

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103142; File No. SR-NYSEARCA-2025-37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges

May 28, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2025, NYSE Arca, Inc. (“NYSE Arca” 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 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 NYSE Arca Equities Fees and Charges (“Fee Schedule”) to adopt fees and credits for Primary Only Orders routed to NYSE Texas, Inc. 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 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 Fee Schedule to adopt fees and credits for Primary Only ("PO") Orders routed to NYSE Texas, Inc. ("NYSE Texas"). The Exchange proposes to implement the fee change 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 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."³

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 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."⁴

³ 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").

⁴ 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).

Indeed, equity trading is currently dispersed across 16 exchanges,⁵ numerous alternative trading systems,⁶ 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.⁷ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.⁸

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 the 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

On May 19, 2025, NYSE Texas, Inc. ("NYSE Texas"), an affiliate of the Exchange, plans to introduce auction functionality applicable to Tape B securities.⁹ In connection with the

⁵ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁶ 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>.

⁷ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁸ See *id.*

⁹ See Securities Exchange Act Release No. 103039 (May 13, 2025) (Federal Register notice pending) (SR-NYSETEX-2025-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rule 7.35 and Amend Rule 7.31).

introduction of auctions on NYSE Texas, the Exchange proposes to amend Section V. of the Fee Schedule titled Standard Rates - Routing and adopt a fee of \$0.0005 per share for PO Orders¹⁰ in Tape B securities priced at or above \$1.00 that are routed to NYSE Texas for execution in the opening or closing auction on that market. For PO Orders in Tape B securities routed to NYSE Texas that add liquidity, the Exchange proposes to not provide any credit. The fees and credits proposed for PO Orders in Tape B securities routed to NYSE Texas are identical to the fees and credits adopted by the Exchange for PO Orders in Tape B securities routed to NYSE American LLC, also an affiliate of the Exchange.¹¹

The proposed fee change would maintain consistency with respect to the fees charged and credits provided by the Exchange when it routes PO Orders to an away market that is an affiliate of the Exchange.

In connection with the Exchange's proposal to adopt fees and credits for PO Orders routed to NYSE Texas, the Exchange proposes to adopt a definition of the term "NYSE Texas Auction" under Section I. of the Fee Schedule. As proposed, the term "NYSE Texas Auction" would mean orders routed for execution in the open or closing auction on NYSE Texas.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ in

¹⁰ A PO Order is a market or limit order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. See NYSE Arca Rule 7.31(f)(1).

¹¹ Under the Standard Rates - Routing pricing table on the Fee Schedule, the Exchange currently charges a per share fee of \$0.0005 for PO Orders in Tape B securities priced at or above \$1.00 that are routed to NYSE American Auction. For PO Orders in Tape B securities routed to NYSE American that add liquidity, the Exchange does not provide any credit.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁴

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 to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order which provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed amendment to the routing fees is reasonable. The Exchange believes it is reasonable to adopt a fee when it routes orders to away markets. In particular, the Exchange believes that the proposed rule change is reasonable because it seeks to recoup costs incurred by the Exchange when routing orders to away markets. The proposed

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), [70 FR 37496](#), 37499 (June 29, 2005).

routing fees are also similar to fees currently charged by the Exchange for routing PO Orders to NYSE American for execution on that market's opening or closing auction.

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is designed to reflect the costs incurred by the Exchange for orders submitted by ETP Holders that remove liquidity from auctions conducted on away markets and would apply equally to all ETP Holders that choose to use the Exchange to route PO Orders to NYSE Texas. Furthermore, the Exchange notes that routing through the Exchange is voluntary, and, because the Exchange operates in a highly competitive environment as discussed below, ETP Holders that do not favor the Exchange's pricing can readily direct order flow directly to NYSE Texas or through competing venues or providers of routing services. The proposed change may impact the submission of orders to a national securities exchange, and to the extent that ETP Holders continue to submit PO Orders to the Exchange, the proposed rule change would not have a negative impact to ETP Holders trading on the Exchange because the proposed fees and credits are consistent with the fees and credits adopted by the Exchange for routing PO Orders to an away market that is an affiliate of the Exchange.¹⁵ However, without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by ETP Holders.

The proposal to adopt fees and credits for PO Orders routed to NYSE Texas for execution in that market's opening or closing auction or that add liquidity on that market are not unfairly discriminatory because the proposed pricing would be applied on an equal basis to all ETP Holders that choose to send PO Orders to the Exchange. Additionally, the proposed rule

¹⁵ See, note 12, supra.

change neither targets nor will it have a disparate impact on any particular category of market participants. The proposal does not permit unfair discrimination because the proposed fees and credits would be applied to all ETP Holders, who would all be assessed the same pricing on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees and credits.

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,¹⁶ 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, the Exchange believes that the proposed rule change could promote competition between the Exchange and competing venues or providers of routing services. 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."¹⁷

Intramarket Competition. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange would uniformly assess the proposed fees and credits on all ETP Holders who choose to route PO Orders through the Exchange to NYSE Texas. The Exchange does not believe that the proposed rule change will impair the

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ See Regulation NMS, 70 FR at 37498-99.

ability of ETP Holders to compete in the financial markets. There are 16 exchanges, numerous alternative trading systems and broker-dealer internalizers and wholesalers, all competing for order flow from which ETP Holders may choose to send their quotes and trades. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed rule change would apply to all ETP Holders equally that transact on the Exchange, 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 current market share of intraday trading (i.e., excluding auctions) is less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. In particular, the proposed rule change is a response to this competitive environment where the Exchange is adopting a fee for functionality that is widely available among its competitors. 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁸ and Rule 19b-4(f)(2) thereunder¹⁹ the 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-NYSEARCA-2025-37 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.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4.

All submissions should refer to file number SR-NYSEARCA-2025-37. 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 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-NYSEARCA-2025-37 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.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).