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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 028

Amendment No. (req. for Amendments *) 1

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sarah Last Name * Tadtman

Title * Counsel

E-mail * [REDACTED]

Telephone * [REDACTED] Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BYX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/30/2022

(Title *)

By Kyle Murray

VP, Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Kyle Murray Date: 2022.03.30 12:08:56 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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BYX-21-028 19b-4 - b2 (Short Volume F

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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BYX-21-028 Exhibit 1 (Short Volume F

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

BYX-21-028 Exhibit 4 (Short Volume F

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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BYX-21-028 Exhibit 5 (Short Volume F

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² 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.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on October 6, 2021.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, [REDACTED], or Sarah Tadtman, Counsel, [REDACTED].

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 1 to SR-BYX-2021-028 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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”)³ and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”), and/or information that is currently available or determinable from other publicly available sources such as Cboe DataShop,⁴ the Cboe website,⁵ or the CTA and UTP feeds made available by the Securities Information Processor (“SIP”), the only exception being the proposed transaction counts related to sell short and sell short exempt.

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 Report as “an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades.”⁶ Specifically, the end-of-day report will include the following information: trade date,⁷

³ See Rule 1.5(n).

⁴ See [Equity and ETF Trades Data | Subscription \(cboe.com\)](#)

⁵ See [Cboe BYX U.S. Equities Exchange Short Sale Reports](#).

⁶ Information provided in the report includes only trade data, and does not include order data.

⁷ Trade date refers to the date of trading activity.

symbol,⁸ total volume,⁹ buy volume,¹⁰ buy trade count,¹¹ sell long volume,¹² sell long trade count,¹³ sell short volume,¹⁴ sell short trade count,¹⁵ sell short exempt volume,¹⁶ and sell short exempt trade count.¹⁷ As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points similar to those provided by NYSE and Nasdaq,¹⁸ and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes

⁸ Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.

⁹ Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

¹⁰ Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

¹¹ Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

¹² Sell long volume is the total share volume of all sell long order executions.

¹³ Sell long trade count is the total trade count of all sell long order executions.

¹⁴ Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

¹⁵ Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

¹⁶ Sell short exempt volume is the total share volume of all sell short exempt order executions.

¹⁷ Sell short exempt trade count is the total trade count of all sell short exempt order executions.

¹⁸ The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on BYX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

that the consolidation and presentation of data as proposed in the Short Volume Report will benefit market participants because such report will allow market participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase¹⁹ on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.²⁰

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 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) 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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the

¹⁹ The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

²⁰ See Exchange Rule 1.5(c).

²¹ 15 U.S.C. 78f(b).

Section 6(b)(5)²² 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)²³ 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. In this regard, the Exchange believes that the proposed Short Volume Report 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 of short sale data, which benefits investors by fostering better informed trading.

As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe

²² 15 U.S.C. 78f(b)(5).

²³ Id.

DataShop,²⁴ the Cboe website,²⁵ or the SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”²⁶ Specifically, the Nasdaq Daily Short Sale Volume files provide the date, which is defined as the trade date of a transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.²⁷ As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily Short Volume files capture these data points.

Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well through information made available through reports on Cboe DataShop²⁸ or other vendors.

²⁴ Supra note 4.

²⁵ Supra note 5.

²⁶ See Nasdaq Pricing Schedule, Section 152(a).

²⁷ See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

²⁸ Supra note 4.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.²⁹ NYSE describes total volume as “the total share volume of all order executions.”³⁰ Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short sale trades during regular trading hours.”³¹ As noted above, the proposed Short Volume Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (e.g., the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange’s total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short

²⁹ See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.

³⁰ Id.

³¹ Supra note 27.

volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not* equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop³² and other vendors.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

Buy Trade Count

³² Supra note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop³³ and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BYX for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

Sell Long Volume

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (i.e., the total share volume of all order executions) and the short volume (i.e., the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).³⁴ Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

³³ Supra note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

³⁴ Supra note 27.

Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,³⁵ and the Equity, ETF, and Index Trades product available on Cboe DataShop.³⁶ Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy trade count, which can be obtained from Cboe DataShop³⁷ as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE's Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt volume for shares executed on NYSE and its affiliates.³⁸ Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short

³⁵ Supra note 5.

³⁶ Supra note 4.

³⁷ Id.

³⁸ Supra note 27.

Volume file and the proposed data is that the NYSE report includes only information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website³⁹ provides a short sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.⁴⁰ As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security's price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order

³⁹ Supra note 5.

⁴⁰ 17 CFR §242.201.

shall be marked “short exempt” only if the provisions of Rule 201(c) or 201(d) are met.⁴¹ Rule 201(c), for example, generally allows a broker-dealer to mark a sale “short exempt” if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.⁴²

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline. Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE’s Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.⁴³ Specifically, the NYSE Monthly Short Sale file includes a “short type” indicator for each transaction that indicates

⁴¹ 17 CFR §242.200(g)(2).

⁴² Id. at 58.

⁴³ See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3.pdf.

whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.⁴⁴ Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis. Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a significant departure from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily

⁴⁴ Id.

basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

Item 4. 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 a data product that provides data similar to that offered by other competitor equities exchanges or data that is currently publicly available via the

SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. 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. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, 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.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.⁴⁵

⁴⁵ 15 U.S.C. 78s(b)(2).

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As detailed above, each of the proposed data points included in the proposed Short Volume Report, with the exception of the sell short and sell short exempt trade counts, are offered in data products by competitor exchanges or are otherwise available or ascertainable from publicly available information.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2-3. Not applicable.

Exhibit 4. Marked copy of changes to the rule text proposed in an amendment compared against the version of the rule text that was initially filed.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBYX-2021-028]

[Insert date]

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 [insert date], 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, 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

This Amendment No. 1 to SR-BYX-2021-028 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

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”)³ and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”), and/or information that is currently available or determinable from other publicly available sources such as Cboe DataShop,⁴ the Cboe website,⁵ or the CTA and UTP feeds

³ See Rule 1.5(n).

⁴ See [Equity and ETF Trades Data | Subscription \(cboe.com\)](#)

⁵ See [Cboe BYX U.S. Equities Exchange Short Sale Reports](#).

made available by the Securities Information Processor (“SIP”), the only exception being the proposed transaction counts related to sell short and sell short exempt.

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 Report as “an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades.”⁶ Specifically, the end-of-day report will include the following information: trade date,⁷ symbol,⁸ total volume,⁹ buy volume,¹⁰ buy trade count,¹¹ sell long volume,¹² sell long trade count,¹³ sell short volume,¹⁴ sell short trade count,¹⁵ sell short exempt volume,¹⁶

⁶ Information provided in the report includes only trade data, and does not include order data.

⁷ Trade date refers to the date of trading activity.

⁸ Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.

⁹ Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

¹⁰ Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

¹¹ Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

¹² Sell long volume is the total share volume of all sell long order executions.

¹³ Sell long trade count is the total trade count of all sell long order executions.

¹⁴ Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

and sell short exempt trade count.¹⁷ As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points similar to those provided by NYSE and Nasdaq,¹⁸ and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes that the consolidation and presentation of data as proposed in the Short Volume Report will benefit market participants because such report will allow market participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase¹⁹ on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.²⁰ Additionally, historical Short Volume Reports dating as far back as January 2,

¹⁵ Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

¹⁶ Sell short exempt volume is the total share volume of all sell short exempt order executions.

¹⁷ Sell short exempt trade count is the total trade count of all sell short exempt order executions.

¹⁸ The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on BYX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

¹⁹ The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

²⁰ See Exchange Rule 1.5(c).

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 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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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)²³ 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

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ Id.

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. In this regard, the Exchange believes that the proposed Short Volume Report 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 of short sale data, which benefits investors by fostering better informed trading.

As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe DataShop,²⁴ the Cboe website,²⁵ or the SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”²⁶ Specifically, the Nasdaq Daily Short Sale Volume files

²⁴ Supra note 4.

²⁵ Supra note 5.

²⁶ See Nasdaq Pricing Schedule, Section 152(a).

provide the date, which is defined as the trade date of a transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.²⁷ As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily Short Volume files capture these data points.

Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well through information made available through reports on Cboe DataShop²⁸ or other vendors.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.²⁹ NYSE describes total volume as “the total share volume of all order executions.”³⁰ Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short sale trades during regular trading hours.”³¹ As noted above, the proposed Short Volume

²⁷ See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

²⁸ Supra note 4.

²⁹ See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.

³⁰ Id.

³¹ Supra note 27.

Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (e.g., the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange's total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not* equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop³² and other vendors.

³² Supra note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

Buy Trade Count

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop³³ and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BYX for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

Sell Long Volume

³³ Supra note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (i.e., the total share volume of all order executions) and the short volume (i.e., the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).³⁴ Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,³⁵ and the Equity, ETF, and Index Trades product available on Cboe DataShop.³⁶ Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy

³⁴ Supra note 27.

³⁵ Supra note 5.

³⁶ Supra note 4.

trade count, which can be obtained from Cboe DataShop³⁷ as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE's Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt volume for shares executed on NYSE and its affiliates.³⁸ Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short Volume file and the proposed data is that the NYSE report includes only information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website³⁹ provides a short

³⁷ Id.

³⁸ Supra note 27.

³⁹ Supra note 5.

sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.⁴⁰ As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security's price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order shall be marked "short exempt" only if the provisions of Rule 201(c) or 201(d) are met.⁴¹ Rule 201(c), for example, generally allows a broker-dealer to mark a sale "short exempt" if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.⁴²

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can

⁴⁰ 17 CFR §242.201.

⁴¹ 17 CFR §242.200(g)(2).

⁴² Id. at 58.

perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline.

Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE's Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.⁴³ Specifically, the NYSE Monthly Short Sale file includes a "short type" indicator for each transaction that indicates whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.⁴⁴ Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis. Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a significant departure

⁴³ See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3.pdf.

⁴⁴ Id.

from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

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 a data product that provides data similar to that offered by other competitor equities exchanges or data that is currently publicly available via the SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. 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. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, 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
- 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, D.C. 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; the Commission does not edit personal identifying information from 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.⁴⁵

⁴⁵ 17 CFR 200.30-3(a)(12).

Secretary

EXHIBIT 4

Additions set forth in the proposed rule text of original SR-CboeBYX-2021-028 are underlined; deletions are [bracketed]. Additional changes being made pursuant to Amendment No. 1 to SR-CboeBYX-2021-028 are double-underlined; deletions being made pursuant to Amendment No. 1 to CboeBYX-2021-028 are struck-through.

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Rules of Cboe BYX Exchange, Inc.

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Rule 11.22. Data Products

The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange's fee schedule:

(a)-(e) No change.

(f) [(Reserved.)] Short Volume Report. Short Volume Data is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all buy, sell long, sell short, and sell short exempt trades.

(g)-(k) No change.

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BYX Exchange, Inc.

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Rule 11.22. Data Products

The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange's fee schedule:

(a)-(e) No change.

(f) [(Reserved.)] Short Volume Report. Short Volume Data is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all buy, sell long, sell short, and sell short exempt trades.

(g)-(k) No change.

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