

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93689; File No. SR-CboeBYX-2021-028)

December 1, 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 the Short Volume Report

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 November 22, 2021, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) 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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. 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 the Short Volume Report. The proposal introduces the Short Volume Report which will be available for purchase to BYX Members (“Members”) and non-Members. The Exchange notes that the proposed data product is substantially similar to information included in the short sale volume report offered by the Nasdaq Stock Market LLC (“Nasdaq”)³ and the TAQ Group Short Volume file offered by the New York Stock Exchange LLC (“NYSE”),⁴ with the exception that the proposed product will also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.

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 Volume Report. The Exchange proposes to describe the Short Volume

³ See the Nasdaq Price List – Equities, Nasdaq Web-based Reports, Nasdaq Short Sale Volume Reports at Price List - NASDAQ Global Data Products (nasdaqtrader.com).

⁴ See the NYSE Historical Proprietary Market Data Pricing, NYSE Group Summary Data Products, TAQ NYSE Group Short Volume (Daily File) at https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_Pricing.pdf.

Report as “an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.” Specifically, the end-of-day report will include the following information: trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count. The Exchange notes that the proposed product includes substantially similar information as that included in comparable products offered on Nasdaq and NYSE except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.⁵ The Exchange believes the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase⁶ on a monthly subscription basis for which subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.⁷ Additionally, historical Short Volume Reports dating as far back as January 2, 2015 will be available for purchase on an ad hoc basis in monthly increments. The subscription files and historical files will include the same data points. Lastly, the Exchange notes the proposed product is a completely voluntary product, in that the

⁵ The Exchange notes that the Nasdaq and NYSE comparable products reflect aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges; thus, the proposal is only applicable to trades executed on BYX.

⁶ The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

⁷ See Exchange Rule 1.5(c).

Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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)¹⁰ 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 Volume Report would further broaden the availability

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Supra notes 3 and 4.

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 data included in the Short Volume Report. The proposed rule change would benefit investors by providing access to the Short Volume Report, which may promote better informed trading. Particularly, information included in the Short Volume Report may allow a market participant to identify the source of selling pressure and whether it is long or short.

Moreover, other exchanges offer substantially similar data products. The Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC.¹¹ Specifically, the Nasdaq daily short volume report provides the following information: trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. Specifically, the NYSE Group Short Volume product provides the following information: trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. While the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings. Specifically, the NYSE TAQ product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.¹² Thus, subscribers to NYSE TAQ could determine volume and trade counts from such data.

¹¹ See Supra note 3. As noted in the Nasdaq Price List, BX and PSX short sale files are available for free.

¹² See https://www.nyse.com/publicdocs/nyse/data/TAQ_XDP_Products_Client_Spec_v2.3c.pdf.

Additionally, the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.¹³ Thus, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short exempt volume and trade count, albeit on a monthly basis rather than a daily basis. Moreover, the Exchange believes the proposed Short Volume Report 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 basis. Therefore, the Exchange believes it is reasonable to include such data in the proposed product.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

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.¹⁴ The Exchange is proposing to introduce the Short Volume Report 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

¹³ See https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3.pdf.

¹⁴ See Supra notes 3 and 4.

other U.S. equity exchanges offer a market data product that is substantially similar to the proposed Short Volume Report.¹⁵ 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.

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 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 (<http://www.sec.gov/rules/sro.shtml>); or

¹⁵ Id.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2021-028 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-2021-028. 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-2021-028, 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).