteria will be able to appeal the delisting decision pursuant to Part 12 of the Company Guide.[137] Depending on the level of proceeding under Part 12 of the Company Guide, a Listing Qualifications Panel, the Committee for Review, or the Exchange Board of Directors will continue to have the authority to consider any failure to meet any quantitative standard for continued listing, and the company will continue to be given a notice of such consideration and an opportunity to respond.[138] A Listing Qualifications Panel, the Committee for Review, or the Exchange Board of Directors, as part of its respective review, may consider, among other things, the issuer's stock price or any information that the issuer

[125] Exchange Letter at 3.

[126] *Id.* at 4.

[127] *Id.*

[128] *Id.*

[129] *See id.*

[130] *See id.*

[131] *See* Sections 1003(f), (h), and (i) of the Company Guide. In addition, NYSE will promptly initiate suspension and delisting procedures, without a cure period, for a company that has an average global market capitalization over a consecutive 30 trading-day period of less than $15 million. *See* Section 802.01B of the NYSE Listed Company Manual.

[132] *See* Notice, *supra* note 3, at 13645–6. *See also supra* notes 20–22 and accompanying text.

[133] *See supra* notes 66–67 and accompanying text.

[134] *See* 15 U.S.C. 78f(b)(5).

[135] 15 U.S.C. 78f(b)(7).

[136] *See supra* note 137 and accompanying text.

[137] *See supra* note 19 and accompanying text. *See also* Part 12 of the Company Guide (providing that a company may request review of a Staff Determination by a Listing Qualification Panel and review of a Panel Decision by the Committee for Review, whose written decisions may subsequently be called for review by the Exchange Board of Directors upon the request of one or more Directors). Under existing Exchange rules, a request for a hearing will ordinarily stay a delisting action pursuant to a Staff Determination to prohibit the continued listing of an issuer's securities in accordance with Section 1204(d) of the Company Guide, but the Exchange staff may immediately suspend trading in any security or securities pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade. *See* Section 1203(c) of the Company Guide. The Exchange has not proposed any changes to these provisions.

[138] *See* Sections 1201(d) of the Company Guide.

releases to the public, including any additional quantitative deficiencies or qualitative considerations reflected in the released information.[139] Therefore, the Commission finds that the proposal is consistent with Section 6(b)(7) of the Act in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered.

C. Comments Regarding the Need for the Proposed Rule Change

One commenter stated that the Exchange has not demonstrated the incremental benefit of its proposal against the backdrop of its recently strengthened initial listing standards.[140] In particular, this commenter stated that the Exchange should explain how the Minimum Market Capitalization Criteria is justified on its own terms, particularly given that the Exchange originally presented the Minimum Market Capitalization Criteria and the Minimum Bid Price Criteria [141] as addressing the same underlying concern.[142] This commenter stated that the Exchange must explain the incremental work of the Minimum Market Capitalization Criteria or, if the Exchange's proposal is intended to work together with the Minimum Bid Price Criteria, the Exchange must analyze their combined effects.[143] In addition, this commenter stated that the Exchange has not explained why its existing, conduct-focused tools are inadequate to address concerns about manipulation.[144]

While existing Exchange continued listing requirements may address some similar concerns, as discussed above, the risks of heightened susceptibility to manipulative trading activity and difficulty maintaining fair and orderly markets in the securities of companies that are not able to sustain an average market capitalization of at least $5 million support the adoption of the proposed Minimum Market Capitalization Criteria.[145] The addition of a non-discretionary, objective metric for continued listing on the Exchange is reasonably designed to enhance its existing conduct-focused regulatory tools to promote administrative predictability and transparency that will benefit issuers and investors alike. Further, the Exchange has separately proposed, and the Commission has approved with separate, independent justification, certain price-based continued listing requirements that reduce the period of time for a company to regain compliance based on investor protection concerns, including the Minimum Bid Price Criteria recently implemented by the Exchange.[146] That the Exchange previously filed a proposal that included both the Minimum Bid Price Criteria and a proposed continued listing requirement that was substantially similar to the Minimum Market Capitalization Criteria, the latter of which was removed before the Commission approved the Minimum Bid Price Proposal, does not alter the Commission's required analysis regarding whether the proposal is consistent with the Act, because the two rules operate independently, and each must be independently approved if the Commission finds that it is consistent with the Act.[147]

The current proposal and prior Commission-approved rules address different continued listing requirements that independently operate to address similar Exchange concerns with lower-priced securities, while taking different approaches to target securities that another continued listing requirement may not capture. For example, the Commission stated, in the context of removing compliance periods for securities that have had excessive reverse stock splits and securities that are trading at very low prices,[148] that there were investor protection concerns with allowing the securities identified in that proposal to have an extended period of time to regain compliance with the relevant requirements.[149] Similar to the Reverse Stock Split Proposal, with respect to its current proposal, the Exchange states that companies identified in this proposal may have financial concerns that render them inappropriate for trading on the Exchange for investor protection reasons.[150] Moreover, while a reverse stock split increases a company's stock price and thus could help a security comply with the Minimum Bid Price Criteria or other continued requirements related to minimum bid price, it does not directly change the company's market capitalization.[151] If a company is trading at a price compliant with the relevant bid price requirements, but has a very small market capitalization, it could continue to be susceptible to manipulative trading. Similarly, if a company has a large market capitalization but its securities fail to meet the relevant bid price requirements, the low trading price of the securities may make these securities more prone to manipulation.[152] Therefore, the Commission finds that the Exchange's proposal is reasonably designed and consistent with the requirements of Section 6(b)(5) of the Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.[153]

[139] *See* Sections 1201(b) and (c), 1202(a), and 1204 of the Company Guide.

[140] *See* SPCC Letter II at 4.

[141] *See supra* note 57.

[142] *See* SPCC Letter I at 4–5. The Exchange originally proposed the Minimum Market Capitalization Criteria and the Minimum Bid Price Criteria together in one filing. *See* Minimum Bid Price Proposal at 53436, n.8. In Amendment No. 3 to the Minimum Bid Price Proposal, the Exchange removed the Minimum Market Capitalization Criteria from that proposal and separately filed the current proposal. *See id.* This commenter stated that the Exchange has not explained why the proposals were disaggregated or whether each rule standing on its own is justified under the Exchange Act. *See* SPCC Letter I at 2. While this commenter also raised whether the present filing should be implemented before the Commission issues a decision on the Minimum Bid Price Proposal (*see id.*), the Commission has since approved the Minimum Bid Price Proposal. *See supra* note 57.

[143] *See* SPCC Letter I at 4–5; SPCC Letter II at 5. *See also* SPCC Letter I at 12 (stating that the Exchange does not examine whether the Minimum Bid Price Proposal would separately and fully address its concerns). This commenter also stated that the proposal should be considered in recognition that Nasdaq had proposed a similar continued listing requirement, and the system-wide effect should be analyzed. *See id.* at 16–17 (citing Nasdaq MVLS Proposal).

[144] *See id.* at 14; SPCC Letter II at 4.

[145] *See supra* notes 78 to 81, and accompanying discussions.

[146] *See, e.g.,* Securities Exchange Act Release No. 102220 (Jan. 16, 2025), 90 FR 8073 (Jan. 23, 2025) (SR–NYSEAMER–2024–61) (''Reverse Stock Split Proposal'') (approving modification of delisting process for securities that have had excessive reverse stock splits); Minimum Bid Price Proposal (approving Minimum Bid Price Criteria and stating that ''the Exchange's proposal is reasonably designed to protect investors by preventing the prolonged trading of very low-priced securities and seeks to provide meaningful assurance that only financially sound and quality issuers remain listed on the Exchange'').

[147] *See* 15 U.S.C. 78s(b)(2)(C). *See also supra* notes 38–42 (discussing the standards for SRO filings).

[148] *See* Reverse Stock Split Proposal at 8075. *See also* Sections 1003(f)(vi) and (vii) of the Company Guide, which, as modified by the Reverse Stock Split Proposal, provides for the immediate suspension and delisting of any listed company that (i) has effectuated one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one or (ii) has effectuated a reverse stock split and the effectuation of such reverse stock split results in the company's security falling below any of the continued listing requirements of Section 1003 of the Company Guide.

[149] *See* Reverse Stock Split Proposal at 8075.

[150] *See id. See also supra* note 21 and accompanying text.

[151] *See supra* note 16.

[152] *See* Minimum Bid Price Proposal at 53443.

[153] *See* 15 U.S.C. 78f(b)(5).

D. Comments Regarding Effects on Companies and the Market

One commenter stated that delisting from the Exchange does not eliminate an issuer's ability to access public capital markets as they can continue to trade in the OTC markets, which operate under a ''regime that emphasizes disclosure, risk flagging, and heightened scrutiny of low priced and thinly traded securities.'' [154] This commenter further stated that, ''[f]rom an investor protection standpoint, this is an appropriate outcome: exchange listing is reserved for companies that meet robust quantitative and qualitative standards, while OTC markets provide an alternative venue for public trading in higher risk or less established issuers, subject to tailored safeguards.'' [155]

Other commenters stated that the proposal would negatively impact capital formation for small public companies and increase risk to investors.[156] One commenter discussed the benefits of exchange listing for both smaller companies and investors in the context of cost of capital.[157] Specifically, this commenter stated that exchange listing provides smaller companies access to a larger set of investors and greater liquidity through access to secondary markets and allows investors to benefit from a set of Commission rules designed to enhance and organize the flow of information to investors.[158] The commenter concluded that this lowers the cost of capital because investors ''are willing to pay a premium for the ability to trade easily'' and ''are more willing to make long-dated investments when they know their positions can be readily transferred to other investors.'' [159] This commenter also stated that investors are less inclined to invest in, and lenders are less willing to extend financing, to companies trading close to the bright-line threshold, which intensifies the downward price pressure.[160] Another commenter stated that the proposal would not only impact companies with a market capitalization under $5 million, but also companies between $5 million and $50 million, as those companies could face a risk of being delisted as a result of temporary market fluctuations.[161]

Several commenters discussed the negative consequences of trading in the OTC market upon immediate delisting and suspension.[162] These commenters stated that when a security is delisted and moves from a national securities exchange to the OTC market, trading occurs with reduced liquidity, diminished analyst coverage, wider bid-ask spreads, lower institutional participation, fewer financing opportunities, and reduced oversight.[163] One commenter also stated that retail shareholders may face difficulty purchasing and selling securities efficiently.[164] This commenter stated that trading in the OTC market would materially impact issuers' ability to access capital, make strategic acquisitions, attract institutional investment, and ultimately regain compliance with exchange listing standards.[165] Another commenter discussed the benefits of the regulatory framework for exchange-listed securities, which are NMS securities.[166]

The Commission acknowledges that there are many benefits to companies and their shareholders related to being listed on a national securities exchange, including increased access to capital formation and promotion of market efficiency. Commenters have raised concerns that delisting companies that fall below the Minimum Market Capitalization Criteria may lead to several negative outcomes, including, but not limited to, making raising capital more difficult for small companies.[167] However, the benefits of listing and possible consequences of delisting for issuers and their shareholders do not override the need for an exchange to maintain and enforce continued listing standards such as the proposed rule, which is consistent with Section 6(b)(5) of the Act.[168] As discussed above, the immediate suspension and delisting of companies that do not comply with the Minimum Market Capitalization Criteria will address identified risks of heightened susceptibility to manipulative trading activity, and it is not unfairly discriminatory to impose a standard that is reasonably tailored to address those risks. Moreover, companies that fail to comply with the Minimum Market Capitalization Criteria and are subsequently delisted will be able to trade in the OTC market, which provides a viable alternative for the trading of companies that do not meet the requirements for Exchange listing. While companies that are no longer eligible to list on the Exchange may apply to list on another national securities exchange, other national securities exchange may choose to impose similar continued listing requirements, as is the case with the Nasdaq MVLS Proposal. However, the OTC market remains a viable trading venue for securities that are not eligible for listing on any national securities exchange. As such, competition among issuers and national securities exchanges would not be unnecessarily or inappropriately burdened as a result of this proposed rule change. These companies may also apply for Exchange listing in the future. Therefore, the Commission finds that the Exchange's proposal to immediately suspend and delist companies that fail to comply with the Minimum Market Capitalization Criteria is reasonably designed to prevent fraudulent and

[154] *See* SIFMA Letter at 3–4. The commenter stated that the ''Commission's 2020 amendments to Rule 15c2–11 [of the Act] were explicitly designed to modernize the OTC market, promote investor protection, and curb fraud and manipulation by strengthening disclosure requirements and narrowing reliance on exceptions.'' *Id.* at 4.

[155] *Id.* at 4.

[156] *See* Lucosky Letter at 4; SPCC Letter I at 7. *See also* Heart Sciences Letter at 1–2; Imunon Letter; MacKenzie Realty Letter at 2; Edible Garden Letter at 2; Donohoe Letter at 3–4. One of these commenters stated that, if this proposal and the Nasdaq MVLS Proposal are adopted, substantially similar automatic delisting triggers would operate simultaneously to affect a large portion of the national market system, especially in periods of market stress. *See* SPCC Letter I at 17.

[157] *See* Lewis February Report at paragraphs 6–15.

[158] *See id.* at paragraph 6.

[159] *Id.* at paragraphs 8–9. This commenter also stated that ''[f]irms with more liquid equity rely more heavily on equity financing and incur lower issuance costs, which in turn facilitates greater investments in physical assets and R&D.'' *Id.* at paragraph 10.

[160] *See* SPCC Letter II at 3. One commenter stated that incentivized ''sustained downward price pressure'' in proximity to the proposed threshold and amplification of ''valuation compression in otherwise solvent issuers'' implicates Section 3(f) of the Act and questioned whether the proposal will promote efficiency, competition, and capital formation. *See* IP Strategy Letter at 4.

[161] *See* Lucosky Letter at 1. *See also* SPCC Letter I at 8 (''[t]he rule does not merely affect firms that fall below $5 million in market capitalization; it affects every company that could plausibly approach it''). *See also supra* note 70 and accompanying text (discussing the analysis regarding the fundamental tradeoff inherent in selecting a threshold for delisting).

[162] *See* Lucosky Letter at 4; Lewis Report at paragraph 3. *See also* Donohoe Letter at 4; Mackenzie Realty Letter at 2; HeartSciences Letter at 2; IP Strategy Letter at 3, 6.

[163] *See* Lucosky Letter at 4; SPCC Letter I at 11. *See also* HeartSciences Letter at 2; MacKenzie Realty Letter at 2; IP Strategy Letter at 3, 6.

[164] *See* Lucosky Letter at 4.

[165] *See id.* One commenter stated that increasing the involuntary migration of solvent issuers to less transparent venues may alter competitive positioning among trading venues without a demonstrable investor protection justification, and the Commission must determine whether such burden on competition is necessary under Section 6(b)(8) of the Act. *See* IP Strategy Letter at 4, 9–10.

[166] *See* Lewis February Report at paragraphs 16–18. This commenter provided examples of Commission rules and industry plans designed to improve the information environment and trade execution quality that apply to NMS securities, or exchange-listed securities, but not to OTC securities. *See id.*

[167] *See supra* notes 162–166 and accompanying text.

[168] 15 U.S.C. 78f(b)(5).

manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[169] The Commission also finds that the Exchange's proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, consistent with Section 6(b)(5) of the Act;[170] and will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.[171]

E. Comments Suggesting Alternatives

Commenters suggested alternatives to the proposal.[172] One commenter suggested providing a reasonable cure period and adopting a ''graduated compliance framework'' similar to other continued listing standards.[173] This commenter also recommended authorizing the Hearing Panel to consider issuer-specific circumstances.[174] Another commenter suggested that the Exchange develop a targeted, risk-based response based on characteristics such as public float, insider ownership, and limitation to U.S. regulatory access; provide a meaningful cure period; or consider delisting based on the existence of an additional compliance deficiency.[175] This commenter also stated that the Exchange could employ graduated supervisory responses, such as enhanced monitoring, watch-list status, or disclosure obligations to distinguish temporary volatility from structural deficiencies.[176]

Further, this commenter suggested providing a twelve-month implementation delay for the proposed rule change to allow issuers, investors, and lenders time to adjust their capital structures, contractual arrangements, and risk assessments in an orderly manner.[177]

The Act governs the Commission's review of SRO-proposed rules. Section 19(b)(2)(C)(i) provides that the Commission ''shall approve'' a proposal if it finds that the rule is consistent with the requirements of the Act and the rules and regulations applicable to the SRO—including requirements in Section 6(b).[178] The statute does not give the Commission the ability to make any changes to the rule proposal as submitted, or to disapprove the rule proposal on the ground that the Commission would prefer some alternative rule on the same topic and the Exchange has not amended its proposal in response to commenters' suggestions. The Commission must evaluate the proposal before it and approve if it finds the proposal is consistent with the Act and the rules thereunder. Even if commenters' suggestions could provide alternative, potentially preferable means to address concerns that securities with small market capitalization are susceptible to manipulative trading activity and may present difficulties with the maintenance of fair and orderly markets in these securities, these suggestions are not part of the Exchange's proposal. For the reasons discussed herein, the Commission finds that the Exchange's proposal to immediately suspend trading and commence delisting proceedings for companies that fall below the Minimum Market Capitalization Criteria is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, consistent with Section 6(b)(5) of the Act.[179] The Commission also finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[180] which requires, among other things, that the rules of an exchange provide fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[181] which requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[182] that the proposed rule change (SR–NYSEAMER–2026–17) be, and hereby is, approved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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[169] *Id.*

[170] *Id.*

[171] 15 U.S.C. 78f(b)(8).

[172] *See* Lucosky Letter at 5; SPCC Letter I at 13–14; SPCC Letter II at 6.

[173] *See* Lucosky Letter at 5.

[174] *See id.*

[175] *See* SPCC Letter I at 16.

[176] *See id.*

[177] *See* SPCC Letter II at 6.

[178] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[179] 15 U.S.C. 78f(b)(5).

[180] 15 U.S.C. 78f(b)(7).

[181] 15 U.S.C. 78f(b)(8).

[182] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0102]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Tender Offer-Regulation 14D and Regulation 14E, Schedule 14D–9

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

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below. The Commission also is requesting approval from OMB to designate this existing collection of information (OMB Control No. 3235–0102) as a ''common form'' for purposes of PRA submissions [1] because the Board of Governors of the Federal Reserve System uses this information collection (under OMB Control No. 7100–0091).

Regulation 14D (17 CFR 240.14d–1 through 240.14d–11) and Regulation 14E (17 CFR 240.14e–1 through 240.14e–8) and related Schedule 14D–9 (17 CFR 240.14d–101) require information intended to help security

[1] *See* ROCIS PRA Module User Guide v.8.2, at 110–111 (Mar. 2024), available at *https://www.rocis.gov/rocis/viewResources.do* (''A 'common form' is an information collection that can be used by two or more agencies, or government-wide, for the same purpose. The Common Forms Module [in ROCIS] allows a 'host' agency to obtain [OMB] approval of an information collection for use by one or more 'using' agencies. After OMB grants approval, any prospective using agency that seeks to collect identical information for the same purpose can obtain approval to use the 'common form' by providing its agency-specific information to OMB (*e.g.,* burden estimates and number of respondents). . . . The host agency will indicate in the **Federal Register** notices that it is requesting approval of a common form and, if known, identify other agencies that may use the information collection. Both the **Federal Register** notices and the ICR should account only for the burden imposed by the host agency's use of the common form. Once the host agency has received approval from OMB, any agency will be able to request OMB approval for its use of the common form in ROCIS by providing its agency specific information to OMB (*e.g.,* burden estimates and number of respondents). Additional public notice by those agencies will not be required.'').