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Ms. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Submitted via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Cboe BZX Exchange Inc. – Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule  
Release No. 34-97480; File No. SR-CboeBZX-2023-030<sup>1</sup>**

Dear Ms. Countryman:

Bloomberg L.P.<sup>2</sup> respectfully submits this letter in response to the above-referenced proposal by the Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) to amend its fee schedule to modify its market data fees for BZX Options Top (“Fee Filing”).<sup>3</sup> Specifically, BZX seeks to modify the Professional and Non-Professional User Fees, modify the Enterprise Fee for BZX Options Top and make other clarifying, non-substantive changes.<sup>4</sup>

As a self-regulatory organization (“SRO”), BZX must follow the requirements of the Securities Exchange Act of 1934 (“Exchange Act”) and rules and regulations thereunder in filings to amend its rules, including those pertaining to fee changes. The Fee Filing unfortunately falls far short of those statutory requirements. While BZX has proposed to significantly increase the Enterprise Fee for BZX Options Top Data feed, it has not provided sufficient justification for the fee increase. The Fee Filing also seeks to establish a new fee for depth-of-book feed without providing any information about the fee or articulating with clarity just how the existing fee

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<sup>1</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule, Release No. 34-97480 (May 11, 2023), available at <https://www.sec.gov/rules/sro/cboebzx/2023/34-97480.pdf> (“Fee Filing”)

<sup>2</sup> Bloomberg L.P. is a global leader in business and financial information, delivering trusted data, news, and insights that bring transparency, efficiency, and fairness to the markets. The company helps connect influential communities across the global financial system via reliable technology solutions that enable our customers to make more informed decisions and foster better collaboration.

<sup>3</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule, Release No. 34-97480 (May 11, 2023), available at <https://www.sec.gov/rules/sro/cboebzx/2023/34-97480.pdf> (“Fee Filing”).

<sup>4</sup> *Id.*

structure is being changed. The Fee Filing contains no substantive information on the costs and projected revenue associated with the proposed fee changes, and no analysis of the potential and existing users and impacts on market participants.

### **Fee Filing Does Not Provide Sufficient Justification for the Proposed Fee Changes**

The rules of an SRO, including those pertaining to fees, must comport with the requirements of the Exchange Act, and an SRO should provide sufficient information to the Commission with respect to these filings. SROs have the burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder.<sup>5</sup> A fee filing proposal should fully and fairly describe the operations of the applicable fee and do so in sufficient detail so that the public can understand the fee filing proposal to provide meaningful comment and the Commission can determine whether the proposal is consistent with the Exchange Act.<sup>6</sup> A fee filing must also address all relevant statutory requirements, including the requirements that the fees are: (1) reasonable;<sup>7</sup> (2) equitably allocated;<sup>8</sup> (3) not unfairly discriminatory;<sup>9</sup> and (4) do not unduly burden competition.<sup>10</sup> Additional guidance on the relevant information to be included in an SRO fee filing is provided in the SEC's 2019 Staff Guidance on SRO Rule Filings Relating to Fees ("Staff Guidance on SRO Fee Filings").<sup>11</sup>

In a nutshell, the Fee Filing seeks to: (1) reduce the rates for the monthly user fees from \$30 to \$5 per user for Professional Users and from \$1.00 to \$0.10 per user for Non-Professionals; (2) increase the Enterprise Fee for BZX Options Top Feed from \$3,500 to \$20,000 per month; and (3) charge separate user fees for BZX Options Top Feed and BZX Options Depth Feed.<sup>12</sup>

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<sup>5</sup> See SEC Rules of Practice, Rule 700(b)(3) (17 CFR 201.700(b)(3)).

<sup>6</sup> See Suspension of an Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members to Establish a Monthly Trading Rights Fee, Exchange Act Release No. 86236, at 7 (June 28, 2019), available at <https://www.sec.gov/rules/sro/cboeedga/2019/34-86236.pdf>. See also SEC Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> ("Staff Guidance on SRO Fee Filings").

<sup>7</sup> Exchange Act Sections 6(b)(4) and 15A(b)(5).

<sup>8</sup> *Id.*

<sup>9</sup> Exchange Act Sections 6(b)(5) and 15A(b)(6), Rule 603 of Regulation NMS.

<sup>10</sup> Exchange Act Sections 6(b)(8) and 15A(b)(9).

<sup>11</sup> See Staff Guidance on SRO Fee Filings.

<sup>12</sup> *Id.*

To justify the proposed changes, BZX refers to the highly competitive nature of the options markets, voluntary consumption of the proprietary data feeds for options, and the availability of the top-of-book data through the Options Price Reporting Authority.<sup>13</sup> It does not, however, provide any information on the expected costs, relevant inputs, anticipated demand, or any other basis for estimating both the Enterprise Fee increase or decrease in monthly user fees.

This falls short of the SEC Staff Guidance on SRO Rule Filings Relating to Fees (“Staff Guidance on SRO Fee Filings”) which provides that, among other things, an SRO fee filing must discuss how a proposed fee may apply differently (*e.g.*, additional cost vs. additional discount) to different types of market participants (*e.g.*, market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants (*e.g.*, large medium or small entity, as measure by order flow, annual revenue, or other relevant metric), including any differences based on other characteristics and any exceptions to the applicability of such fees.<sup>14</sup> The Fee Filing also does not contain a comparison of the projected number of purchasers likely to be subjected to the proposed fee following the proposed fee change and the expected cost of the proposed fee for different types of firms or subscribers with the same metrics in the baseline period.<sup>15</sup>

The Enterprise Fee increase applies to the top-of-book feed, but it appears that BZX is also seeking to split the single user fee for the top-of-book and depth-of-book feed into two separate charges.<sup>16</sup> According to the Staff Guidance on SRO Fee Filings, when a fee filing changes an existing fee, an SRO should clearly identify and discuss in its filing the existing precedent fee in order to make clear the difference between the current fee and the proposed new fee.<sup>17</sup> The Fee Filing seeks to increase the fee for the top-of-book feed from \$3,500 to \$20,000 per month and charge yet another fee the depth-of-book feed, but it does not provide any information on that additional fee, not even the amount that would be assessed. The lack of detail around the new fee for depth-of-book feed is puzzling and, as a result, the Fee Filing is deficient.

BZX has thus failed to demonstrate that the Fee Filing meets all statutory requirements to allow the SEC to determine that the fees are compliant with the Exchange Act. Without sufficiently detailed information on the fee changes and discussion of the costs associated with the proposed changes, the number of affected users, and the impact of the proposed changes, the Commission simply cannot determine whether the proposal is consistent with the Exchange Act.

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<sup>13</sup> Fee Filing at 6-12.

<sup>14</sup> Staff Guidance on SRO Fee Filings at Section III, Part A.

<sup>15</sup> *Id.*

<sup>16</sup> Fee Filing at 3, 10-11.

<sup>17</sup> Staff Guidance on SRO Fee Filings at Section III, Par A.

For the reasons discussed above, we ask the Commission to suspend and disapprove the Fee Filing.

We appreciate the Commission's willingness to consider our comments and would be pleased to discuss any question that the Commission may have with respect to this letter.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Gregory R. Babyak". The signature is written in a cursive, slightly slanted style.

Gregory Babyak  
Global Head of Regulatory Affairs, Bloomberg L.P.