

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92149; File No. SR-CboeBYX-2021-013)

June 10, 2021

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Introduce a New Data Product to be Known as Short Sale Volume Data

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 May 28, 2021, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to introduce a new data product to be known as Short Sale Volume data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 aspects 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 Rule 11.22(f) to provide for a new data product to be known as Short Sale Volume data. The proposal introduces Short Sale Volume data that will be available for purchase to BYX Members (“Members”) and non-Members.³ The proposal is similar to products offered by the New York Stock Exchange LLC (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) which provide short sale volume information.

A description of each market data product offered by the Exchange is described in Exchange Rule 11.22. The Exchange proposes to amend Rule 11.22(f) to introduce and add a description of the Short Sale Volume data product. The Exchange proposes to describe the Short Sale Volume data as “a data product that summarizes short sale volume (shares traded on BYX). Short Sale Volume data is available on an end-of-day and intraday basis.”

The Exchange proposes to offer Short Sale Volume data on an end-of-day and intraday basis which will be available for purchase by Members and non-Members. Specifically, the Exchange

³ The Exchange intends to submit a separate rule filing to establish fees for Short Sale Volume data.

proposes to offer an end-of-day short sale volume report that includes the date, session (i.e., Pre-Opening Session,⁴ Regular Trading Hours,⁵ or After Hours Trading Session⁶),⁷ symbol, trade count, buy and sell volume, type of sale (i.e., sell, sell short, or sell short exempt), capacity (i.e., principal, agent, or riskless principal), and retail order indicator. The end-of-day Short Sale Volume data would include same day corrections to short sale volume.

The Exchange also proposes to offer Short Sale Volume data on an intraday basis that will provide the same information to that of end-of-day Short Sale Volume data, but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10 minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided aggregated with data captured through 9:50 a.m., and so forth. Each update will represent combined data captured from the current "snapshot" and all previous "snapshots" and thus will provide short sale volume data on an aggregate basis. The intraday Short Sale Volume data will not include same day corrections, as proposed in the end-of-day data. The proposed data products provide proprietary BYX trade data and do not include trade data from any other exchange.

The proposed end-of-day and intraday Short Sale Volume data will be available for purchase on a monthly subscription basis. Subscribers to the end-of-day Short Sale Volume data

⁴ See Exchange Rule 1.5(r).

⁵ See Exchange Rule 1.5(w).

⁶ See Exchange Rule 1.5(c).

⁷ Session information will only be available in data after July 31, 2020.

will receive a daily end-of-day file. Similarly, subscribers to the intraday Short Sale Volume data will receive data which will be produced and updated every 10 minutes as described above.

Additionally, end-of-day and intraday Short Sale Volume data will be available on a historical basis for purchase as far back as January 3, 2017.⁸ The subscription files and historical ad hoc files will include the same data points. Further, the Exchange will establish a monthly subscriber fee and historical ad hoc fee for the Short Sale Volume data by way of a separate proposed rule change, which the Exchange will submit in connection with the launch of the Short Sale Volume data product.

The Exchange anticipates a wide variety of market participants to purchase Short Sale Volume data, including, but not limited to active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize Short Sale Volume data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange believes the proposed Short Sale Volume data products may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, Short Sale Volume data may allow a market participant to identify the source of selling pressure and whether it is long or short. Further, it may provide more visibility into increasing and decreasing retail interest in a specific security. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to

⁸ Historical data will be available on an ad hoc basis.

make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer similar data products.⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Short Sale Volume data would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of Short

⁹ See the Nasdaq Daily Short Sale Volume files at <https://nasdaqtrader.com/Trader.aspx?id=shortsale>. See also the NYSE TAQ Group Short Sales and Short Volume at <https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales>.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

Sale Volume data. The proposed rule change would benefit investors by providing access to the Short Sale Volume data, which may promote better informed trading. Particularly, information regarding Short Sale Volume may allow a market participant to identify the source of selling pressure and whether it is long or short. Further, it may provide more visibility into increasing and decreasing retail interest in a specific security.

Moreover, other exchanges offer similar data products.¹³ Nasdaq offers a daily short sale volume report and NYSE offers the TAQ group short sales and short volume product, which provide similar information to that included in the proposed end-of-day Short Sale Volume data product. The Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, BX and PSX during regular trading hours.¹⁴ Specifically, the Nasdaq daily short sale volume provides the following information: date, symbol, volume during regular trading hours, and CTA market identifier. The NYSE daily short volume file reflects a summary of short sale volume for securities traded on NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago. Specifically, the NYSE short sales and short volume product provides the following information: date, symbol, short exempt volume, short volume, total volume of the short sale transaction, and market identifier. NYSE and Nasdaq also offer monthly short sale volume reports which offer different information than that provided in their daily short sale reports.

The Exchange proposes to include different and additional data in the proposed products. Specifically, the Exchange proposes to include session information, trade count, capacity, and a retail order indicator in the proposed data product which are not currently provided in either the

¹³ See Supra note 9.

¹⁴ See <https://nasdaqtrader.com/Trader.aspx?id=shortsale>.

NYSE or Nasdaq short sale volume product offerings. Further, the Exchange proposes to offer an intraday Short Sale Volume data product, which is not offered by other exchanges. The Exchange believes the additional data points and the intraday data will benefit market participants because they will provide visibility into market activity that is not currently available. Further it will allow market participants to better understand the changing risk environment on a daily and intraday basis. Therefore, the Exchange believes it is reasonable to include such data in the proposed products.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer data products similar to those offered by other competitor equities exchanges.¹⁵ The Exchange is proposing to introduce Short Sale Volume data in order to keep pace with changes in the industry and evolving customer needs, and believes this proposed rule change would contribute to robust competition among national securities exchanges. As noted, at least two other U.S. equity exchanges offer a market data product that is similar to the proposed Short Sale Volume data.¹⁶ As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁵ See Supra note 9.

¹⁶ Id.

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

The Exchange neither solicited nor received 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 (i) as the Commission may designate up to 90 days of such date 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 shall: (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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2021-013 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-CboeBYX-2021-013. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2021-013, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).