

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105820; File No. SR-TXSE-2026-009]

Self-Regulatory Organizations; Texas Stock Exchange LLC; Notice of Filing of a Proposed Rule Change to Amend a Continued Listing Standard Relating to Beneficial Holders Applicable to ETF Shares Listed on the Exchange under Rule 17.104(b)(2)(B)

June 30, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 16, 2026, Texas Stock Exchange LLC (the “Exchange” or “TXSE”) 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 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 filed a proposal to amend Rule 17.104 related to the continued listing requirements on the Exchange for Exchange Traded Fund Shares (“ETF Shares”), as further described below.

The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>) at the Exchange’s website (<https://txse.com/rule-filings>), and at the principal office of the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of 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 change to Rule 17.104(b)(2)(B) (the “Beneficial Holders Rule”) in order to amend the continued listing standard applicable to ETF Shares³ listed on the Exchange.⁴ Currently, the Exchange's continued listing standard for ETF Shares under the Beneficial Holders Rule requires that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange shall consider the suspension of trading in and will commence delisting proceedings under Rule 16.500 for a series of ETF Shares for which there are fewer than 50 Beneficial Holders.⁵ The Exchange is proposing to eliminate the Beneficial Holders Rule because it believes that the rule does not advance any investment protection

³ The term “ETF Shares” means shares of stock issued by an Exchange-Traded Fund. See Exchange Rule 17.104(a)(1)(B). The term “Exchange-Traded Fund” has the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11 under the Investment Act of 1940. See Exchange Rule 17.104(a)(1)(A).

⁴ The Exchange notes that its Rules related to the listing and trading of other product types (that is, products listed pursuant to Chapter 17 that are not ETF Shares as defined above) have similar requirements related to Beneficial Holders which the Exchange is not proposing to change at this time. Specifically, the Exchange is only proposing to amend the Beneficial Holders Rules as it pertains to ETF Shares because such product type represents the vast majority of products listed on U.S. exchanges. The Exchange may consider proposing to amend the Beneficial Holders standards for other product types in a future proposal.

⁵ As it relates to this filing, “Beneficial Holders” shall mean beneficial holders and, where applicable in a particular continued listing standard, record holders.

objective specific to ETFs, produces arbitrary and negative outcomes for investors and for products that are otherwise operating normally, and that the competitive market for ETF Shares efficiently incentivizes stagnant and unprofitable funds to wind down. The Exchange is also proposing to renumber Rule 17.104(b)(2) in order to reflect the deletion of Rule 17.104(b)(2)(B).

Minimum shareholder requirements have applied to listed operating companies long before ETFs were listed in the United States and for such securities operate as a safeguard against manipulation and liquidity concerns related to a small and concentrated float. In that context, such a requirement makes sense: the supply of shares is relatively fixed and a security with limited distribution is more easily subject to manipulation. ETFs, however, have structural features that mitigate those risks.

The defining feature of ETFs is the creation and redemption mechanism. Authorized participants can create new shares by delivering cash or other will assets to the trust or redeem existing shares in exchange for cash or other assets. This mechanism ensures that an ETF generally trades in line with the value of its underlying holdings (“NAV”) by creating an economic incentive for market participants to create shares and sell them at the market when the market price of an ETF is trading above NAV and to buy shares on the market and redeem them when the ETF is trading below NAV. The Commission has long recognized this feature as distinguishing ETFs from other product classes and it justifies the distinct regulatory framework that applies to ETF Shares under Rule 6c-11 (the “ETF Rule”).⁶

Because of the economic incentives for market participants to keep the price of an ETF in line with its NAV through the arbitrage process (rather than price formation strictly through trading behavior of existing holders), the number of beneficial holders bears little relationship to

⁶ See Investment Company Act Release No. 33646 (September 25, 2019), 84 FR 57162 (October 24, 2019).

how well an ETF tracks its NAV, its susceptibility to manipulation, or whether a fair and orderly market in the ETF can be maintained. An ETF with a small beneficial holder base and an ETF with a larger one are both generally held in line with their NAV by authorized participants under the same arbitrage incentives. The investor protection and fair and orderly markets rationales that historically supported beneficial holder requirements for operating company stock does not translate to a product class whose price is set by reference to a derivative value rather than by the supply and demand dynamics of a more fixed float.

The structure of the rule itself reflects the lack of clarity around exactly how it protects investors and helps maintain fair and orderly markets. The Beneficial Holders Rule does not apply to newly listed ETFs during the first 12 months following listing. The Beneficial Holders Rule and equivalent rules at other exchanges generally provide that an ETF has an additional 180 days to comply with the 50 beneficial holders requirement after receiving a deficiency notification. Under recently approved amendments to the equivalent rule on Cboe BZX Exchange, Inc. (“BZX”),⁷ a product that is out of compliance even after that 180-day additional period may now receive an additional 180 days to meet the 50 beneficial holder requirement. Practically, this means that an ETF may remain listed and trading for approximately two years with fewer than 50 beneficial holders. If the beneficial holder threshold were addressing a genuine and time-sensitive risk to investors or to market integrity, neither the initial year nor the additional 360 days would be an acceptable “grace period.” The Exchange believes that the BZX Approval reflects a recognition that sub-threshold beneficial holder counts do not, standing alone, present risks that warrant immediate delisting, and that the proper response is to eliminate

⁷ See Exchange Act Release No. 104970 (March 11, 2026), 91 FR 12650 (March 16, 2026) (Order Granting Approval of a Proposed Rule Change To Amend Exchange Rule 14.12) (the “BZX Approval”).

the Beneficial Holders Rule rather than to continue calibrating progressively longer cure periods around it.

The Exchange also believes that the Beneficial Holders Rule is not necessary to prevent products lacking investor interest from remaining listed indefinitely and becoming “zombie ETFs.” Recent industry data indicates that the average lifespan of an ETF liquidated in 2026 has fallen to approximately one year and nine months, down from approximately three years and six months in 2025 and approximately four years and eight months in 2024.⁸ Additionally, more than 600 ETFs liquidated across 2023 (226 liquidations),⁹ 2024 (187 liquidations),¹⁰ and 2025 (232 liquidations).¹¹ This trend reflects ordinary market dynamics. Morningstar data indicates that ETFs typically incur approximately \$250,000 in annual fixed costs and require approximately \$33 million in assets to reach breakeven, with the result that products failing to attract a viable asset base are routinely liquidated by their issuers.¹² A product that has fewer than 50 beneficial holders after an extended period is likely under substantial commercial pressure toward voluntary liquidation. The Beneficial Holders Rule adds no clear protections to this existing market dynamic, it adds only an arbitrary regulatory deadline that may force delisting at a moment unrelated to the actual interest of investors in the product.

The Exchange further notes that the Beneficial Holders Rule can produce outcomes that

⁸ See *Average ETF Lifespan Collapses With Wall Street Antsy for Scale*, Bloomberg by Katie Greifeld (April 2, 2026), available at: <https://www.bloomberg.com/news/articles/2026-04-02/average-etf-lifespan-collapses-with-wall-street-antsy-for-scale>.

⁹ See *6 ETF Investing Predictions for 2025*, Morningstar by Bryan Armour (January 8, 2025), available at: <https://www.morningstar.com/funds/6-etf-investing-predictions-2025>.

¹⁰ *Id.*

¹¹ See *Active ETF Launches and Closures: 2025 in Review*, Morningstar by Jason Kephart, Bryan Armour, and Stephen Welch (February 13, 2026), available at: <https://www.morningstar.com/business/insights/blog/active-etf-launches-and-liquidations-2025>.

¹² *Id.*

are contrary to investor protection. As the Commission acknowledged in the BZX Approval, the requirement can force delisting of products that are making demonstrable progress toward compliance and can produce reductions in beneficial holders across an entire series of related products as a result of distress in a single tranche, including in tranches that are themselves in full compliance with all other listing standards.¹³ The Commission's approval of an extended cure period in that release reflects a recognition that delisting on the basis of temporary beneficial holder deficiencies can harm investors. The Exchange believes the more direct response to that recognition is to eliminate the threshold rather than to retain a rule that can produce negative outcomes for investors.

To the extent that valid concerns exist about manipulation, liquidity, or distribution in ETFs, those concerns are addressed directly and more accurately by other elements of the listing and regulatory framework. Trading surveillance conducted by the Exchange and FINRA addresses manipulation risk on an evidence-based rather than a proxy basis. The creation and redemption mechanism itself operates within a substantial regulatory framework, including the basket-construction and portfolio-transparency requirements of the ETF Rule, the broker-dealer regulation applicable to authorized participants as FINRA and exchange member firms, and the anti-manipulation provisions of the Exchange Act and rules thereunder. These existing protections address the price-integrity concerns that beneficial holder requirements were historically designed to address in the operating company context. The proposed amendment therefore does not leave any genuine risk unaddressed. It removes a vestigial rule that is poorly suited to the product class while leaving in place the structures that provide investor protections and ensure the maintenance of a fair and orderly market.

¹³ See BZX Approval at 12651.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is 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.

The Exchange believes that eliminating the Beneficial Holders Rule is consistent with these requirements because the rule does not advance any investor protection objective specific to ETFs. Minimum shareholder requirements have applied to listed operating companies long before ETFs were listed in the United States and, for such securities, operate as a safeguard against manipulation and liquidity concerns related to a small and concentrated float. ETFs, however, have structural features that mitigate those risks. The defining feature of ETFs is the creation and redemption mechanism, which the Commission has long recognized as distinguishing ETFs from other product classes and which justifies the distinct regulatory framework that applies to ETF Shares under the ETF Rule. Because authorized participants have economic incentives to keep the price of an ETF in line with its NAV through the arbitrage process, the number of beneficial holders bears little relationship to how well an ETF tracks its NAV, its susceptibility to manipulation, or whether a fair and orderly market in the ETF can be maintained. An ETF with a small beneficial holder base and an ETF with a larger one are both generally held in line with their NAV by authorized participants under the same arbitrage

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

incentives. The investor protection and fair and orderly markets rationales that historically supported beneficial holder requirements for operating company stock do not translate to a product class whose price is set by reference to a derivative value rather than by the supply and demand dynamics of a more fixed float.

The Exchange further believes that the structure of the rule itself reflects the lack of clarity around exactly how it protects investors and helps maintain fair and orderly markets. The rule does not apply to newly listed ETFs during the first 12 months following listing, and the Beneficial Holders Rule and equivalent rules at other exchanges generally provide that an ETF has an additional 180 days to comply with the 50 beneficial holders requirement after receiving a deficiency notification. Under recently approved amendments to the equivalent rule on BZX, a product that is out of compliance even after that 180-day additional period may now receive an additional 180 days to meet the 50 beneficial holder requirement. An ETF may therefore remain listed and trading for approximately two years with fewer than 50 beneficial holders. If the beneficial holder threshold were addressing a genuine and time-sensitive risk to investors or to market integrity, neither the initial year nor the additional 360 days would be an acceptable grace period. The Exchange believes that the BZX Approval reflects a recognition that sub-threshold beneficial holder counts do not, standing alone, present risks that warrant immediate delisting, and that the proper response is to eliminate the Beneficial Holders Rule rather than to continue calibrating progressively longer cure periods around it.

The Exchange also believes that elimination of the Beneficial Holders Rule is consistent with Section 6(b)(5) because the rule is not necessary to prevent products lacking investor interest from remaining listed indefinitely and becoming "zombie ETFs." Ordinary market dynamics already perform that function. More than 600 ETFs liquidated across 2023, 2024, and

2025, and the average lifespan of an ETF liquidated in 2026 has fallen to approximately one year and nine months. ETFs incur meaningful annual fixed costs and require a substantial asset base to reach breakeven, with the result that products failing to attract a viable asset base are routinely liquidated by their issuers. A product that has fewer than 50 beneficial holders after an extended period is therefore already under substantial commercial pressure toward voluntary liquidation. The Beneficial Holders Rule adds no clear protections to this existing market dynamic; it adds only an arbitrary regulatory deadline that may force delisting at a moment unrelated to the actual interest of investors in the product.

The Exchange further believes that elimination of the Beneficial Holders Rule is consistent with the protection of investors because the rule can produce outcomes that are contrary to investor protection. As the Commission acknowledged in the BZX Approval, the requirement can force delisting of products that are making demonstrable progress toward compliance and can produce reductions in beneficial holders across an entire series of related products as a result of distress in a single tranche, including in tranches that are themselves in full compliance with all other listing standards. The Commission's approval of an extended cure period in that release reflects a recognition that delisting on the basis of temporary beneficial holder deficiencies can harm investors. The Exchange believes the more direct response to that recognition is to eliminate the threshold rather than to retain a rule that can produce negative outcomes for investors.

Finally, the Exchange believes that elimination of the Beneficial Holders Rule is consistent with Section 6(b)(5) because, to the extent that valid concerns exist about manipulation, liquidity, or distribution in ETFs, those concerns are addressed directly and more accurately by other elements of the listing and regulatory framework. Trading surveillance

conducted by the Exchange and FINRA addresses manipulation risk on an evidence-based rather than a proxy basis. The creation and redemption mechanism itself operates within a substantial regulatory framework, including the basket-construction and portfolio-transparency requirements of the ETF Rule, the broker-dealer regulation applicable to authorized participants as FINRA and exchange member firms, and the anti-manipulation provisions of the Exchange Act and rules thereunder. These existing protections address the price-integrity concerns that beneficial holder requirements were historically designed to address in the operating company context. The proposed amendment therefore does not leave any genuine risk unaddressed. It removes a vestigial rule that is poorly suited to the product class while leaving in place the structures that provide investor protections and ensure the maintenance of a fair and orderly market.

Finally, the Exchange believes that the proposed renumbering of Rule 17.104(b)(2) is consistent with the Act because it will make the Exchange's Rules more clear and understandable in light of the proposed deletion of current Rule 17.104(b)(2)(B).

For these reasons, the Exchange believes that the proposed changes are consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change does not impose any burden on intramarket competition because the elimination of the Beneficial Holders Rule will apply uniformly to all series of ETF Shares listed on the Exchange. The proposed rule change removes a continued listing requirement that will place all listed ETF Shares on the same footing with respect to continued listing standards.

The proposed rule change does not impose any burden on intermarket competition. To

the extent it has any effect on intermarket competition, the proposed rule change should promote competition by removing a listing requirement that does not advance any investor protection objective specific to ETFs and that can produce arbitrary outcomes for products that are otherwise operating normally. Other exchanges that list ETF Shares remain free to maintain or modify their own continued listing standards as they see fit, and the Exchange welcomes the opportunity for issuers to choose among listing venues based on the merits of the listing frameworks each exchange provides.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-TXSE-2026-009 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-TXSE-2026-009. 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-TXSE-2026-009 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.¹⁶

Sherry R. Haywood,
Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).