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August 22, 2023

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. 34-97997; File No. SR-CboeBZX-2023-051**

Dear Ms. Countryman:

Bloomberg L.P.<sup>1</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 the market data section of its fees schedule to: (1) adopt a New External Credit applicable to BZX Options Top; (2) adopt a credit towards the monthly Distribution fees for BZX Options Top; (3) modify the BZX Options Top Enterprise Fee; and (4) establish fees for Cboe One Options Feed (“Fee Filing”).<sup>2</sup>

BZX’s Fee Filing follows a filing in May 2023 to increase the Enterprise Fee for BZX Options Top Data feed and establish a new fee for depth-of-book feed (“May 2023 Fee Filing”).<sup>3</sup> As we noted in our comment letter to the May 2023 Fee Filing, BZX, as a self-regulatory organization (“SRO”), 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

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<sup>1</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>2</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule, Release No. 34-97997 (July 26, 2023), available at <https://www.sec.gov/files/rules/sro/cboebzx/2023/34-97997.pdf> (“Fee Filing”).

<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> (“May 2023 Fee Filing”).

pertaining to fee changes.<sup>4</sup> This Fee Filing does not meet the statutory requirements as it contains no substantive information on the costs and projected revenue associated with the proposed fee changes, and no analysis on the potential and existing users and impacts to market participants.

### **Fee Filing Does Not Sufficiently Justify Changes to the Fee Structure**

Among other changes contemplated in the Fee Filing, BZX seeks to adopt the following monthly Enterprise Fees for the BZX Options Top Feed from the current monthly flat fee of \$20,000 to: \$20,000 for up to 1,500,000 Users (Tier 1); \$40,000 for 1,500,001 to 2,500,000 Users (Tier 2); \$60,000 for 2,500,001 or greater Users (Tier 3).<sup>5</sup>

BZX additionally seeks to create the Cboe One Options Feed – created from the Cboe Options Top Data, C2 Options Top Data, EDGX Options Top, and BZX Options Top – with the following four fees:<sup>6</sup>

1. Monthly Distributor Fees (\$15,000 for Internal Distributor and \$10,000 for External Distributor)
2. Monthly User Fees (\$30.50 per Professional User and \$0.60 per Non-Professional User)
3. Monthly Enterprise Fees
  - \$350,000 for up to 1,500,000 Users (Tier 1)
  - \$550,000 for 1,500,001 to 2,500,000 Users (Tier 2)
  - \$750,000 for 2,500,001 or greater Users (Tier 3)
4. Monthly Data Consolidation Fee (\$500)

BZX has the burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder.<sup>7</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>8</sup> A fee filing must also address all relevant statutory requirements, including the requirements that the fees are: (1)

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<sup>4</sup> Bloomberg Comment Letter, dated June 7, 2023, on the May 2023 Fee Filing, *available at* <https://www.sec.gov/comments/sr-cboebzx-2023-030/srcboebzx2023030-201359-402842.pdf> (“May 2023 Comment Letter”).

<sup>5</sup> Fee Filing at 5.

<sup>6</sup> Fee Filing at 6-15.

<sup>7</sup> See SEC Rules of Practice, Rule 700(b)(3) (17 CFR 201.700(b)(3)).

<sup>8</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”).

reasonable;<sup>9</sup> (2) equitably allocated;<sup>10</sup> (3) not unfairly discriminatory;<sup>11</sup> and (4) do not unduly burden competition.<sup>12</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>13</sup>

The Fee Filing does not provide any information on the expected costs, relevant inputs, anticipated demand, or other basis for estimating the range of fees and number of users in the tiered fee structure.<sup>14</sup> Without addressing these deficiencies, the Fee Filing does not meet the statutory requirements to allow the SEC to determine that the proposed changes are compliant with the Exchange Act, and the Commission cannot determine whether the proposal is consistent with the Exchange Act.

We appreciate the Commission's willingness to consider our comments.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregory Babyak". The signature is stylized with a large "G" and a cursive "Babyak".

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

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<sup>9</sup> Exchange Act Sections 6(b)(4) and 15A(b)(5).

<sup>10</sup> *Id.*

<sup>11</sup> Exchange Act Sections 6(b)(5) and 15A(b)(6), Rule 603 of Regulation NMS.

<sup>12</sup> Exchange Act Sections 6(b)(8) and 15A(b)(9).

<sup>13</sup> See Staff Guidance on SRO Rule Filings Relating to Fees.

<sup>14</sup> We noted the lack of similar information in our May 2023 Comment Letter.