

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95548; File No. SR-CboeBYX-2022-019)

August 18, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness 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 August 9, 2022, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to 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 seeks to amend Rule 11.22 to adopt paragraph 11.22(f), which introduces a new data product, the Short Volume Report. A description of each market data product offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, and includes trade date,³ total volume,⁴ sell short volume,⁵ and sell short exempt

³ “Trade date” is the date of the trading activity.

⁴ “Total volume” is the total share volume of all order executions.

⁵ “Sell Short volume” is the total share volume of all short order executions, (Sell Short + Sell Short Exempt).

volume,⁶ by symbol.⁷ The Short Volume Report will be available for purchase to both BYX Members (“Members”)⁸ as well as non-Members.⁹

The Exchange notes that the data fields included in the Short Volume Report are essentially identical to the fields included by the New York Stock Exchange LLC (“NYSE”) in their Daily Short Volume file.¹⁰ Specifically, the NYSE Daily Short Volume file also includes trade date,¹¹

⁶ “Short exempt volume” is the total share volume of all short exempt order executions.

⁷ Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.

⁸ The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n), definition of “Member”.

⁹ The Exchange intends to submit a separate filing to establish fees for the Short Volume Report.

¹⁰ See NYSE Daily Short Volume Client Specification, available at: https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf. The NYSE Daily Short Volume includes trade date, symbol, short exempt volume, short volume, and total volume. Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short sale volume only for transactions executed on BYX. Additionally, NYSE’s Daily Short Volume file specifies that short volume is comprised of the sum of, (sell short volume + sell short exempt volume + sell short with slide). While the Exchange does not specifically flag sell short with slide transactions, such transactions are recognized simply as sell short or sell short exempt and are thus included in the Exchange’s sell short and sell short exempt volume.

¹¹ NYSE “Trade date” is the date of trading session activity.

symbol,¹² short exempt volume,¹³ short volume,¹⁴ and total volume.¹⁵ The proposed Short Volume Report is also similar to Nasdaq’s Daily Short Sale Volume file¹⁶ which includes, date,¹⁷ symbol,¹⁸ short volume,¹⁹ total volume,²⁰ and market center.²¹ The Short Volume Report will be available for purchase²² by both Members and non-Members on a monthly subscription basis, and subscribers will receive a daily end-of-day file. Additionally, like NYSE, the Exchange will offer historical daily Short Volume Reports. Historical daily Short Volume Reports will be available for purchase

¹² NYSE “Symbol” is defined in the NYSE Symbology Specification, available at: https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf.

¹³ NYSE “Short Exempt Volume” is the total share volume of all Short Exempt order executions.

¹⁴ NYSE “Short Volume” is the total share volume of all short order executions, (Sell Short + Sell Short Exempt + Sell Short with Slide).

¹⁵ NYSE “Total Volume” is the total share volume of all order executions.

¹⁶ See Specifications for Daily Short Sale Volume file, available at: <https://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>. 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 on BYX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

¹⁷ Nasdaq “Date” is the trade date (YYYYMMDD).

¹⁸ Nasdaq “Symbol” is the Trading Symbol.

¹⁹ Nasdaq “Short Volume” is the aggregate reported share volume of executed short sales during regular trading hours.

²⁰ Nasdaq “Total Volume” is the aggregate reported share volume of all executed trades during regular trading hours.

²¹ Nasdaq “Market Center” is the market identifier (Q = NASDAQ for NASDAQ file, B = Boston for Boston file, X = PSX).

²² 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 this proposal.

dating back to January 2, 2015,²³ and will include the same data fields as the daily end-of-day files.²⁴

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Volume Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Volume Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed Short Volume Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal 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 purchase 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.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

²³ Historical Short Volume Reports will be available for purchase on an ad hoc basis.

²⁴ The Exchange notes that NYSE also offers historical daily short sale files. See <https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales>.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

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)²⁷ 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 of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume data. The proposed rule change would benefit investors by providing access to the Short Volume Report data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, NYSE offers a Daily Short Volume file which provides data that is essentially identical to that currently proposed by the Exchange - trade date, symbol, short volume, short exempt volume, and total volume.²⁸ The proposed Short Volume Report is also similar to Nasdaq’s Daily Short Sale Volume file which includes, date, symbol, short volume,

²⁷ Id.

²⁸ Supra note 10.

total volume, and market center.²⁹ Accordingly, the proposed Short Volume Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

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

The Exchange does not believe that the proposed rule change will impose 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 fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by other competitor equities exchanges. Additionally, the Short Volume Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Volume Report, and the Exchange is not required to make the Short Volume Report available to investors. Rather, the Exchange is voluntarily making the Short Volume Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. 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.

²⁹ Supra note 16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6) thereunder.³¹

A proposed rule change filed under Rule 19b-4(f)(6)³² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative prior to 30 days after the date of the filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed Short Volume Report is nearly identical to the currently available NYSE Daily Short Volume file and Nasdaq Daily Short Volume file and would permit the Exchange to immediately make the Short Volume Report available to subscribers as an alternative to similar products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6)(iii).

raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.³⁴

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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-2022-019 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-2022-019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

³⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2022-019 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.³⁵

Jill M. Peterson,
Assistant Secretary.

³⁵ 17 CFR 200.30-3(a)(12), (59).