

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103135; File No. SR-NYSETEX-2025-13]

### **Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule of NYSE Texas to Adopt Fees Applicable to Orders Executed in Auctions**

May 28, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2025, the NYSE Texas, Inc. (“NYSE Texas” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule of NYSE Texas, Inc. (the “Fee Schedule”) to adopt fees applicable to orders executed in auctions. The Exchange proposes to implement the fee changes effective May 19, 2025. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the table in Section E.1. of the Fee Schedule to adopt fees applicable to orders executed in auctions. The Exchange proposes to implement the fee changes effective May 19, 2025.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation National Market System (“NMS”), the Commission highlighted the importance of market forces in determining prices and Self-Regulatory Organizations (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>3</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When

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<sup>3</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>4</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>5</sup> numerous alternative trading systems,<sup>6</sup> and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.<sup>7</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.<sup>8</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

### Proposed Rule Change

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<sup>4</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>5</sup> See Cboe U.S Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share).

<sup>6</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>7</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>8</sup> See *id.*

Section E.1. of the Fee Schedule currently includes a table setting forth fees for executions resulting from single-sided orders. In connection with the Exchange’s recent adoption of rules to provide for the operation of auctions,<sup>9</sup> the Exchange proposes to add a new column to the table to provide for fees for orders executed in auctions. This new column would be titled “Auction Fees” and would provide for the following rates, for Tape A, B, and C symbols in all trading sessions:

- For securities priced at or above \$1.00 per share:
  - \$0.0015 for Opening Orders
  - \$0.0012 for Closing Orders
  - \$0.0006 for executions in auctions other than from Auction Orders
- For securities priced below \$1.00 per share, 0.10% of trade value.<sup>10</sup>

The Exchange also proposes to adopt the following definitions for terms used in Section E.1.:

- “Auction Orders” means Market Orders, Market-On-Close Orders, Limit-On-Close Orders, and Auction-Only Orders executed in an NYSE Texas auction.
- “Closing Orders” means Market Orders, Market-On Close Orders, Limit-On-Close Orders, and Auction-Only Orders executed in a Closing Auction.
- “Opening Orders” means Market Orders and Auction-Only Orders executed in an Early Open Auction, Core Open Auction, or Trading Halt Auction.

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<sup>9</sup> See Securities Exchange Act Release No. 103039 (May 13, 2025), 90 FR 21369 (May 19, 2025) (SR-NYSETEX-2025-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 7.35 and Amend Rule 7.31).

<sup>10</sup> The Fee Schedule defines trade value as a dollar amount equal to the price per share multiplied by the number of shares executed. The Exchange proposes a non-substantive, formatting change to incorporate this definition into the bulleted list of definitions proposed in this filing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) of the Act,<sup>12</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>13</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed fees for orders executed in auctions on the Exchange are reasonable, as they are within the range of transaction fees that the Exchange currently charges and are identical to fees charged by the Exchange’s affiliated equities exchange

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See Regulation NMS, 70 FR at 37499.

NYSE Arca, Inc. (“NYSE Arca”) for orders executed in auctions.<sup>14</sup> The Exchange notes that market participants are free to direct their order flow to competing venues if they believe other markets offer more favorable fees and credits. On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to encourage Participants to direct order flow to the Exchange to participate in auctions.

The Exchange believes that the proposed change is an equitable allocation of fees and credits among its market participants and is not unfairly discriminatory, as it applies equally to all similarly situated market participants. Moreover, the proposed rule change neither targets, nor will it have a disparate impact on, any particular category of market participant. The proposed fees are based on the type of business transacted on the Exchange, and Participants are not required to submit orders to the Exchange for execution in auctions or otherwise. The Exchange believes that the proposal would equitably allocate fees among market participants and would not permit unfair discrimination because the proposed fees would apply uniformly to all Participants that execute orders in auctions on the Exchange. As noted above, in today’s competitive marketplace, market participants have a choice of where to direct their order flow or which market to transact on. In the prevailing competitive environment, Exchange members are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value. Accordingly, no Exchange member already operating on the Exchange would be disadvantaged by the proposed allocation of the Exchange’s fees and credits.

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<sup>14</sup> See NYSE Arca Equities Fees and Charges Sections III (Standard Rates - Transactions (applicable when Tier Rates do not apply)) (providing for \$0.0015 fee for Opening Orders and \$0.0012 fee for Closing Orders in securities priced at or above \$1.00, and 0.1% of Dollar Value fee for orders in securities priced below \$1.00) and IV (Other Standard Rates for Securities with a Per Share Price \$1.00 or Above) (providing for \$0.0006 fee for executions in an auction other than for executions from Auction Orders, for orders in securities priced at or above \$1.00).

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>15</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposed change is intended to facilitate the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants on the Exchange. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>16</sup>

*Intramarket Competition.* The Exchange believes the proposed fees for orders executed in auctions would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is intended to encourage additional order flow to be directed to the Exchange to participate in auctions, and Participants that do not execute orders in auctions would not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition because the proposed fee would apply to all orders executed in auctions on an equal and non-

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<sup>15</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> See Regulation NMS, 70 FR at 37498-99.

discriminatory basis, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4<sup>18</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form

(<https://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSETEX-2025-13 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-NYSETEX-2025-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSETEX-2025-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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