

July 18, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission 100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Release No. 34-93688; File No. SR-CboeBZX-2021-078 – Cboe’s Short Volume Report

Dear Ms. Countryman:

Themis Trading has recently become aware of a data feed provided by the Cboe that has been supplying confidential and non-public information. In a [comment letter](#) from R. T. Leuchtkafer (RTL), it was revealed that the **Cboe has been distributing trade-by-trade, short sale data on an end of day basis** and they have been doing this possibly since as early as 2015.

Here are some key points from Leuchtkafer’s letter about the short sale data that the Cboe has been distributing:

- **Cboe has been providing trade-by-trade short sale volume data on an end of day basis.** This information, known as the [Short Sale Daily Report](#), is posted “day-by-day and trade-by-trade, every day after the close for the current day’s trading, for each of the four exchanges, and free for the taking”. The information includes:

- Symbol
- Trade date
- Trade time
- Short sale type
- Trade size
- Trade price
- Link indicator
- Short size

Here is a sample from July 8, 2022 of what the Cboe has been providing:

Market Center	Symbol	Date	Time	Short Sale Type	Size	Price	Link Indicator	Short Size
Z	TZA	20220708	07:00:00	S	700	41.99		
Z	SOXL	20220708	07:00:00	S	300	13.37		
Z	SOXL	20220708	07:00:00	M	100	13.31		
Z	SOXL	20220708	07:00:00	S	100	13.37		
Z	UCO	20220708	07:00:00	S	100	37.81		
Z	FFIE	20220708	07:00:00	S	100	5.92		
Z	USEA	20220708	07:00:01	M	5	7.99		
Z	VERB	20220708	07:00:02	M	35	0.62		

This is not delayed data from two weeks ago. This is trade-by-trade data produced every day and distributed after the close for all to see and process.

- No other exchange release trade-by-trade daily short sale reports.

According to RTL, other “exchanges distribute daily **summary** short sale volume data feeds. These feeds contain **aggregate short trade volume** figures by stock for the day (NYSE splits out short exempt volume).”

- The consolidated tape does not reveal if a trade was marked short.

According to RTL, “short sales aren't and never have been identified as such on the consolidated tape. Cboe has filtered this data to extract short sales on its exchanges every day and enriched the data to separately identify individual shorts and short exempts.”

- Short sale data is not meant to be shared.

According to RTL, “short sale indicators are regulatory data. Exchange matching engines use them solely to enforce Reg SHO price restrictions. Exchanges also use them in downstream exchange surveillance functions to fulfill their obligations as SROs and enforce federal law.”

Conclusion

We believe that, even if they are aware that this data exists, most retail and institutional investors are probably not processing this data and using it in their trading strategies. However, there are certain groups of high-speed traders that we think could benefit from knowing which

stocks were being sold short and then could then model the execution size and time of those short sales.

Does the SEC know about this? Did they approve the dissemination of this data? We're not sure and neither was RTL. But if the Cboe just filed and [withdrew](#) a proposal to produce similar data to what they have already been disseminating, we're thinking that the Short Sale Daily Reports were never filed with the SEC. Maybe it's because they are disseminated for free and not sold...we're not sure. We're also not sure if the SEC will continue to allow the Cboe to disseminate the Short Sale Daily Report. However, considering this information is not public information, we think the SEC should prohibit the release of this trade-by-trade short sale data since the information could be used to harm long-term investors

Sincerely,

Joseph Saluzzi

Partner, Themis Trading LLC