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 not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposal does not put any market participants at a relative disadvantage compared to other market participants because the proposed increased quote limit will apply equally to all Market Makers who send quotes to the Exchange in excess of 3.5 billion inbound quotes on any particular trading day. The Exchange also believes that the proposed change neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition. Rather, the proposal seeks to benefit all market participants by encouraging the efficient utilization of the Exchange's highly deterministic and transparent network architecture while taking into account increased market volatility that may impact the number of quotes being sent to the Exchange by Market Makers. The Exchange does not anticipate that any Market Maker will exceed the proposed 3.5 billion inbound quote limit and become subject to the proposed fee. Accordingly, the Exchange believes that the proposed Excessive Quoting Fee does not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposal does not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 15 other options exchanges where market participants can become members and send quotes if they deem the 3.5 billion inbound quote limit to be too restrictive for their quoting behavior. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues; rather, it is intended to protect all market participants of MIAX Emerald by ensuring that the Exchange's System is not overloaded from excessive quotes being sent to it each day.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and Rule 19b–4(f)(2)[14] thereunder. 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 shall institute proceedings to determine whether the proposed rule 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 email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–09 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–EMERALD–2022–09. This file number should be included on the subject line if email 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–EMERALD–2022–09 and should be submitted on or before April 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94372; File No. SR–CboeBZX–2021–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report

March 7, 2022.

I. Introduction

On November 17, 2021, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of and Comments on the Proposed Rule Change

A. Description of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.22(f) to provide for a new data product to be known as the Short Volume Report, which will be available for purchase to Members and non-Members.[7] Specifically, the Exchange proposes to describe the Short Volume Report as ''an end-of-day report that summarizes equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell, sell short, and sell short exempt trades.'' [8] The Exchange proposes that the end-of-day report will include the following information: Trade date, symbol, total volume, buy volume, buy trade count, sell volume, sell trade count, sell short volume, sell short trade count, sell short exempt volume, and sell short exempt trade count.[9] The Exchange proposes that the Short Volume Report will be available on a monthly subscription basis.[10] The Exchange states subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.[11]

In support of the proposal, the Exchange states that the proposed product includes substantially similar information as that included in comparable products offered on the Nasdaq Stock Market LLC (''Nasdaq'') and the New York Stock Exchange (''NYSE'') except that the Exchange proposes to also include buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.[12] The Exchange states that while the proposed product offers volume and trade counts which are not offered in the comparable NYSE and Nasdaq short sale volume reports, similar data is otherwise available or determinable in other NYSE data product offerings.[13] Specifically, the Exchange states that the NYSE Trade and Quote (''TAQ'') product provides trade and quote information for orders entered on the NYSE affiliated equity exchanges, which include buy, sell, and sell short volume.[14] Thus, according to the Exchange, subscribers to NYSE TAQ could determine volume and trade counts from such data.[15] Additionally, the Exchange states that the NYSE Monthly Short Sales report provides a record of every short sale transaction on NYSE during the month, which includes a size and short sale indicator.[16] Thus, according to the Exchange, subscribers to the NYSE Monthly Short Sales report could determine the sell short and sell short exempt volume and trade count, albeit on a monthly basis rather than a daily basis.[17]

The Exchange states that the additional data points will benefit market participants because they will allow market participants to better understand the changing risk environment on a daily basis.[18] The Exchange states that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors, promoting increased transparency and better informed trading, specifically by allowing market participants to identify the source of selling pressure and whether it is long or short.[19]

B. Comments on the Proposed Rule Change

One commenter states that the proposed rule text and the Exchange's description of the content of the proposed Short Volume Report are unclear.[20] Specifically, the commenter states that the difference between ''total volume'' and ''buy volume'' is difficult to understand, ''since every trade always includes a buyer.'' [21] The commenter also states that the phrase ''buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume'' is confusing, and questions how, for example, buy volume for sell short exempt trades and sell volume for short exempt trades would be any different.[22] The commenter states that in order to be sensible ''buy and sell volume'' must either mean simply ''trade volume'' or else it describes splitting out buyer and seller-initiated trade volume or total buy and sell order volume.[23] The commenter states that ''the public deserves to be told'' with greater clarity what data the proposed Short Volume Report contains and ''deserves a chance to comment before approval.'' [24] In addition, the commenter states that the proposal could involve the provision and sale of ''sensitive'' or ''regulatory'' data and could reveal ''quite a bit about who is doing what in the markets.'' [25]

This commenter also states that the data contained in the proposed Short Volume Report is substantially different from the data contained in products offered by other national securities exchanges, despite the Exchange's assertion that the proposed Short Volume Report is similar to those

[3] *See* Securities Exchange Act Release No. 93688 (December 1, 2021), 86 FR 69319 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2021-078/srcboebzx2021078.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94010, 87 FR 4075 (January 26, 2022). The Commission designated March 7, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 69320. The Exchange states that it intends to submit a separate rule filing to adopt fees for the Short Volume Report product. *See* Notice, *supra* note 3, at 69320.

[8] *See* proposed Rule 11.22(f).

[9] *See* Notice, *supra* note 3, at 69320.

[10] *See id.*

[11] Additionally, the Exchange proposes to make historical Short Volume Reports dating as far back as January 2, 2015 available for purchase on an ad hoc basis in monthly increments. According to the Exchange, the subscription files and historical files will include the same data points. *See id.*

[12] Specifically, the Exchange states that the Nasdaq daily short sale volume file reflects the aggregate number of shares executed on Nasdaq, Nasdaq BX, Inc. and Nasdaq PHLX LLC. According to the Exchange, the Nasdaq daily short volume report provides the following information: Trade date, symbol, volume during regular trading hours, and CTA market identifier. Additionally, the Exchange states that the NYSE Group Short Volume daily file reflects a summary of short sale volume for securities traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. According to the Exchange, the NYSE Group Short Volume product provides the following information: Trade date, symbol, short exempt volume, short volume, total volume all transactions, and market identifier. *See id.* at 69320–69321.

[13] *See id.* at 69321.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] Letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated December 27, 2021, at 2–3.

[21] *Id.* at 2.

[22] *Id.*

[23] *Id.* Specifically, the commenter states that ''the phrase 'buy and sell volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' makes more sense if understood as (a) 'buy[er-initiated] and sell[er-initiated] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume' or (b) 'buy [order] and sell [order] volume as well as trade counts for buy, sell, sell short, and sell short exempt volume.''' *Id.*

[24] *Id.* at 2–3. For example, the commenter states that listed companies and investors may want to comment to the extent that the proposed Short Volume Report is intended to convey to high frequency trading firms, on a daily basis for every stock, the level of aggressive short selling or short sale order volume. *Id.*

[25] *Id.* at 1, 5–6.

products.[26] Specifically, the commenter states that the Exchange's description of the NYSE TAQ data that it points to as precedent is inaccurate.[27] According to the commenter, contrary to the Exchange's statements in the proposal, the TAQ data does not contain information that would enable subscribers to determine short sale volume or trade counts.[28]

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2021–078 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [29] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[30] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend its rules to provide for a new data product to be known as the Short Volume Report. The Commission has received comment letters that express concerns regarding the content of the proposed Short Volume Report, including the clarity of the Exchange's description of the proposed product.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) [31] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[32] any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by April 1, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 15, 2022.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, and any other issues raised by the proposed rule change under the Act. In particular, the Commission seeks commenters' views regarding whether the Exchange has adequately described the proposed new data product for the Commission to make a determination under Section 6(b)(5) of 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 email to *rule-comments@sec.gov.* Please include File No. SR–CboeBZX–2021–078 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 No. SR–CboeBZX–2021–078. The file number should be included on the subject line if email 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 No. SR-CboeBZX–2021–078 and should be submitted by April 1, 2022. Rebuttal comments should be submitted by April 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

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[26] *Id.* at 2–4.

[27] *Id.* at 3–4.

[28] *Id.* This commenter also submitted a second comment letter which objects to certain redactions made to the commenter's first letter, stating that the redactions diminished the commenter's ''pointed criticism[s]'' of the Commission's performance in reviewing the proposal. *See* letter from R.T. Leuchtkafer to Vanessa Countryman, Secretary, Commission, dated January 4, 2022.

[29] 15 U.S.C. 78s(b)(2)(B).

[30] *Id.*

[31] 15 U.S.C. 78f(b)(5).

[32] 17 CFR 240.19b–4.

[33] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).