

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104126; File No. SR-NYSETEX-2025-33]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Ordering Window Deposit Requirement in Colocation Note 8

September 29, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 25, 2025, the NYSE Texas, Inc. (“NYSE Texas” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Ordering Window deposit requirement in Colocation Note 8 of the Connectivity Fee Schedule. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Ordering Window deposit requirement in Colocation Note 8 of the Connectivity Fee Schedule.

Background

In November 2023, the Commission approved the Exchange’s proposal to amend the Connectivity Fee Schedule to provide, in Colocation Note 8, an alternative procedure by which the Exchange can allocate power in the colocation hall at the Mahwah Data Center (“MDC”)⁴ via deposit-guaranteed orders from Users made within a 90-day “Ordering Window.”⁵ Under that procedure, during an Ordering Window, each User may submit a single order for its anticipated power needs, without regard to the provision of Colocation Note 7 that prohibits the Exchange from accepting orders for more than four dedicated cabinets and/or 32 kW of power. Orders submitted during the Ordering Window are currently subject to deposits equal to two months’ worth of the monthly recurring costs of the amount of power ordered, and such orders are not finalized until the User’s signed order form and deposit are received by the Exchange. After the

⁴ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and its affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (the “Affiliate SROs”) are indirect subsidiaries of ICE. Each of the Exchange’s Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2025-36, SR-NYSEAMER-2025-59, SR-NYSEARCA-2025-70, and SR-NYSENAT-2025-22.

⁵ See Securities Exchange Act Release No. 98937 (November 14, 2023), 88 FR 80793 (November 20, 2023) (SR-NYSE-2023-29, SR-NYSEAMER-2023-39, SR-NYSEARCA-2023-53, SR-NYSECHX-2023-16, SR-NYSENAT-2023-18).

Ordering Window closes, space and power are allocated by the Exchange according to a formula described in Colocation Note 8.

As the Exchange explained in its original proposal, the purpose of the Ordering Window procedure is to permit the Exchange to obtain a real indication of Users' true demands for power both now and in the future. At the time of the original proposal, ICE was in the process of developing a new colocation hall – Hall 5 – at the MDC, yet lacked any way to gauge Users' true demand for space and power given Users' inability to place orders for more than four dedicated cabinets and/or 32 kW of power. In addition, ICE sought firm, guaranteed commitments from Users that they would actually purchase the additional space and power if it was offered to them, thereby justifying ICE's investment in building out additional colocation halls. The Exchange developed the Ordering Window procedure to address these issues.

To date, the Exchange has used the Ordering Window procedure once, in early 2024, before the opening of the MDC's Hall 5. While the procedure worked as intended, the Exchange did observe behavior on the part of some Users that impacted the allocation of space and power. Seven Users submitted orders for 32 kW or less, and were all allocated the full amount of their orders under "Step 2" of the allocation procedure in Colocation Note 8. An additional nine Users ordered more than 32 kW. The Exchange has learned from discussions with those nine firms that five of them placed orders for the amount of power they actually wished to receive, while the other four firms placed orders for three to six times their desired amount of power – and, in some cases, more than all the power that was actually available in all of Hall 5.⁶ When power was allocated to these nine firms pursuant to "Step 3" of the allocation procedure in

⁶ One User submitted an order for 2,700 kW, which was more than the total amount of power available in all of Hall 5 during the Ordering Window, while another User submitted an order for 5,500 kW, nearly double that amount.

Colocation Note 8, the result was that the five firms that ordered their actual desired amount of power received approximately 60% of their requested amounts, while the four firms that ordered several times more power than they actually wanted received an amount of power closer to their actual desired amount.

Proposed Change

ICE is currently developing an additional colocation hall at the MDC – Hall 6 – and seeks to evaluate customer demand for the space and power in that Hall, as well as whether customer demand would support additional expansion projects beyond Hall 6. The Exchange plans to use the Ordering Window procedure to assist in evaluating these issues, but proposes one change to the procedure before doing so.

Specifically, the Exchange proposes to increase the deposit that Users must provide when submitting orders for more than 32 kW during the Ordering Window to six months' worth of the monthly recurring costs of the amount of power ordered, up from two months' worth. There would be no change to the deposit requirement for Users ordering 32 kW or less, who would continue to provide a deposit equal to two months' worth of the monthly recurring costs of the amount of power ordered. Similarly, there would be no change to the use of the deposit: it would continue to be applied to the User's first and subsequent months' invoices after the power is delivered until it is completely depleted. If the User withdraws its order during the Ordering Window, the deposit will be returned.

The Exchange believes that increasing the deposit requirement for orders of more than 32 kW during the Ordering Window would discourage Users seeking more than 32 kW of power from acting opportunistically and placing orders for amounts of power several times their actual desired amount. The Exchange believes that increasing the deposit amount for orders exceeding

32 kW by a multiple of three will have a material effect on the ordering behavior of these Users, since ordering several times more power than their actual desired amount would tie up sizeable amounts of capital as deposits. By way of example, during the Ordering Window in early 2024, the four firms that placed orders for significantly more power than they needed paid deposits totaling \$17 million; under the proposed rule change, similar orders would require deposits of \$51 million. The Exchange believes from discussions with several Users that such a deposit requirement would dissuade Users from submitting such inflated orders for power.

The Exchange believes that increasing the deposit requirement to six months from two months for orders more than 32 kW is the best way to meet the goals of the Ordering Window procedure while dissuading certain Users' opportunistic ordering behavior. In addition, the proposal would have no impact on Users ordering less than 32 kW of power, whose deposit requirement would not change and who would continue to be allocated power in "Step 2" of the allocation procedure, before any orders larger than 32 kW are considered.

Application and Impact of the Proposed Changes

The proposed change is not targeted at, or expected to be limited in applicability to, market participants of any specific type or size. Rather, the proposed change would apply equally to any User ordering more than 32 kW of power during an Ordering Window.

Users with more modest power needs would not be disadvantaged by the proposed change. This proposal would not change the deposit requirement for Users finalizing orders during the Ordering Window of 32 kW or less. Nor would this proposal change the fact that in "Step 2," each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled.

The proposed changes are not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed rule change is designed to mitigate the opportunistic behavior of Users who submitted Ordering Window orders for significantly more power than their actual desired amounts. The Exchange believes that increasing the deposit requirement for orders of more than 32 kW during the Ordering Window to six months' worth of the monthly recurring costs of the amount of power ordered, up from two months' worth, would discourage Users seeking more than 32 kW of power from acting opportunistically and placing orders for amounts of power several times their actual desired amount. The Exchange believes that increasing the deposit amount for orders exceeding 32 kW by a multiple of three will have a material effect on the ordering behavior of these Users, since ordering several times more power than their actual desired amount would tie up sizeable amounts of capital as deposits. By way of example, during the Ordering Window in early 2024, the four firms that placed orders for significantly more

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

power than they needed paid deposits totaling \$17 million; under the proposed rule change, similar orders would require deposits of \$51 million. The Exchange believes from discussions with several Users that such a deposit requirement would dissuade Users from submitting such inflated orders for power.

The Exchange believes that increasing the deposit requirement to six months from two months for orders more than 32 kW is the best way to meet the goals of the Ordering Window procedure while dissuading certain Users' opportunistic ordering behavior. In addition, the proposal would have no impact on Users ordering less than 32 kW of power, whose deposit requirement would not change and who would continue to be allocated power in "Step 2" of the allocation procedure, before any orders larger than 32 kW are considered. The Exchange's proposal is thus specifically tailored to dissuade Users from submitting orders for significantly more power than their actual desired amounts.

The proposed rule change would protect investors and the public interest in that it would provide the Exchange with more accurate insight into Users' true power requirements. It is in the public interest for the Exchange to take User demand into account and to make reasoned, informed decisions about whether and how to expand the MDC.

At the same time, there would be no change to the use of the deposit: it would continue to be applied to the User's first and subsequent months' invoices after the power is delivered until it is completely depleted. If the User withdraws its order during the Ordering Window, the deposit will be returned. Accordingly, a User would continue to benefit from the deposit.

The proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The

proposed change is not targeted at, or expected to be limited in applicability to, market participants of any specific type or size. Rather, the proposed change would apply equally to any User ordering more than 32 kW of power during an Ordering Window. Users with more modest power needs would not be disadvantaged by the proposed change. This proposal would not change the deposit requirement for Users finalizing orders during the Ordering Window of 32 kW or less. Nor would this proposal change the fact that in “Step 2,” each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User’s order for more than 32 kW would be filled.

For all these 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, the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would increase the deposit requirement for orders for more than 32 kW submitted during an Ordering Window in order to mitigate the opportunistic behavior of Users ordering significantly more power than their actual desired amounts. The Exchange does not expect the proposed rule change to impact intra-market or intermarket competition between exchanges, Users, or any other market participants.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ and Rule 19b-4(f)(2) thereunder¹⁰ the

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4.

Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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.

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-NYSETEX-2025-33 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-2025-33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the filing 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-2025-33 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.¹¹

Sherry R. Haywood,

Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).