



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103912]

Order Granting Application by NYSE Texas, Inc. for an Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

September 9, 2025.

NYSE Texas, Inc. (“NYSE Texas” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of NYSE Arca, Inc. (“NYSE Arca”) that the Exchange seeks to incorporate by reference.³ Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange has requested, pursuant to Rule 0-12 under the Exchange Act,⁴ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange’s rules that are affected solely by virtue of a change to a cross-referenced NYSE Arca rule. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the NYSE Arca rules listed below that are cross-referenced (collectively, the “Cross-Referenced NYSE Arca Rules”) in Exchange rules that

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See Letter from David De Gregorio, Associate General Counsel, New York Stock Exchange, dated May 28, 2025 (“Exemptive Request”).

⁴ 17 CFR 240.0-12.

were adopted in two recent proposed rule changes,⁵ without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act:⁶

- NYSE Arca Rule 5.3-O (Criteria for Underlying Securities)
- NYSE Arca Rule 5.13-O (Designation of the Index Narrow-Based Index Options)
- NYSE Arca Rule 9.18-O (Doing a Public Business in Options)
- NYSE Arca Rule 9.28-O (Advertisements, Market Letters and Sales Literature Relating to Options)
- NYSE Arca Rule 5.2-E(c) (Common Stock-Select Market Companies)

The Exchange represents that the NYSE Arca rules listed above are not trading rules and instead set forth listing requirements or requirements related to the general conduct of options trading.⁷ The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange will provide written notice to Participants⁸ whenever NYSE Arca proposes a change to a Cross-Referenced NYSE Arca Rule.⁹ The Exchange states that such notice will alert Participants to the proposed NYSE Arca rule change and give them an opportunity to comment on the proposal.¹⁰ The Exchange further represents that it will inform Participants in writing when the Commission approves any such proposed rule changes.¹¹

⁵ See Securities Exchange Act Release Nos. 102957 (April 29, 2025), 90 FR 19054 (May 5, 2025) (SR-NYSECHX-2025-04) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rules 1.1, 5, 7.18, 8 and Exchange Article 22, Rules 24-27) and 103018 (May 9, 2025), 90 FR 20715 (May 15, 2025) (SR-NYSETEX-2025-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Rule 11.30).

⁶ See Exemptive Request, *supra* note 3, at 2.

⁷ See *id.* at 2, n.7.

⁸ See definition of “Participant” in NYSE Texas Rules, Article 1, Rule 1(s).

⁹ See *id.* at 3. The Exchange represents that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4(l) within the time frame required by such rule. See *id.* at 3, n.8. The website posting will include a link to the location on NYSE Arca’s website where the applicable proposed rule change is posted. See *id.*

¹⁰ See *id.*

¹¹ See *id.*

According to the Exchange, this exemption is appropriate because it would promote consistency between the Exchange’s rulebook and the Cross-Referenced NYSE Arca Rules at all times. This harmonization of the Exchange rules and the Cross-Referenced NYSE Arca Rules would thus support the uniform application of such rules to Participants and NYSE Arca ETP Holders¹² and increase internal efficiencies with respect to the administration of such rules.¹³

The Commission has issued exemptions similar to the Exchange’s request.¹⁴ In granting similar exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;¹⁵

¹² See definition of “ETP Holder” in NYSE Arca Rule 1.1.

¹³ See Exemptive Request, at 2.

¹⁴ See, e.g., Securities Exchange Act Release Nos. 91202 (February 24, 2021), 86 FR 12250 (March 2, 2021) (order granting Nasdaq ISE’s exemptive request regarding Nasdaq Rule 1000 Series incorporated by reference); 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.’s exemptive request relating to rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAX PEARL, LLC’s exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083-84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations (“SROs”) (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.’s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules (“BATS Options Market Order”)); 61152 (December 10, 2009), 74 FR 66699, 66709-10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

¹⁵ See 17 CFR 240.0-12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁶

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹⁷ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described NYSE Arca rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its Participants whenever NYSE Arca changes a rule that the Exchange has incorporated by reference.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,¹⁸ that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the Cross-Referenced NYSE Arca Rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its Participants whenever NYSE Arca proposes to change a rule that the Exchange has incorporated by reference.

¹⁶ See BATS Options Market Order, *supra* note 14 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order")).

¹⁷ See BATS Options Market Order, *supra* note 14, 75 FR at 8761; see also 2004 Order, *supra* note 16, 69 FR at 8502.

¹⁸ 15 U.S.C. 78mm.

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

Sherry R. Haywood,

Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(76).