April 14, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC

Re: Release No. 34-93688, File No. SR-CboeBZX-2021-078; Release No. 34-93689, File No. SR-CboeBYX-2021-028; Release No. 34-93694, File No. SR-CboeEDGA-2021-025; Release No. 34-93696, File No. SR-CboeEDGX-2021-049;

Dear Ms. Countryman:

Thank you for the chance to comment again on the above noted filings.

Cboe's recent amendment explains in more detail what the proposed "Short Volume Report" data feeds are. Remarkably, the Cboe exchanges plan to report trade volume twice. The feeds will show trade volume for each side, buy and sell. The "buy [trade] volume" field in the feed will of course simply equal the sum of the sale type volume fields, because that's how trading works. The exchanges will handle it that way, I suppose, in case their customers don't know how to add. If their customers do know how to add, Cboe says they can help QA the data by checking that the buy volume field really does equal the sale volume fields. Are these the first exchange rule filings to prompt customers to check the arithmetic? Maybe we can add that idea to Reg SCI. And finally, the "total volume" field will be that buy volume number plus all the sale type volumes, which means the "total volume" field will actually be twice total trade volume.

In my experience all this is a unique - and bizarre - approach for exchange volume reporting. If I have these details right, the amendment explains nonsense with more nonsense. And if this mess is approved the SEC should at least insist that "total volume" is renamed "total total volume" so the public knows it's two times bigger.

I've thought about this because it seems so odd. I suppose one explanation is that the exchanges had something else in mind for the feed and then pivoted to this malarkey. Or maybe the exchanges think they're 1990s-era ECNs and should double-count volume, just like ECNs used to do. While you can't regulate that kind of nostalgia, you can make fun of it. It's been a while but I recall ECNs dropped their double-counting convention decades ago because it was a nervous affectation, like wearing a toupee. Cboe should look to its friends at NYSE and Nasdaq for some direction here. So far as I know those exchange families have never used the phrase "buy trade" in any context and have always single-counted trade volume.

Since we're now on the topic of how 1990s-era ECNs counted volume, will executions from outbound routed orders be included in this data? The amendment says the data will reflect "certain equity trading activity on the Exchange" and refers to "trades executed on the Exchange" and so on, but I wouldn't be surprised if Cboe believes an outbound buy order results in a "buy trade" on Cboe.

Finally, on the topic of trade counts, including this information in the feeds might seem benign. But the trade counts will be by exchange. Two of these exchanges are quite small and the other two, like other exchanges, do the bulk of their volume in the biggest names. Downlist names on the smaller exchanges might have at most a small handful of trades per day, or even just one or two. Downlist names on the larger exchanges might have as few as a dozen or so trades per day. It should be straightforward then to use daily trade and volume counts to figure out specifically which trades were short on any given day.

In part because of the order protection rule and how algorithms operate, you can think of smaller exchanges as a sample of the larger universe of trading activity, in the same sense in which a pollster samples voters to estimate the outcome of an election. If you can get an insight into activity on a smaller exchange - more information about a small set of trades makes that easier - there's a fair chance you can extrapolate that insight to market-wide behavior.

In other words for scores, hundreds, or even thousands of stocks, customers of Cboe's proposed feeds can likely figure out on a trade-by-trade basis which trades are shorts on these exchanges every day, and reasonably assume they track activity in the market at large. Armed with that knowledge firms can tee up strategies to take advantage of it on the next trading day.

Cboe justifies the trade counts because they might reveal the "qualitative nature of sell side activity" and says 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." First, if this was an investor benefit when Cboe envisioned this data feed, why wasn't it mentioned in Cboe's original filings here or in its aborted filings for the intraday feed last summer? And more important, of course, the much darker inverse is possible too, that customers of these feeds will be very interested in whether investors are unwilling to pay the spread for a security while other participants are aggressively shorting it. Who has the skill and interest to figure this out? Cboe gave us a hint - "active equity trading firms." Trade counts help you do that, it's information valuable enough for Cboe to want to sell it, and I believe its primary use case will be to the detriment of investors and public companies and not to their benefit. It is a bitter spoonful to see the usual boilerplate in Cboe's amendment that its proposal will "protect investors and the public interest." Never imagine Cboe has a sense of irony.

I understand the SEC might be bound by precedent to allow the sale of daily short trade volume figures. Nasdaq and NYSE have done it for years. That's no reason to let Cboe enhance these products by one jot - certainly not by splitting out long and short sale trade counts - and give more fuel to predatory high frequency trading firms. The SEC should recognize it for what it is. It is data required under federal regulations to protect investors and listed companies from "potentially manipulative or abusive short selling." It is also information rich regulatory data Cboe wants to sell to professionals. These professionals will not hesitate to use it against the same investors and companies the data is intended to protect. There is no benign path here no matter how much malarkey gets put to paper.

Sincerely,

R. T. Leuchtkafer