



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97303; File No. SR-CboeBYX-2023-006]

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 US Equity Short Volume & Trades Report

April 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 2023, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 to introduce a new data product to be known as the US Equity Short Volume & Trades Report. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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.

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 revise paragraph 11.22(f) in order to introduce a new data product to be known as the US Equity Short Volume & Trades Report. A description of market data products offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the US Equity Short Volume & Trades Report is a report that will contain both an end-of-day short volume report and an end-of-month report that provides a record of all short sale transactions for the month. The proposed US Equity Short Volume & Trades Report will incorporate the existing Short Volume Report⁵ currently described in Rule 11.22(f) as well as introduce a new, end-of-month report containing a record of all short sale transactions for the current month. The proposed US Equity Short Volume & Trades Report is nearly identical to the NYSE TAQ Group Short Sales & Short Volume product and Nasdaq's Short Sale Volume Reports (discussed *infra*).

⁵ See Securities Exchange Act Release No. 95548 (August 18, 2022), 87 FR 52087 (August 24, 2022), SR-CboeBYX-2022-019 ("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").

The end-of-day report (“EOD Report”) included within the US Equity Short Volume & Trades Report will be identical to the existing Short Volume Report published by the Exchange. The existing Short Volume Report summarizes certain equity trading activity on the Exchange, including trade date,⁶ total volume,⁷ short volume,⁸ and sell short exempt volume,⁹ by symbol.¹⁰ The data fields contained in the existing Short Volume Report will not change when the Short Volume Report is incorporated into the US Equity Short Volume & Trades Report as the EOD Report. The proposed end-of-month report (“EOM Report”) to be included in the US Equity Short Volume & Trades Report will be a new report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),¹¹ trade size,¹² trade price,¹³ and type of short sale execution,¹⁴ by symbol and exchange.¹⁵ The US Equity Short

⁶ “Trade date” is the date of trading activity in yyyy-mm-dd format.

⁷ “Total volume” is the total number of shares transacted.

⁸ “Short volume” is the total number of shares sold short.

⁹ “Short exempt volume” is the total number of shares sold short classified as exempt.

¹⁰ “Symbol” refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.

¹¹ “Trade date and time” is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 (microseconds) ET format.

¹² “Trade size” is the number of shares transacted.

¹³ “Trade price” is the price at which shares were transacted.

¹⁴ “Short type” is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

¹⁵ “Exchange” is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

Volume & Trades Report will be available for purchase to both BZX Members (“Members”)¹⁶ as well as non-Members.¹⁷

As discussed in the Exchange’s previous filing to introduce the EOD Report,¹⁸ the data fields included in the EOD Report are essentially identical to the fields included by the New York Stock Exchange LLC (“NYSE”) in their Daily Short Volume file¹⁹ and similar to the fields provided by the NASDAQ Stock Market LLC (“Nasdaq”) in its Daily Short Sale file.²⁰ The data fields contained in the EOD Report found within the proposed US Equity Short Volume & Trades Report are identical to the data fields found in the existing Short Volume Report.²¹ NYSE offers its Daily Short Volume file as one component of its NYSE TAQ Group Short Sales & Short Volume product²² and Nasdaq offers its Daily Short Sale file as one component of its Short Sale Volume Reports.²³ The Exchange is proposing to include its EOD Report as one component of the US Equity Short Volume & Trades Report in the same manner as NYSE and Nasdaq incorporate their daily short sale files within a more robust data offering.

¹⁶ See Rule 1.5(n) (“Member”). 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.

¹⁷ The Exchange intends to submit a separate filing to establish fees for the US Equity Short Volume & Trades Report.

¹⁸ Supra note 5.

¹⁹ See NYSE Daily Short Volume Client Specification, available at: https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3a.pdf.

²⁰ See Nasdaq OMX Daily and Monthly Short Sale File Format and Specifications, available at: <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>

²¹ Supra note 5.

²² See <https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales>.

²³ See <https://nasdaqtrader.com/Trader.aspx?id=shortsale>.

The Exchange notes that the data fields included in the EOM Report are nearly identical to the fields included by NYSE in its Monthly Short Sales file, except that the Exchange will not include two fields that appear within the NYSE Monthly Short Sales file.²⁴ Specifically, the NYSE Monthly Short Sales file also includes date,²⁵ time,²⁶ size,²⁷ price,²⁸ type of short sale execution,²⁹ market center,³⁰ and symbol.³¹ Additionally, the data fields included in the EOM Report are nearly identical to the fields found in the Nasdaq Monthly Short Sale File, except that the Exchange will not include two fields that appear within the Nasdaq Monthly Short Sale

²⁴ See NYSE Monthly Short Sales Client Specification, available at: https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3a.pdf. The NYSE Monthly Short Sales file includes trade date and time, size, price, type of short sale execution, market center, and symbol. Unlike the NYSE file, the US Equity Short Volume & Trades Report will not include the linked indicator or short size fields. The Exchange does not currently offer a linked indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale execution.

²⁵ NYSE “Date” is the trade date of the short sale transaction in YYYYMMDD format.

²⁶ NYSE “Time” is the time of the short sale transaction in microsecond (HH:MM:SSnnnnnn) format.

²⁷ NYSE “Size” is the size of the trade in shares.

²⁸ NYSE “Price” is the price of the trade.

²⁹ NYSE “Short Type” is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Sale Exempt execution, S = Short not exempt).

³⁰ NYSE “Market center” is the market identifier (A = NYSE American, N = NYSE, P = NYSE Arca, C = NYSE National, M = NYSE Chicago).

³¹ NYSE “Symbol” refers to the NYSE formatted symbol in which the trading activity occurred. See https://www.nyse.com/publicdocs/nyse/data/NYSE_Symbology_Spec_v1.0c.pdf.

File.³² Both the Exchange and Nasdaq include date,³³ time,³⁴ size,³⁵ price,³⁶ short sale execution type,³⁷ market center,³⁸ and symbol.³⁹ The Exchange notes that the only difference between its proposed EOM Report and the corresponding NYSE and Nasdaq monthly files is that the Exchange will not include a linked indicator⁴⁰ field or short size⁴¹ field in its EOM Report. As the Exchange does not currently offer a linked indicator field, it will not include this field within the EOM Report. Additionally, the Exchange will not include a short size field in its EOM Report because the size shown in the trade size field included in the Exchange's EOM Report

³² See NASDAQ OMX Daily and Monthly Short Sale File Format and Specification, available at: <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>. The Nasdaq Monthly Short Sale File includes trade date and time, size, price, type of short sale execution, market center, and ticker symbol. Unlike the Nasdaq file, the US Equity Short Volume & Trades Report will not include the link indicator or short size fields. The Exchange does not currently offer a link indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale transaction.

³³ Nasdaq "Date" is the date that the trade was reported to the tape in YYYYMMDD format.

³⁴ Nasdaq "Time" is the time of the trade in HH:MM:SS format.

³⁵ Nasdaq "Size" is the number of shares in the transaction in mixed or round lot as reported to the tape.

³⁶ Nasdaq "Price" is the price of the trade as reported to the tape.

³⁷ Nasdaq "Short Type" is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Exempt, S = Short Not Exempt).

³⁸ Nasdaq "Market Center" is the market identifier (Q = NASDAQ, T = NASDAQ, B = Boston, X = PSX).

³⁹ Nasdaq "Ticker Symbol" refers to the Nasdaq formatted symbol in which the trading activity occurred.

⁴⁰ NYSE defines "LinkedIndicator" as null for all unbundled executions and the Auction Reference Trade ID for all bundled executions. Nasdaq defines "Link Indicator" as a market center defined character variable used to flag records that will be difficult to match to tape data ([blank] = matches tape, P = multiple parts of a batch trade included in the short sale data, B = the only part of a batch trade included in the short sale data, M may represent multiple prints, A = "As-Of" trade).

⁴¹ NYSE defines "ShortSize" as the number of shares sold short. Nasdaq defines "Short Size" as the number of shares in the transaction that were designated for short sale.

will be the number of shares in the transaction that executed with a sell short or sell short exempt marking.⁴²

Both the EOD Report and EOM Report will be included in the cost of the US Equity Short Volume & Trades Report and will be available for purchase by both Members and non-Members on an annual or monthly subscription basis.⁴³ Additionally, like NYSE, the Exchange will offer historical reports containing both the end-of-day volume and end-of-month trading activity.⁴⁴ Historical reports will be available for purchase dating back to January 2, 2015, and will include the same data fields as the US Equity Short Volume & Trades Report.

The Exchange anticipates that a wide variety of market participants will purchase the proposed US Equity Short Volume & Trades Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the US Equity Short Volume & Trades 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 US Equity Short Volume & Trades 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.

⁴² The EOM Report will not distinguish between “Short Size” and “Trade Size” in that all transactions reflected in the EOM Report will be marked sell short or sell short exempt. Supra note 14.

⁴³ Supra note 17.

⁴⁴ Supra note 22.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁶ 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)⁴⁷ 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 US Equity Short Volume & Trades 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 and short sale execution data. The proposed rule change would benefit investors by providing access to the US Equity Short Volume & Trades data, which may promote better informed trading, as well as research and studies of the equities industry.

⁴⁵ 15 U.S.C. 78f(b).

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ Id.

Moreover, as noted above, both NYSE and Nasdaq offer data products that contain both a daily and monthly short sale file. These products provide data that is nearly identical to the offering proposed by the Exchange. The proposed EOD Report that will be offered as one component of the US Equity Short Volume & Trades Report is the Exchange's existing Short Volume Report, which is substantially similar to the NYSE and Nasdaq daily short volume product offerings. The proposed EOM Report that will be offered as the second component of the US Equity Short Volume & Trades Report will contain date, time, size, price, short sale type, market center, and symbol, which is nearly identical to the data fields found within the NYSE and Nasdaq monthly short volume reports.⁴⁸ As stated previously, the Exchange's EOM Report is nearly identical to the NYSE and Nasdaq monthly reports in that the Exchange will offer identical data fields except for a linked indicator value and a short size value. Accordingly, the proposed US Equity Short Volume & Trades 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 believe the proposed rule change does not impose any burden on intramarket 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 competing equities exchanges. The Exchange's proposed US Equity Short Volume & Trades Report will contain both an EOD Report and an EOM Report, both of which are substantially similar to the competing NYSE and Nasdaq data product offerings, with the only difference being that the Exchange will not include a linked indicator field or short size field in its EOM Report.

⁴⁸ Supra notes 24 and 32.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The US Equity Short Volume & Trades Report will be available equally to Members and non-Members. Market participants are not required to purchase the US Equity Short Volume & Trades Report, and the Exchange is not required to make the US Equity Short Volume & Trades Report available to investors. Rather, the Exchange is voluntarily making the US Equity Short Volume & Trades 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 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.

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

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 Act⁴⁹ and Rule 19b-4(f)(6) thereunder.⁵⁰

⁴⁹ 15 U.S.C. 78s(b)(3)(A).

⁵⁰ 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will permit the Exchange to immediately make the US Equity Short Volume & Trades Report available to subscribers as an alternative to the competing 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 raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁵²

At any time within 60 days of the filing of the 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 will 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

⁵¹ 17 CFR 240.19b-4(f)(6)(iii).

⁵² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2023-006.

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-2023-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2023-006, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

Sherry R. Haywood,
Assistant Secretary.

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⁵³ 17 CFR 200.30-3(a)(12), (59).