

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88536; File No. SR-BOX-2019-37]

### Self-Regulatory Organizations; BOX Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change in Connection With the Proposed Commencement of Operations of the Boston Security Token Exchange LLC as a Facility of the Exchange

April 1, 2020.

On December 18, 2019, BOX Exchange LLC (“Exchange” or “BOX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> a proposed rule change in connection with the proposed commencement of operations of the Boston Security Token Exchange LLC (“BSTX”) as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.<sup>3</sup> On February 13, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> The Commission has received comment letters on the proposed rule change.<sup>6</sup> This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act <sup>7</sup> to

determine whether to approve or disapprove the proposed rule change.

### I. Summary of the Proposal

As described in the Notice,<sup>8</sup> the Exchange proposes to adopt the Amended and Restated Limited Liability Company Agreement of BSTX (the “BSTX LLC Agreement”) for BSTX as a facility of the Exchange.<sup>9</sup> BSTX proposes to operate a fully automated, price-time priority execution system to list and trade NMS stocks that meet BSTX listing standards and for which ancillary records of ownership reflecting certain end-of-day security token balances as reported by market participants would be created and maintained using distributed ledger technology (such securities to be referred to as “security tokens”).<sup>10</sup>

According to the Exchange, BSTX is (1) 50% owned by BOX Digital Markets LLC (“BOX Digital”), which is 98% owned by BOX Holdings Group LLC (“BOX Holdings”) and 2% owned by Lisa Fall;<sup>11</sup> and (2) 50% owned by tZERO Group, Inc. (“tZERO”), which is 80.07% owned by Medici Ventures, Inc. (“Medici”), a wholly owned subsidiary of a publicly held corporation, Overstock.com, Inc. (“Overstock”), and 19.93% owned by individuals and companies.<sup>12</sup> BOX Holdings is (1) 41.33% owned by MX US 2, Inc., which is 100% owned by MX US 1, Inc., a wholly owned subsidiary of Bourse de

Montreal, Inc., which in turn is a wholly owned subsidiary of TMX Group Limited (“TMX”); (2) 22.01% owned by IB Exchange Corp.; and (3) 36.66% owned by seven separate, unaffiliated owners.<sup>13</sup> The Exchange also states that BSTX is an affiliate of the Exchange and will be subject to regulatory oversight by the Exchange,<sup>14</sup> and that tZERO and BSTX are affiliates of Overstock.<sup>15</sup>

The Exchange states that BOX Holdings wholly owns BOX Options Market LLC (“BOX Options”), which is a facility of the Exchange<sup>16</sup> and the only facility that the Exchange currently operates.<sup>17</sup> The Exchange notes that the BSTX LLC Agreement provisions are generally the same as provisions of the BOX Options LLC Agreement or the BOX Holdings LLC Agreement, with certain exceptions.<sup>18</sup> The Exchange states that it will enter into a facility agreement with BSTX (“Facility Agreement”) pursuant to which the Exchange will exercise regulatory oversight over BSTX.<sup>19</sup> Furthermore, the Exchange has entered into an IP License and Services Agreement (“LSA”) with tZERO,<sup>20</sup> under which tZERO will provide BSTX and the Exchange with a license to use its intellectual property that comprises the BSTX trading system and services related to, among other things, implementing and maintain the trading system.<sup>21</sup>

Currently, BOX Digital and tZERO are the only holders of the limited liability company interests of BSTX (“LLC Members”).<sup>22</sup> The Exchange proposes that a person would become an additional or substitute LLC Member of BSTX only upon that person’s execution of a counterpart of the BSTX LLC Agreement to evidence that person’s written acceptance of the terms and

<sup>8</sup> See Notice, *supra* note 3.

<sup>9</sup> See *id.*, 85 FR at 345. The proposed Boston Security Token Exchange LLC, Amended and Restated Limited Liability Company Agreement, dated as of January 29, 2019 (“BSTX LLC Agreement”) is attached as Exhibit 5A to the Form 19b-4 for SR-BOX-2019-37 (available on the Commission’s website at <https://www.sec.gov/rules/sro/box/2019/34-87868-ex5a.pdf>).

<sup>10</sup> See Notice, *supra* note 3, 85 FR at 345. The Exchange has separately filed with the Commission a proposed rule change regarding the listing and trading rules for the BSTX facility. See Securities Exchange Act Release No. 88300 (February 28, 2020), 85 FR 13242 (March 6, 2020) (“BSTX Trading Rules Proposal”).

The Commission also published an order instituting proceedings to determine whether to approve or disapprove the BSTX Trading Rules Proposal. See Securities Exchange Act Release No. 88002 (January 16, 2020), 85 FR 4040 (January 23, 2020) (SR-BOX-2019-19) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC).

<sup>11</sup> Lisa Fall is the Chief Executive Officer of BSTX, and President of the Exchange. See BSTX LLC Agreement, *supra* note 9, Signature Page.

<sup>12</sup> See Notice, *supra* note 3, 85 FR at 346. One individual holds 7.53% of the outstanding shares of tZERO, and Newer Ventures LLC, SpeedRoute Technologies Inc., Dinosaur Financial, and 28 individuals each own less than 3% of the outstanding shares of tZERO. See *id.*

<sup>13</sup> See *id.* The following entities each hold less than 17% of the outstanding units of BOX Holdings: Citadel Securities Principal Investments LLC, Citigroup Financial Products Inc., UBS Americas Inc., CSFB Next Fund Inc., LabMorgan Corp., Wolverine Trading, LLC, and Aragon Solutions Ltd. See *id.*

<sup>14</sup> See *id.* at 345.

<sup>15</sup> See *id.* at 346.

<sup>16</sup> See *id.* at 345.

<sup>17</sup> See *id.* at 345, n.4.

<sup>18</sup> See *id.* at 345, n.8 and accompanying text.

<sup>19</sup> See *id.* at 345. The Exchange will also provide certain business services to BSTX pursuant to an administrative services agreement. See *id.*

<sup>20</sup> See *id.* at 347.

<sup>21</sup> See *id.* at 352. The Facility Agreement, administrative services agreement, and LSA were not provided as exhibits to the proposal.

<sup>22</sup> See *id.* at 346; BSTX LLC Agreement, *supra* note 9. “LLC Members” are duly admitted holders of limited liability company interests in BSTX and would include any person later admitted to BSTX as an additional or substitute LLC Member as provided by the BSTX LLC Agreement. See Notice, *supra* note 3, 85 FR at 346; BSTX LLC Agreement, *supra* note 9, Section 1.1.

<sup>36</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345 (January 3, 2020) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 88206 (February 13, 2020), 85 FR 9824 (February 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> All comments on the proposed rule change are available on the Commission’s website at <https://www.sec.gov/comments/sr-box-2019-37/srbox201937.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

provisions of the BSTX LLC Agreement.<sup>23</sup> According to the Exchange, the Commission would be notified if an LLC Member's ownership interest in BSTX, alone or together with any related person of that LLC Member, meets or exceeds 5%, 10%, or 15%, and the BSTX LLC Agreement provides that any "Transfer" that results in the acquisition and holding by any person, alone or together with its related persons, of an ownership interest that meets or crosses 20% or any subsequent 5% increment, would be subject to the rule filing process pursuant to Section 19 of the Act.<sup>24</sup>

Pursuant to the BSTX LLC Agreement, a Controlling Person that establishes a Controlling Interest<sup>25</sup> in an LLC

<sup>23</sup> See Notice, *supra* note 3, 85 FR at 352–53; BSTX LLC Agreement, *supra* note 9, Section 7.1(b).

<sup>24</sup> See Notice, *supra* note 3, 85 FR at 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(e) and (f). The term "Transfer" is defined in Section 7.1(a) of the BSTX LLC Agreement, and excludes "(i) transfers among [LLC] Members, (ii) transfers to any Person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of and equity beneficial interests in such [LLC] Member, or (iii) any Person that is a wholly owned Affiliate of such [LLC] Member." See BSTX LLC Agreement, *supra* note 9, Section 7.1(a); Notice, *supra* note 3, 85 FR at 352.

<sup>25</sup> "Controlling Person" is defined as "a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in [an LLC] Member." "Controlling Interest" is defined as "the direct or indirect ownership of 25% or more of the total voting power of all equity securities of [an LLC] Member . . . by any Person, alone or together with any Related Persons of such Person." See BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(v)(A)–(B). "Related Person" is defined as "with respect to any Person: (A) Any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Interests; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BSTX Participant who is at the same time a broker-dealer, any Person that is associated with the BSTX Participant (as determined using the definition of 'person associated with a member' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BSTX Participant, any broker or dealer that is also a BSTX Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable." See BSTX LLC Agreement, *supra* note 9, Section 1.1.

Member that holds equal to or greater than a 20% ownership interest in BSTX will be required to become a party to the BSTX LLC Agreement, by executing an instrument of accession, and abide by its provisions to the same extent as if they were LLC Members.<sup>26</sup> The Exchange also states that these amendments to the BSTX LLC Agreement will be subject to the rule filing process pursuant to Section 19 of the Act.<sup>27</sup> The Exchange further proposes that any BSTX Participant that directly or indirectly with Related Persons holds more than 20% of BSTX would have its voting power capped at 20%.<sup>28</sup> According to the Exchange, this limitation is designed to prevent a market participant from exerting undue influence on an Exchange facility.<sup>29</sup>

The Exchange states that the BSTX LLC Agreement includes provisions that ensure that the Exchange has full regulatory control over BSTX and these provisions are designed to prevent any owner of BSTX from having undue influence over regulatory actions.<sup>30</sup> The BSTX LLC Agreement provides that BSTX's board of directors ("Board") will consist of six directors, comprised of (1) two directors appointed by each of BOX Digital and tZERO (the "Member Directors"); (2) one director appointed by the unanimous vote of the Member Directors (the "Independent Director"); and (3) one non-voting director appointed by the Exchange ("the "Regulatory Director").<sup>31</sup> The Exchange

"BSTX Participant" is defined as "a firm or organization that is registered with the Exchange pursuant to Exchange Rules for purposes of participating in Trading on the BSTX Market as an order flow provider or market maker." See *id.*

<sup>26</sup> See Notice, *supra* note 3, 85 FR at 346, 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(g). The proposed Form of Instrument of Accession to Boston Security Token Exchange LLC, Amended and Restated Limited Liability Company Agreement is attached as Exhibit 5B to the Form 19b–4 for SR–BOX–2019–37 (available on the Commission's website at <https://www.sec.gov/rules/sro/box/2019/34-87868-ex5b.pdf>). The Exchange specifically notes that Medici, Overstock, BOX Digital, BOX Holdings, MX US 1, Inc., MX US 2, Inc., Bourse de Montreal, Inc., and TMX would be required to execute an instrument of accession substantially in the form attached as Exhibit 5B. See Notice, *supra* note 3, 85 FR at 346.

Pursuant to Section 7.4(g)(iii) of the BSTX LLC Agreement, "a Person shall not be required to execute an amendment to [the BSTX LLC Agreement] . . . if such Person does not, directly or indirectly, hold any interest in [an LLC] Member." BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(iii).

<sup>27</sup> See Notice, *supra* note 3, 85 FR at 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(g)(iv).

<sup>28</sup> See Notice, *supra* note 3, 85 FR at 346, 353; BSTX LLC Agreement, *supra* note 9, Section 7.4(h).

<sup>29</sup> See Notice, *supra* note 3, 85 FR at 346.

<sup>30</sup> See *id.* at 348.

<sup>31</sup> See *id.*; BSTX LLC Agreement, *supra* note 9, Section 4.1(a). The Exchange states that the Regulatory Director must be a member of senior

states that BSTX will have an Independent Director to avoid either BOX Digital or tZERO from controlling or creating deadlock on the Board.<sup>32</sup> The Exchange also states that BSTX's Board structure differs from that of BOX Options because BOX Options, as a wholly-owned subsidiary of BOX Holdings, has the same directors as BOX Holdings, and BOX Holdings, unlike BSTX, has no owners with 50% or greater ownership.<sup>33</sup>

Generally, actions by the Board will be considered effective only if approved by at least a majority of the votes entitled to vote on that action.<sup>34</sup> The Board must approve, by an affirmative vote of the Member Directors, any "major action," which will include, among other things, changes to operating the BSTX Market using any software system other than the BSTX trading system, except as otherwise provided in the LSA or to the extent otherwise required by the Exchange to fulfill its regulatory functions or responsibilities or to oversee the BSTX Market as determined by the board of the Exchange.<sup>35</sup> The BSTX LLC Agreement also provides that the Exchange shall receive notice of planned or proposed changes to BSTX, with the exception of certain changes not related to the operation of the market, or to the BSTX Market, and that such changes will require affirmative approval by the Exchange before implementation.<sup>36</sup> If the Exchange determines that planned or proposed changes could cause a regulatory deficiency, the Exchange may direct BSTX, subject to Board approval, to modify the proposal as necessary.<sup>37</sup>

The Exchange also proposes how regulatory funds may be allocated. The Exchange states that, pursuant to the Facility Agreement, the Exchange will have the right to receive all fees, fines, and disgorgements imposed upon BSTX Participants with respect to BSTX's trading system ("Regulatory Funds") and all other market data fees, tape, and other revenue ("Non-regulatory

management of the regulation staff of the Exchange. See Notice, *supra* note 3, 85 FR at 348. See also BSTX LLC Agreement, *supra* note 9, Section 1.1.

<sup>32</sup> See Notice, *supra* note 3, 85 FR at 348.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*; BSTX LLC Agreement, *supra* note 9, Section 4.3.

<sup>35</sup> See Notice, *supra* note 3, 85 FR at 348–49; BSTX LLC Agreement, *supra* note 9, Section 4.4(a). "BSTX Market" is defined as the market operated by the Exchange pursuant to Section 3.1 of the BSTX LLC Agreement. See BSTX LLC Agreement, *supra* note 9, Section 1.1.

<sup>36</sup> See Notice, *supra* note 3, 85 FR at 350; BSTX LLC Agreement, *supra* note 9, Section 3.2(a)(ii).

<sup>37</sup> See Notice, *supra* note 3, 85 FR at 350; BSTX LLC Agreement, *supra* note 9, Section 3.2(a)(iii).

Funds”), and all Regulatory Funds and Non-regulatory Funds collected in respect to BSTX may be used by the Exchange, at its sole discretion, for regulatory purposes.<sup>38</sup> Furthermore, all Regulatory Funds collected by the Exchange will be retained by the Exchange and not transferred to BSTX; however, Non-regulatory Funds collected may be transferred to BSTX after the Exchange has made adequate provisions for all regulatory purposes.<sup>39</sup>

The proposal includes provisions regarding capital contributions and distributions. The BSTX LLC Agreement provides for an initial capital contribution from both BOX Digital and tZERO, with tZERO providing an initial cash contribution of \$10 million and BOX Digital providing the “[r]ight to seek approval to become a facility of SRO” and “[r]egulatory expertise.”<sup>40</sup> The BSTX LLC Agreement also includes provisions regarding determinations of capital needs by the Board, including, among others, the requirement that at least one Member Director appointed by each LLC Member affirmatively vote to raise capital;<sup>41</sup> potential cash distributions;<sup>42</sup> and allocation of profits, losses, and credits for each fiscal year to LLC Members at least once annually on a pro rata basis.<sup>43</sup>

The proposal also includes provisions regarding the regulation of BSTX and regulatory jurisdiction over LLC Members of BSTX.<sup>44</sup> Specifically, the BSTX LLC Agreement provides that the Exchange has the authority to act as the self-regulatory organization (“SRO”) for BSTX, will provide the regulatory framework for the BSTX Market, and will have regulatory responsibility for

the activities of the BSTX Market.<sup>45</sup> Additionally, the BSTX LLC Agreement includes provisions, which the Exchange states are substantively similar to provisions in the BOX Options LLC Agreement, that address the handling of confidential information, both pertaining to regulatory matters and otherwise.<sup>46</sup> The BSTX LLC Agreement also contains provisions, which the Exchange states are substantially similar to those of the BOX Options LLC Agreement, related to regulatory jurisdiction over LLC Members;<sup>47</sup> the maintenance of books and records;<sup>48</sup> and the independence of the self-regulatory function of the Exchange and compliance with federal securities laws.<sup>49</sup>

The Exchange also states that it is submitting a separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX as well as BOX Options.<sup>50</sup> According to the Exchange, BSTX Participants will have the same representation, rights, and responsibilities as BOX Options Participants.<sup>51</sup>

## II. Summary of the Comment Letters Received

To date the Commission has received two comment letters on the proposal.<sup>52</sup> One commenter notes that the proposal was only recently brought to its attention because it did not anticipate that a filing by an options exchange to create a facility could impact the U.S.

<sup>45</sup> See *id.* at 354; BSTX LLC Agreement, *supra* note 9, Section 3.2. The Exchange states that Section 3.2 of the BSTX LLC Agreement ensures that the Exchange has full regulatory control over BSTX and is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of BSTX. See Notice, *supra* note 3, 85 FR at 354.

<sup>46</sup> See Notice, *supra* note 3, 85 FR at 354–55; BSTX LLC Agreement, *supra* note 9, Article 15. The BSTX LLC Agreement contains additional language to make it clear that the Commission can access and examine confidential information pursuant to federal securities laws and rules. See Notice, *supra* note 3, 85 FR at 354–55; BSTX LLC Agreement, *supra* note 9, Section 15.5.

<sup>47</sup> See Notice, *supra* note 3, 85 FR at 355; BSTX LLC Agreement, *supra* note 9, Sections 11.1, 18.6(a), 18.6(c).

<sup>48</sup> See Notice, *supra* note 3, 85 FR at 355; BSTX LLC Agreement, *supra* note 9, Section 11.1.

<sup>49</sup> See Notice, *supra* note 3, 85 FR at 348, 350; BSTX LLC Agreement, *supra* note 9, Section 4.12.

<sup>50</sup> See Notice, *supra* note 3, 85 FR at 345.

<sup>51</sup> See *id.* See also Securities Exchange Act Release No. 88236 (February 19, 2020), 85 FR 10768 (February 25, 2020) (SR–BOX–2020–04) (“Exchange Governance Amendment Proposal”). The Commission notes that the Exchange Governance Amendment Proposal proposes to amend the Exchange’s LLC Agreement and Bylaws to provide flexibility for the Exchange to regulate multiple facilities.

<sup>52</sup> See *supra* note 6.

equities markets.<sup>53</sup> This commenter expresses concern that the approval of the proposal “could be a significant change for the equities market.”<sup>54</sup> This commenter requests an extension of the comment period to consider the proposal.<sup>55</sup> Another commenter notes that the tZERO token is affiliated with certain owners of the Exchange, Overstock, and other entities related to the Exchange.<sup>56</sup> This commenter also notes that the price of the tZERO token is down by over 85% since issuance less than two years ago.<sup>57</sup> This commenter believes that the Commission should disclose and study further details on the relationships between the aforementioned entities.<sup>58</sup>

## III. Proceedings To Determine Whether To Approve or Disapprove SR–BOX–2019–37 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>59</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. 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,<sup>60</sup> the Commission is providing

<sup>53</sup> See Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 13, 2020 (“SIFMA Letter”), at 2. See also Letter from David A. Schrader, Partner, Paykin Krieg & Adams, LLP, to Vanessa Countryman, Secretary, Commission, dated February 25, 2020 (“PKA Law Letter”), at 2 (stating that the proposal has had little dissemination among market participants, particularly the exchanges and designated market makers).

<sup>54</sup> See SIFMA Letter, *supra* note 53, at 2. This commenter’s letter also references the BSTX Trading Rules Proposal. See *id.* at 1. See also PKA Law Letter, *supra* note 53, at 2 (stating that the proposal contains potentially significant changes to the operation and structure of the global equity trading markets).

<sup>55</sup> See SIFMA Letter, *supra* note 53, at 2. This commenter also requests more time to provide feedback on the BSTX Trading Rules Proposal. See *id.* at 2.

<sup>56</sup> See PKA Law Letter, *supra* note 53, at 2.

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>60</sup> *Id.*

<sup>38</sup> See Notice, *supra* note 3, 85 FR at 350–51. If BSTX incurs costs and expenses for regulatory purposes, the Exchange may reimburse BSTX using Regulatory Funds. See *id.* at 351. In the event that the Exchange does not hold sufficient funds to meet all regulatory purposes, BSTX will reimburse the Exchange for any such additional costs and expenses. See *id.* The BSTX LLC Agreement does not include provisions regarding Regulatory Funds.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*; BSTX LLC Agreement, *supra* note 9, Section 6.1 & Schedule A. tZERO will also provide “consideration provided pursuant to the LSA.” BSTX LLC Agreement, *supra* note 9, Schedule A.

<sup>41</sup> See Notice, *supra* note 3, 85 FR at 351; BSTX LLC Agreement, *supra* note 9, Section 6.2. The Exchange states that the requirement concerning the affirmative vote of one Member Director appointed by each LLC Member is not present in the BOX Options LLC Agreement, but that the Exchange believes that this provision promotes commercial fairness and is necessary due to the differing ownership structure of BSTX. See Notice, *supra* note 3, 85 FR at 351.

<sup>42</sup> See BSTX LLC Agreement, *supra* note 9, Section 8.1.

<sup>43</sup> See *id.*, Section 9.1.

<sup>44</sup> See Notice, *supra* note 3, 85 FR at 354–55.

notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(1) of the Act, which requires that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.<sup>61</sup> In addition, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(3) of the Act, which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer;<sup>62</sup> and Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>63</sup>

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>64</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>65</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that

a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>66</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, 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 proposal is consistent with Sections 6(b)(1),<sup>67</sup> 6(b)(3),<sup>68</sup> and 6(b)(5)<sup>69</sup> of the Act 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 views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>70</sup> any request for an opportunity to make an oral presentation.<sup>71</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 28, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 12, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>72</sup> in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

<sup>66</sup> See *id.*

<sup>67</sup> 15 U.S.C. 78f(b)(1).

<sup>68</sup> 15 U.S.C. 78f(b)(3).

<sup>69</sup> 15 U.S.C. 78f(b)(5).

<sup>70</sup> 17 CFR 240.19b-4.

<sup>71</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>72</sup> See Notice, *supra* note 3.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2019-37 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-BOX-2019-37. 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-BOX-2019-37 and should be submitted by April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>73</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>73</sup> 17 CFR 200.30-3(a)(57).

<sup>61</sup> 15 U.S.C. 78f(b)(1).

<sup>62</sup> 15 U.S.C. 78f(b)(3).

<sup>63</sup> 15 U.S.C. 78f(b)(5).

<sup>64</sup> 17 CFR 201.700(b)(3).

<sup>65</sup> See *id.*