
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **September 21, 2023**

Better Choice Company Inc.

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or other Jurisdiction of Incorporation)

001-40477
(Commission File Number)

83-4284557
(IRS Employer Identification No.)

**12400 Race Track Road
Tampa, Florida 33626**
(Address of Principal Executive Offices) (Zip Code)

(Registrant's Telephone Number, Including Area Code): **(212) 896-1254**

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value share	BTTR	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

On September 21, 2023, Better Choice Company, Inc. (the "Company") received a written notice (the "Notice") from the NYSE American LLC (the "NYSE American") indicating that the Company is not in compliance with the NYSE American continued listing standard set forth in Section 1003(f)(v) of the NYSE American Company Guide ("Section 1003(f)(v)") because shares of the Company's common stock have been selling for a substantial period of time at a low price per share. The Notice has no immediate effect on the listing or trading of the Company's common stock and the common stock will continue to trade on the NYSE American under the symbol "BTTR." Additionally, the Notice does not result in the immediate delisting of the Company's common stock from the NYSE American.

Pursuant to Section 1003(f)(v), the NYSE American staff (the "Staff") determined that the Company's continued listing is predicated on effecting a reverse stock split of its common stock or demonstrating sustained price improvement within a reasonable period of time, which the Staff determined to be no later than March 21, 2024. The Notice further stated that as a result of the foregoing, the Company has become subject to the procedures and requirements of Section 1009 of the NYSE American Company Guide, which could, among other things, result in the initiation of delisting proceedings, unless the Company cures the deficiency in a timely manner. NYSE American may also accelerate delisting action in the event that the Company's common stock trades at levels viewed by the Staff to be abnormally low.

The Company intends to regain compliance with the NYSE American's continued listing standards by undertaking a measure or measures that are for the best interests of the Company and its shareholders.

The Company intends to monitor the price of its common stock and consider available options if its common stock does not trade at a consistent level likely to result in the Company regaining compliance by March 21, 2024. The Company's receipt of the Notice does not affect the Company's business, operations or reporting requirements with the Securities and Exchange Commission. The Company is actively engaged in discussions with the NYSE American and is developing plans to regain compliance with the NYSE American's continued listing standards within the cure period.

As required under NYSE American rules, the Company issued a press release on September 27, 2023, announcing that it had received the Notice. A copy of the press release announcing these events is attached as Exhibit 99.1 to this Current Report on Form 8-K and is hereby incorporated by reference herein.

Item 8.01 Other Events

The information set forth in item 3.01 to this Current Report on Form 8-K is incorporated by reference to this Item 8.01.

In light of the Notice, the Company is also supplementing the risk factors previously disclosed in Item 1A of its Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission on March 28, 2023, to add the following enhancement to the risk factor already disclosed:

We are subject to the continued listing requirements of the NYSE American. If we are unable to comply with such requirements, our common stock would be delisted from the NYSE American, which would limit investors' ability to effect transactions in our common stock and subject us to additional trading restrictions.

Shares of our common stock are currently listed on the NYSE American. In order to maintain our listing, we must maintain certain share prices, financial and share distribution targets, including maintaining a minimum amount of shareholders' equity and a minimum number of public shareholders. In addition to these objective standards, the NYSE American may delist the securities of any issuer if, in its opinion, the issuer's financial condition and/or operating results appear unsatisfactory; if it appears that the extent of public distribution or the aggregate market value of the security has become so reduced as to make continued listing on the NYSE American inadvisable; if the issuer sells or disposes of principal operating assets or ceases to be an operating company; if an issuer fails to comply with the NYSE American's listing requirements; if an issuer's common stock sells at what the NYSE American considers a "low selling price" (generally trading below \$0.20 per share for an extended period of time); or if any other event occurs or any condition exists which makes continued listing on the NYSE American, in its opinion, inadvisable. On September 21, 2023, we received a deficiency letter from the NYSE American indicating that we are not in compliance with Section 1003(f)(v) of the NYSE American Company Guide, because shares of our common stock have been selling for a low price per share for a substantial period time. If we fail to regain compliance with the NYSE American continued listing standards by March 21, 2024, the NYSE American will commence delisting proceedings.

If the NYSE American delists our shares of common stock from trading on its exchange and we are not able to list our securities on another national securities exchange, we expect our common stock would qualify to be quoted on an over-the-counter market. If this were to occur, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;
- reduced liquidity for our securities;
- a determination that our common stock is a “penny stock” which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

The National Securities Markets Improvement Act of 1996, which is a federal statute, prevents or preempts the states from regulating the sale of certain securities, which are referred to as “covered securities.” Because our shares of common stock are listed on the NYSE American, our shares of common stock qualify as covered securities under such statute. Although the states are preempted from regulating the sale of our securities, the federal statute does allow the states to investigate companies if there is a suspicion of fraud, and, if there is a finding of fraudulent activity, then the states can regulate or bar the sale of covered securities in a particular case. If we were no longer listed on the NYSE American, our securities would not be covered securities and we would be subject to regulation in each state in which we offer our securities.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

bits	Description
	Press Release dated September 27, 2023

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Better Choice Company Inc.

By: /s/ Carolina Martinez
Name: Carolina Martinez
Title: Chief Financial Officer

September 27, 2023

Better Choice Company Receives NYSE American Notice

TAMPA, FL, September 27, 2023 (GLOBE NEWSWIRE) -- Better Choice Company, Inc. (NYSE American: BTTR) ("Better Choice" or the "Company"), a pet health and wellness company, today announced that it received a Notice (the "Notice") on September 21, 2023 from the NYSE American LLC (the "NYSE American") stating that the Company is not in compliance with the continued listing standards as set forth in Section 1003(f)(v) of the NYSE American Company Guide ("Company Guide").

The Notice stated that because the Company's common stock had been trading for a low price per share for a substantial period of time, the Company was not in compliance with Section 1003(f)(v) of the Company Guide. The NYSE American staff (the "Staff") determined that the Company's continued listing is predicated on effecting a reverse stock split of its common stock or demonstrating sustained price improvement within a reasonable period of time, which the Staff determined to be until March 21, 2024. NYSE American may also accelerate delisting action in the event that the Company's common stock trades at levels viewed by the Staff to be abnormally low.

The Company intends to seek to regain compliance with the NYSE American's continued listing standards by undertaking a measure or measures that are considered necessary and in the best interests of the Company and its shareholders.

The Notice has no immediate effect on the listing or trading of the Company's common stock and the common stock will continue to trade on the NYSE American under the symbol "BTTR" but will have an added designation of "BC" to indicate that the Company is not in compliance with the NYSE American's listing standards. Additionally, the Notice does not result in the immediate delisting of the Company's stock from the NYSE American. The Company's receipt of the Notice does not affect the Company's business, operations or reporting requirements with the Securities and Exchange Commission. The Company is actively engaged in discussions with the NYSE American and is developing plans to regain compliance with the NYSE American's continued listing standards within the time period indicated.

About Better Choice Company, Inc.

Better Choice Company Inc. is a pet health and wellness company focused on providing pet products and services that help dogs and cats live healthier, happier and longer lives. We offer a broad portfolio of pet health and wellness products for dogs and cats sold under our Halo brand across multiple forms, including foods, treats, toppers, dental products, chews, and supplements. We have a demonstrated, multi-decade track record of success and are well positioned to benefit from the mainstream trends of growing pet humanization and consumer focus on health and wellness. Our products consist of kibble and canned dog and cat food, freeze-dried raw dog food and treats, vegan dog food and treats, oral care products and supplements. Halo's core products are made with high-quality, thoughtfully sourced ingredients for natural, science-based nutrition. Each innovative recipe is formulated with leading veterinary and nutrition experts to deliver optimal health. For more information, please visit <https://www.betterchoicecompany.com>.

Forward Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "should," "plan," "could," "target," "potential," "is likely," "will," "expect" and similar expressions, as they relate to us, are intended to identify forward-looking statements. The Company has based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. Some or all of the results anticipated by these forward-looking statements may not be achieved. Further information on the Company's risk factors is contained in our filings with the SEC. Any forward-looking statement made by us herein speaks only as of the date on which it is made. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. The Company undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.