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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Christina Z. Milnor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99224; File No. SR-CboeBZX-2023-102]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22 To Introduce a New Data Product To Be Known as the Short Interest Report

December 21, 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 December 11, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend Rule 11.22 to introduce a new data product to be known as the Short Interest Report. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

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Rules of Cboe BZX Exchange, Inc.

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Rule 11.22. Data Products

The Exchange offers the following data products free of charge, except as otherwise noted in the Exchange’s fee schedule:

(a)–(m) No change.

(n) *Short Interest Report. The Short Interest Report contains a summary of consolidated market short interest positions in all BZX-listed securities.*

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), 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 proposes to amend Rule 11.22 to adopt new subparagraph (n) to include the Short Interest Report as an Exchange data product.

The Exchange currently makes available via its website, without charge, a Short Interest Report.⁵ By way of background, pursuant to the Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 4560, each FINRA member firm is required to report its “total” short interest positions in all customer and proprietary firm accounts.⁶ FINRA uses the short interest data to, among other things, assess its members’ short selling activity and compliance with Regulation SHO. The short interest data provided by FINRA members also provides analytical and investment data that the brokerage industry, academic institutions and investors use in developing risk-assessment tools and trading models.

⁵ https://www.cboe.com/us/equities/market_statistics/short_interest/

⁶ See FINRA Rule 4560.

The Short Interest Report that the Exchange currently makes available is a summary of consolidated market short interest positions in all BZX-listed securities⁷ only as reported by FINRA. The file is provided daily, for each business day, but values are only updated twice per month.

Proposed Rule 11.22(n) provides that the Short Interest Report contains a summary of consolidated market short interest positions in all BZX-listed securities. The report data fields include Cycle Settlement Date,⁸ BATS-Symbol,⁹ Security Name, Number of Shares Net Short Current Cycle,¹⁰ Number of Shares Net Short Previous Cycle,¹¹ Cycle Average Daily Trade Volume,¹² Minimum Number of Trade Days to Cover Shorts,¹³ Split Indicator,¹⁴ Manual Revision Indicator,¹⁵ Percent Change in Short Position,¹⁶ and Change in Short Position from Previous.¹⁷

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., will make the Short Interest Reports available for purchase¹⁸ to Members and non-Members on the LiveVol DataShop website.¹⁹

The Exchange notes that the data fields included in the Short Interest Report are substantially similar to the

⁷ A BZX-listed security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange’s Rules and includes both corporate listed securities and Exchange Traded Products (“ETPs”).

⁸ “Cycle Settlement Date” is the reporting period date.

⁹ “BATS-Symbol” is the Exchange-assigned symbol for the given security.

¹⁰ “Number Shares Net Short Current Cycle” is the total of uncovered open short interest positions in a particular security in shares, for the current reporting period.

¹¹ “Number of Shares Net Short Previous Cycle” is the total number of uncovered open short interest positions in a particular security in shares, for the previous reporting period.

¹² “Cycle Average Daily Trade Volume” is the number of shares traded on average per day in a particular security in shares.

¹³ “Minimum Number of Trade Days to Cover Shorts” is the ratio of the current short interest position over the average daily volume for the current settlement date.

¹⁴ “Split Indicator” indicates whether the security has undergone a stock split during the current reporting period.

¹⁵ “Manual Revision Indicator” indicates whether the security’s short interest for the previous reporting period has been revised.

¹⁶ “Percent Change in Short Position” is the percent change from the current reporting period’s short interest compared to the previous reporting period’s short interest.

¹⁷ “Change in Short Position from Previous” is the difference between the current and previous reporting period of uncovered short interest positions in a particular security in shares.

¹⁸ The Exchange intends to submit a separate filing to establish fees for the Short Interest Report.

¹⁹ See <https://datashop.cboe.com/>.

³⁰ 17 CFR 200.30-3(a)(12).

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).

fields included by the Nasdaq Stock Market LLC (“Nasdaq”)²⁰ and the New York Stock Exchange LLC (“NYSE”)²¹ in their Short Interest Report files. Specifically, the Nasdaq Short Interest Report file also includes Security Name and Symbol, Current Shares Short, Previous Month Shares Short, Change in Shares Short, Percent Change, Average Daily Share Volume, Days to Cover, and Stock Split Flag, and New Issue Flag.²² The proposed Short Interest Report is also similar to NYSE’s Short Interest Report file, which includes Stock Symbol and Standard Suffix, Issue Name, Revision Indicator, Split Indicator Current Short Interest Position, Previous Short Interest Position, Change in Short Interest Position, Average Daily Volume, and Current Days to Cover.²³ Accordingly, the data fields included in the Short Interest Report are nearly identical to the fields included by Nasdaq and NYSE in their respective short interest reports, except that the Exchange will not include one field that appears within the Nasdaq report (*i.e.*, the New Issue Flag) and three fields that appear within the NYSE report (*i.e.*, the Change in Days to Cover, Free Float and Change in Average Daily Volume). The Exchange’s proposed Short Interest Report will include only data points provided by FINRA, and as the foregoing fields are not included in the FINRA-provided data points, the Exchange will not include such fields in the report. Additionally, like NYSE, the Exchange will offer historical Short Interest Reports, dating back to March 31, 2015, which will include the same data fields as the daily end-of-day files.

The Exchange anticipates that a wide variety of market participants will purchase the proposed Short Interest 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 Interest 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 Interest 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.²⁴ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²⁵ 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)²⁶ 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 Interest Report, which supplies data on short interest positions for all BZX-listed securities as reported by FINRA, broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes transparency through the dissemination of short interest data. The proposed rule change would benefit

investors by providing access to the Short Interest Report data, which may promote better informed trading, as well as research and studies of the equities industry. Further, data products such as the Short Interest Report are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they provide. The need to compete for order flow places substantial pressure upon exchanges to keep their market data offerings competitive.

Moreover, as noted above, Nasdaq offers a Short Interest file which provides short interest data that is nearly identical to that currently proposed by the Exchange.²⁷ The proposed Short Interest Report is also nearly identical to NYSE’s Short Interest file.²⁸ As stated previously, the Exchange’s Short Interest Report is nearly identical to the NYSE and Nasdaq reports in that the Exchange will offer identical data fields except that the Exchange will not include one field that appears within the Nasdaq report (*i.e.*, the New Issue Flag) and three fields that appear within the NYSE report (*i.e.*, the Change in Days to Cover, Free Float and Change in Average Daily Volume). As noted above, the Exchange’s report will include data points provided by FINRA, and the foregoing Nasdaq and NYSE fields are not included in the FINRA-provided data points. Accordingly, the proposed Short Interest 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, with the only difference, as noted above, being that the Exchange’s report not include fields outside of those provided by FINRA.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intramarket

²⁰ See Specifications for Short Interest file, available at: <https://www.nasdaq.com/solutions/short-interest-report>.

²¹ See NYSE Group Short Interest Client Specification, available at: [NYSE_Group_Short_Interest_Client_Specification_v1.5.pdf](#). Unlike NYSE, the proposed Short Volume Report will not include the trading exchange, as the proposed report includes short interest information only for transactions executed on BZX.

²² See *supra* note 20.

²³ See *supra* note 21.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ *Id.*

²⁷ See *supra* note 20.

²⁸ See *supra* note 21.

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Short Interest Report will be available equally to Members and non-Members. Market participants are not required to purchase the Short Interest Report, and the Exchange is not required to make the Short Interest Report available to investors. Rather, the Exchange is voluntarily making the Short Interest Report available, 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.

The Exchange also 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. Moreover, as noted above, Nasdaq offers a Short Interest file which provides short interest data that is nearly identical to that currently proposed by the Exchange.²⁹ The proposed Short Interest Report is also nearly identical to NYSE's Short Interest file.³⁰ As stated previously, the Exchange's Short Interest Report is nearly identical to the NYSE and Nasdaq reports in that the Exchange will offer identical data fields except that the Exchange will not include one field that appears within the Nasdaq report (*i.e.*, the New Issue Flag) and three fields that appear within the NYSE report (*i.e.*, the Change in Days to Cover, Free Float and Change in Average Daily Volume). As noted above, the Exchange's report will include data points provided by FINRA, and the foregoing Nasdaq and NYSE fields are not included in the FINRA-provided data points. Accordingly, the proposed Short Interest 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.

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 Act³¹ and Rule 19b-4(f)(6)³² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁴ the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiving the operative delay would allow market participants to realize immediately the benefits of the proposal, which the Exchange states includes trading information regarding investor sentiment that may allow market participants to make more informed trading decisions. The proposed change raises no novel legal or regulatory issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-102 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-CboeBZX-2023-102. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-102 and should be submitted on or before January 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Christina Z. Milnor,
Assistant Secretary.

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³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 200.30-3(a)(12), (59).

²⁹ See *supra* note 20.

³⁰ See *supra* note 21.