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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87868; File No. SR-BOX-2019-37]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change in Connection with the Proposed Commencement of Operations of Boston Security Token Exchange LLC as a Facility of the Exchange

December 30, 2019.

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 18, 2019, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed commencement of operations of BSTX. In this Proposed Rule Change, the proposed Amended and Restated Limited Liability Company Agreement of the Company dated January 29, 2019 (the “LLC Agreement”), is attached as Exhibit 5A hereto [sic]. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 is submitting this Proposed Rule Change to the Commission in connection with the proposed commencement of operations of BSTX. The Exchange proposes to establish BSTX as a facility, as that term is defined in Section 3(a)(2) of the Act,³ of the Exchange.⁴ BSTX would be a facility of the Exchange that will operate a market for the trading of digital security tokens. BSTX would operate a fully automated, price/time priority execution system for the trading of “security tokens,” which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or “blockchain”) technology. The security tokens would qualify as NMS stocks pursuant to Regulation NMS.⁵ All transactions in security tokens would

³ 15 U.S.C. 78c(a)(2).

⁴ Approval for the BSTX facility is being sought by the Exchange through a separate proposed rule change with the Commission. See Securities Exchange Act Release No. 87287 October 11, 2019, 84 FR 56022 October 18, 2019 (“BSTX Rulebook Proposal”). The Exchange also currently plans to separately propose certain other rule changes with the Commission designed to provide sufficient flexibility for there to be multiple facilities under the Exchange’s regulatory authority. Currently, there is only one facility of the Exchange, BOX Options Market LLC.

⁵ 17 CFR 242.600 through 613.

clear and settle in accordance with the rules, policies and procedures of registered clearing agencies.

BSTX is owned jointly by BOX Digital, a Delaware limited liability company and a subsidiary of BOX Holdings Group LLC, and tZERO Group, Inc., a Delaware corporation and an affiliate of Overstock.com, Inc. BSTX is an affiliate of the Exchange and, when it commences trading operations, will be subject to regulatory oversight by the Exchange. In addition, the Exchange will enter into a facility agreement with BSTX (the “Facility Agreement”) pursuant to which the Exchange will regulate the Company as a facility of the Exchange. The Exchange’s powers and authority under the Facility Agreement ensure that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company. The Exchange will also provide certain business services to the Company such as providing human resources and office technology support pursuant to an administrative services agreement between the Exchange and BSTX.

The LLC Agreement is the source of governance and operating authority for the Company and, therefore, functions in a similar manner as articles of incorporation and bylaws would function for a corporation. The Exchange is submitting a separate filing to establish rules relating to trading on BSTX.⁶ The Exchange is also submitting another separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX in addition to the Exchange’s existing facility. With the addition of BSTX as an Exchange facility, BSTX

⁶ See BSTX Rulebook Proposal.

Participants⁷ will have the same representation, rights and responsibilities as Participants on the Exchange's other facility.

The Exchange currently operates BOX Options Market LLC ("BOX Options"), which is a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Act. The proposed LLC Agreement provisions are generally the same as the provisions of the BOX Options LLC Agreement or, where indicated herein, are the same as provisions of the BOX Holdings LLC Agreement.⁸ Currently, BOX Holdings has nine separate, unaffiliated owners. BOX Holdings owns 100% of BOX Options so BOX Holdings is essentially the alter ego of BOX Options. By contrast, the Company has two separate, unaffiliated owners, BOX Digital and tZERO, each of which owns 50% of the Company. Ownership diverges for BOX Options directly above BOX Holdings in its ownership structure and ownership diverges for the Company directly above the Company in its ownership structure. Therefore, as discussed below, when comparing various provisions in the LLC Agreement, some provisions are more appropriately compared with the BOX Holdings LLC Agreement, particularly with respect to ownership issues. The Exchange believes that governance consistent with established provisions that have already received Commission approval harmonizes rules and practices across the Exchange's facilities, which may foster cooperation and coordination with persons engaged in regulating, clearing, settling,

⁷ A BSTX Participant is a firm or organization that is registered with the Exchange pursuant to Exchange Rules for the purposes of participating on the BSTX Market as an order flow provider or market maker. See Section 1.1, LLC Agreement.

⁸ The Exchange notes, as further described in the Proposed Rule Change, that certain provisions of the BOX Holdings LLC and BOX Options LLC Agreements are not included in the LLC Agreement because they are not applicable. For example, certain provisions in the BOX Holdings LLC Agreement that are related to different ownership classes are not present in the LLC Agreement because BSTX has only one class of ownership. See, e.g., Sections 4.1, 4.4, 4.13 and 7 of the BOX Holding LLC Agreement.

processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.⁹

Structure of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the structure of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company (“Interests”). The duly admitted holders of Interests are referred to as the members of the Company (“Members”). The Interests represent equity interests in the Company and entitle the duly admitted holders thereof to participate in the Company’s allocations and distributions. Currently, BOX Digital and tZERO are the Company’s Members and each own 50% of the Interests.

BOX Digital is a subsidiary of BOX Holdings and an affiliate of the Exchange and, therefore, the Company will be an affiliate of the Exchange. BOX Holdings owns 98% of BOX Digital and 2% of BOX Digital is held by Lisa Fall. BOX Holdings already owns one subsidiary that is an existing facility of the Exchange. The existing facility – BOX Options – operates a market for trading option contracts on U.S. equities. BOX Holdings is the parent company for both BOX Digital and BOX Options. BOX Holdings has nine separate, unaffiliated owners, including MX US 2, Inc., a wholly owned, indirect subsidiary of TMX Group Limited (“TMX”),

⁹ 15 U.S.C. 78f(b)(5).

which holds 41.33% of the outstanding units of BOX Holdings and IB Exchange Corp., which holds 22.01% of the outstanding units of BOX Holdings. The other seven owners 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, each hold less than 17% of the outstanding units of BOX Holdings.

Medici Ventures, Inc. (“Medici”), a Delaware corporation, owns 80.07% of the outstanding shares of tZERO, Joseph Cammarata holds 7.53% and each of the following owns less than 3% of the outstanding shares of tZERO: Todd Tobacco, Newer Ventures LLC, Schalk Steyn, Raj Karkara, Alec Wilkins, Dohi Ang, Brian Capuano, Trent Larson, Eric Fish, Kristen Anne Bagley, Kirstie Dougherty, SpeedRoute Technologies Inc., Tommy McSherry, Rob Collucci, John Gilchrist, John Paul DeVito, Jimmy Ambrose, Jason Heckler, Max Melmed, Alex Vlastakis, Olalekan Abebefe, Samson Arubuola, Ryan Mitchell, Zachary Wilezol, Anthony Bove, Ralph Daiuto, Rob Christiansen, Amanda Gervase, Derek Tobacco, Steve Bailey and Dinosaur Financial. Overstock.com, Inc. (“Overstock”), a publicly held corporation organized under the laws of the state of Delaware, owns 100% of the outstanding shares of Medici. Therefore, both tZERO and the Company are affiliates of Overstock.

Pursuant to Section 7.4(g)(ii) of the LLC Agreement, any Controlling Person¹⁰ is required to become a party to the LLC Agreement and abide by its provisions, to the same extent and as if

¹⁰ A “Controlling Person” is defined as “a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in a Member.” See Section 7.4(g)(v)(B), LLC Agreement. A “Controlling Interest” is defined as “the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Related Persons of such Person.” See Section 7.4(g)(v)(A), LLC Agreement. A “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

they were members. Related Persons that are otherwise Controlling Persons are not required to become parties to the LLC Agreement if they are only under common control of an upstream owner but are not in the upstream ownership chain above a Company owner because they will not have the ability to exert any control over the Company. BOX Holdings, Medici and Overstock are indirect owners of the Company. Overstock owns 100% of Medici Ventures, Inc., which owns more than 80% of tZERO Group, Inc., which owns 50% of BSTX. Medici and Overstock will be required to become parties to the Company's LLC Agreement by executing an instrument of accession substantially in the form attached hereto as Exhibit 5B [sic] and abide by its provisions, to the same extent and as if they were members, because they are Controlling Persons of the Company. Similarly, BOX Digital, BOX Holdings, MX US 2, Inc., MX US 1, Inc., Bourse de Montreal Inc. and TMX Group Limited will also each be required to become parties to the LLC Agreement by executing an instrument of accession and abide by its provisions to the same extent and as if they were members because they are Controlling Persons of the Company. TMX Group Limited owns 100% of Bourse de Montreal Inc., which owns

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 [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 [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 [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."

100% of MX US 1, Inc., which owns 100% of MX US 2, Inc., which owns more than 40% of BOX Holdings. BOX Holdings owns 98% of BOX Digital, which owns 50% of BSTX.

Any BSTX Participant that holds, directly or indirectly, more than 20% of the Company will have its voting power capped at 20% pursuant to Section 7.4(h) of the LLC Agreement, a limitation designed to prevent a market participant from exerting undue influence on an Exchange facility.¹¹ Related Persons will be grouped together when applying these limits. The Exchange believes the proposed voting cap provision is consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.¹² In particular, the voting cap is designed to minimize the ability of a BSTX Participant to improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The SEC will be required to be notified if an owner exceeds 5%, 10% or 15% ownership in the Company pursuant to Section 7.4(e) of the LLC Agreement.¹³ Further, rule filings are required when an owner crosses above 20% or any subsequent 5% increment, pursuant to Section 7.4(f) of the LLC Agreement.¹⁴ Related Persons are grouped together when applying these limits. These are the same provisions as are contained in the BOX Holdings LLC Agreement. The Exchange believes the proposed notification provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act. In particular, SEC notification of ownership

¹¹ LLC Agreement Section 7.4(h) is based on Section 7.4(h) of the BOX Holdings LLC Agreement.

¹² 15 U.S.C. 78f(b)(1).

¹³ LLC Agreement Section 7.4(e) is based on Section 7.4(e) of the BOX Holdings LLC Agreement.

¹⁴ LLC Agreement Section 7.4(f) is based on Section 7.4(f) of the BOX Holdings LLC Agreement.

interests exceeding certain percentage thresholds can help improve the Commission's ability to effectively monitor and surveil for potential undue influence and control over the operation of the Exchange.

The Exchange notes that existing ownership limits applicable to owners of the Exchange, the entity that will have regulatory oversight of BSTX, are not changing.¹⁵ The Exchange believes the existing ownership limits will help to ensure the independence of the Exchange's regulatory oversight of BSTX and facilitate the ability of the Exchange to carry out its regulatory responsibilities and operate in a manner consistent with the Act, and are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.¹⁶

The Company does not have the same ownership as BOX Options or BOX Holdings; therefore, the Members of the Company differ from those of BOX Options and BOX Holdings. The Exchange believes that the structure of the Company will promote just and equitable principles of trade, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.¹⁷

Term and Termination

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the term and termination of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

¹⁵ See Securities Exchange Act Release No. 34-66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange).

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ 15 U.S.C. 78f(b)(5).

Pursuant to Section 2.3 of the LLC Agreement, the Company will have a perpetual legal existence unless it is sooner dissolved as a result of an event specified in the Delaware Limited Liability Company Act, as amended and in effect from time to time, and any successor statute (the “LLC Act”) or by agreement of the Members. The term is the same as the provision in the BOX Options LLC Agreement,¹⁸ but also provides that the Company can be dissolved by agreement of the Members. In addition, Section 10.1 of the LLC Agreement provides that the Company shall be dissolved upon (i) the election to dissolve the Company made by the Board pursuant to Section 4.4(b)(v) of the LLC Agreement; (ii) the entry of a decree of judicial dissolution under § 18-802 of the LLC Act; (iii) the resignation, expulsion, bankruptcy or dissolution of the last remaining Member, or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the business of the Company is continued without dissolution in accordance with the LLC Act; or (iv) the occurrence of any other event that causes the dissolution of a limited liability company under the LLC Act unless the Company is continued without dissolution in accordance with the LLC Act. The dissolution events are generally the same as those in the BOX Options LLC Agreement;¹⁹ however, the Company may also be dissolved by the affirmative vote of Members holding a majority of all of the then outstanding Percentage Interests²⁰ (excluding any Percentage Interests held directly or indirectly by tZERO and its Affiliates from the numerator and the denominator for such calculation) taken within 180 calendar days after the occurrence of any “Trigger Event” as such term is defined in the IP License and Services Agreement entered into by and between

¹⁸ See BOX Options LLC Agreement Section 2.3.

¹⁹ See BOX Options LLC Agreement Section 8.1.

²⁰ “Percentage Interests” are defined as “with respect to a Member, such Member’s Interests expressed as a percentage of all outstanding Interests.” See Section 1.1, LLC Agreement.

tZERO and the Company (the “LSA”) and described in more detail below.²¹ The Exchange believes that the addition of such dissolution events will promote just and equitable principles of trade, and, in general, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²²

Upon the occurrence of any of the events set forth in Section 10.1(a) of the LLC Agreement, the Company will be dissolved and terminated in accordance with the provisions of Article 10 of the LLC Agreement.

Governance of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to the governance of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 4.1 of the LLC Agreement establishes a board of directors of the Company (the “Board of Directors” or the “Board”) to manage the development, operations, business and affairs of the Company without the need for any approval of the Members or any other person.

²¹ The LSA defines a “Trigger Event” as meaning “any of the following events: (a) a material breach by tZERO of any of its obligations under this LSA (being either a single event which is a material breach or a series of breaches which taken together are a material breach) which material breach or failure is not cured by tZERO within 90 days after Company gives written notice of such breach or failure to tZERO hereunder, except for Critical Functions in which case the cure period shall be 10 days; (b) any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency Law or any non-frivolous dissolution or liquidation proceedings commenced by or against tZERO; and if such case or proceeding is not commenced by tZERO, it is acquiesced by tZERO in or remains undismissed for 30 days; (c) tZERO ceasing active operation of its business without a successor or discontinuing any of the Base Services; (d) tZERO becomes judicially declared insolvent or admits in writing its inability to pay its debts as they become due; or (e) tZERO applies for or consents to the appointment of a trustee, receiver or other custodian for tZERO, or makes a general assignment for the benefit of its creditors.”

²² 15 U.S.C. 78f(b)(5).

Section 4.10 of the LLC Agreement provides that, except and only to the extent expressly provided for in the LLC Agreement and the Related Agreements and as delegated by the Board of Directors to committees of the Board of Directors or to duly appointed Officers or agents of the Company, neither a Member nor any other Person other than the Board of Directors shall be an agent of Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company. Section 4.12(a) of the LLC Agreement provides that each of the Members and the Directors, Officers, employees and agents of the Company (a) shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of decisions by the board of directors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would interfere with the Exchange's ability to carry out its responsibilities under the Act; (b) comply with the federal securities laws and the rules and regulations promulgated thereunder; and (c) cooperate with the Exchange pursuant to its regulatory authority and with the SEC. Section 3.2 of the LLC Agreement provides that the Exchange will (a) act as the SEC-approved SRO for the BSTX Market, (b) have regulatory responsibility for the activities of the BSTX Market and provide regulatory services to the Company pursuant to the Facility Agreement. These are the same provisions that are contained in the BOX Options LLC Agreement.²³ These provisions ensure that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

²³ See BOX Options LLC Agreement Sections 4.1, 4.10, 4.12, and 3.2.

Section 4.1 of the LLC Agreement provides that the Board will consist of six (6) directors (each a “Director”), comprised of two (2) Directors appointed by BOX Digital, two (2) Directors appointed by tZERO (together with the BOX Digital Directors, each a “Member Director”), one (1) Director (the “Independent Director”) appointed by the unanimous vote of all of the then serving Member Directors, and one (1) non-voting Director (the “Regulatory Director”) appointed by the Exchange. As long as the Company is a facility of the Exchange pursuant to Section 3(a)(2) of the Act, the Exchange will have the right to appoint a Regulatory Director to serve as a Director. The Regulatory Director must be a member of the senior management of the regulation staff of the Exchange. By comparison, the board of directors of BOX Options is the same as BOX Holdings because it is a wholly-owned subsidiary of BOX Holdings. The remaining structure of the Board of Directors for the Company differs from that of BOX Holdings because the ownership of the Company differs from that of BOX Holdings, which has no owners with 50% or greater ownership. The Company has an Independent Director to avoid either Member from controlling or creating deadlock on the Board. However, the presence of a Regulatory Director selected by the Exchange on the Board is identical to the longstanding practice at the Exchange’s other facility, BOX Options. The Exchange believes that the proposed board structure, and in particular, the inclusion of the proposed Independent Director and Regulatory Director, will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²⁴

²⁴ 15 U.S.C. 78f(b)(5).

Further, the Exchange believes that inclusion of the Regulatory Director on the BSTX Board would also be consistent with Section 6(b)(1) of the Act. This is because the Regulatory Director is required to be someone who is a member of the senior management of the regulation staff of the Exchange and is therefore a person who is knowledgeable of the rules of the Exchange and the regulations applicable to it and, in turn, is someone who would be well positioned to help ensure the Exchange, including in the operation of any facilities, continues to be so organized and has the capacity to carry out the purposes of the Act, including to prevent inequitable and unfair practices.

Section 4.3 of the LLC Agreement provides that the Board will meet as often as it deems necessary, but at least four (4) times per year.²⁵ Meetings of the Board or any committee thereof may be conducted in person or by telephone or in any other manner agreed to by the Board or, respectively, by the members of a committee. Any of the Directors or the Exchange may call a meeting of the Board upon fourteen (14) calendar days prior written notice. In any case where the convening of a meeting of Directors is a matter of urgency, notice of the meeting may be given not less than forty-eight (48) hours before the meeting is to be held. No notice of a meeting shall be necessary when all Directors are present. The attendance of at least a majority of all the Directors shall constitute a quorum for purposes of any meeting of the Board. Except as may otherwise be provided by the LLC Agreement, each of the Directors will be entitled to one vote on any action to be taken by the Board, except that the Regulatory Director shall not vote on any action to be taken by the Board or any committee, the CEO (if a Director) shall not be entitled to vote on matters relating to the CEO's powers, compensation or performance, and a Director shall not be entitled to vote on any matter pertaining to that Director's removal from

²⁵ LLC Agreement Section 4.3 is based on Section 4.3 of the BOX Options LLC Agreement.

office. A Director may vote the votes allocated to another Director (or group of Directors) pursuant to a written proxy. Except as otherwise provided by the LLC Agreement, any action to be taken by the Board shall be considered effective only if approved by at least a majority of the votes entitled to be voted on that action. Meetings of the Board may be attended by other representatives of the Members, the Exchange and other persons related to the Company as the Board may approve. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if written consents, setting forth the action so taken, are executed by the members of the Board or committee, as the case may be, representing the minimum number of votes that would be necessary to authorize or to take that action at a meeting at which all members of the Board or committee, as the case may be, permitted to vote were present and voted. The Board will determine procedures relating to the recording of minutes of its meetings. The Exchange believes that the proposed board structure will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²⁶

Pursuant to Section 4.4 of the LLC Agreement, no action with respect to any major action (each a “Major Action”), will be effective unless approved by the Board, including the affirmative vote of all then serving Member Directors, in each case acting at a meeting. A vacancy on the Board will not prevent approval of a Major Action. No other Member votes are required for a Major Action. For purposes of the LLC Agreement, “Major Action” means any of

²⁶ 15 U.S.C. 78f(b)(5).

the following: (i) a merger or consolidation of the Company with any other entity or the sale by the Company of any material portion of its assets; (ii) entry by the Company into any line of business other than the business outlined in Article 3 of the LLC Agreement; (iii) conversion of the Company from a Delaware limited liability company into any other type of entity; (iv) except as expressly contemplated by the LLC Agreement and then existing Related Agreements, entering into any agreement, commitment, or transaction with any Member or any of its Affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to the Company than the Company would obtain in a comparable arms-length transaction or agreement with a third party; (v) to the fullest extent permitted by law, taking any action (except pursuant to a vote of the Members pursuant to Section 10.1(a)(ii) of the LLC Agreement to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company; (vi) operating the BSTX Market utilizing any other 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; (vii) operating the BSTX Market utilizing any other regulatory services provider other than the Exchange, except as otherwise provided in the Facility Agreement 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; (viii) entering into any partnership, joint venture or other similar joint business undertaking; (ix) making any fundamental change in the market structure of the Company from that contemplated by the Members as of the date of the LLC Agreement, except 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; (x) issuing any new Interests pursuant to Section 7.6 of the LLC Agreement or admitting additional or substitute Members pursuant to Section 7.1(b); (xi) altering the provisions for Board membership applicable to any Member, except 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; and (xii) altering the definition of or requirements for approving a Major Action, except 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. The Major Action events are generally the same as those in the BOX Options LLC Agreement and BOX Holdings LLC Agreement²⁷ with the exception of deletions to references to BOX Options affiliates and owners and to include cross references to other provisions of the LLC Agreement; however, the Company's LLC Agreement also provides that a Major Action also includes provisions (viii), (x), and (xi) as described above. The Exchange believes that such events should be deemed Major Actions for commercial fairness. The Exchange believes that deeming the above referenced events as Major Actions will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²⁸

Pursuant to Section 4.1(b) of the LLC Agreement, a Member Director may be removed by the Member entitled to appoint that Member Director, with or without cause. The

²⁷ See Section 4.4 of the BOX Options LLC Agreement and Section 4.4 of the BOX Holdings LLC Agreement.

²⁸ 15 U.S.C. 78f(b)(5).

Independent Director may be removed by a majority vote of the then serving Member Directors, with or without cause. Any Member Director or Independent Director may be removed by the Board if the Board determines, in good faith, that the Director has violated any provision of the LLC Agreement or any federal or state securities law or that such action is necessary or appropriate in the public interest or for the protection of investors. A Director shall not participate in any vote regarding that Director's removal. The Company shall promptly notify the Exchange in writing of the commencement or cessation of service of a Member Director or Independent Director. Like BOX Options, Directors may be removed by the Board for reasons related to protection of investors and the owners with rights to appoint a Member Director have power to remove and replace their respective designees. The removal provisions for the Company's Independent Director differ from those of BOX Options and BOX Holdings because those entities do not have an Independent Director. The Exchange believes that the proposed removal provisions will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act. Further, the Exchange believes that the ability for Member Directors and Independent Directors to be removed from the Board in the circumstances described above would be consistent with Section 6(b)(1) of the Act.²⁹ This is because removal of such Directors who have violated the LLC Agreement or federal or state laws would help ensure that the Exchange, including in its

²⁹ 15 U.S.C. 78f(b)(1).

operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act, including the prevention of inequitable and unfair practices.

Section 4.1(c) of the LLC Agreement provides that, if a vacancy is created on the Board as a result of the death, disability, retirement, resignation or removal (with or without cause) of a Member Director or otherwise there shall exist or occur any vacancy on the Board, the Member whose designee created the vacancy will fill that vacancy by written notice to the Company. Each Member shall promptly fill vacancies on the Board, and the Board shall consider the advisability of taking further action until the vacancies are filled. The vacancy provisions are not in the BOX Options LLC Agreement; however, the Exchange believes that providing for contingencies in the event of a vacancy are important to avoid business disruption and, therefore, this proposal will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.³⁰ Further, the Exchange believes that filling Director vacancies, as described above, would provide a predetermined and transparent manner for filling Director vacancies and therefore help avoid business disruptions at BSTX. The Exchange believes that this, in turn, would be consistent with Section 6(b)(1) of the Act³¹ because it would help ensure that the Exchange, including in the operation of facilities, is so organized and has the capacity to be able carry out the purposes of the Act, including to remove impediments to and perfect the mechanisms of a national market system for securities.

Section 4.1(d) of the LLC Agreement provides that the Regulatory Director may be removed (a) by the Exchange, with or without cause, (b) by the Board if the Board determines, in good faith, that the Regulatory Director has violated any provision of the LLC Agreement or any

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78f(b)(1).

federal or state securities law, or (c) by the Board if the Board determines, in good faith, that the Regulatory Director does not meet the requirements of a Regulatory Director as set forth in the LLC Agreement. If the Regulatory Director ceases to serve for any reason, the Exchange shall appoint a new Regulatory Director in accordance with the requirements in the LLC Agreement. The removal provisions in the Company's LLC Agreement are substantially the same as those in the BOX Options LLC Agreement.³²

Section 4.12(b) of the LLC Agreement provides that the Company and its Members shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the SEC and the Exchange pursuant to and to the extent of their respective regulatory authority. The Directors, Officers, employees and agents of the Company, by virtue of their acceptance of such position, shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall be deemed to agree to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange, and the Company shall take reasonable steps necessary to cause its Directors, Officers, employees and agents to so cooperate. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement and BOX Holdings LLC Agreement.³³

Section 3.2(a)(ii) of the LLC Agreement provides that the Exchange shall receive notice of planned or proposed changes to the Company (but not including changes relating solely to one or more of the following: marketing, administrative matters, personnel matters, social or team building events, meetings of the Members, communication with the Members, finance, location and timing of Board meetings, market research, real property, equipment, furnishings, personal

³² See Section 4.1(d) of the BOX Options LLC Agreement.

³³ See Section 4.12(b) of the BOX Options LLC Agreement and Section 4.12(b) of the BOX Holdings LLC Agreement.

property, intellectual property, insurance, contracts unrelated to the operation of the BSTX Market and de minimis items (“Non-Market Matters”) or the BSTX Market (including, but not limited to the BSTX trading system) which will require an affirmative approval by the Exchange prior to implementation, not inconsistent with the LLC Agreement. Planned changes include, without limitation: (a) planned or proposed changes to the BSTX trading system; (b) the sale by the Company of any material portion of its assets; (c) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company; or (d) obtaining regulatory services from a regulatory services provider other than the Exchange. Procedures for requesting and approving changes shall be established by the mutual agreement of the Company and the Exchange. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.³⁴

Section 3.2(a)(iii) of the LLC Agreement provides that in the event that the Exchange, in its sole discretion, determines that the proposed or planned changes to the Company or the BSTX Market (including, but not limited to, the BSTX trading system) set forth in Section 3.2(a)(ii) of the LLC Agreement could cause a Regulatory Deficiency if implemented, the Exchange may direct the Company, subject to approval of the Exchange Board of Directors, to modify the proposal as necessary to ensure that it does not cause a Regulatory Deficiency. The Company will not implement the proposed change until it, and any required modifications, are approved by the Exchange Board of Directors. The costs of modifications undertaken shall be paid by the Company. These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.³⁵ These provisions ensure the Exchange maintains full regulatory control and authority over BSTX while it operates as a facility of the Exchange. The Exchange believes this

³⁴ See Section 3.2(a)(ii) of the BOX Options LLC Agreement.

³⁵ See Section 3.2(a)(iii) of the BOX Options LLC Agreement.

provision helps guarantee the Exchange’s ability to fulfill its regulatory responsibilities and operate in a manner consistent with the Act, in particular with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.³⁶

Section 3.2(a)(iv) of the LLC Agreement provides that in the event that the Exchange, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, the Exchange may direct the Company, subject to approval of the Exchange board of directors, to undertake such modifications to the Company (but not to include Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX trading system), as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow the Exchange to perform and fulfill its regulatory responsibilities under the Act.³⁷ The costs and modifications undertaken shall be paid by the Company. These provisions in the LLC Agreement are substantially the same as those in the BOX Options LLC Agreement, with the exception of a reference to an agreement that is not applicable to the Company.³⁸

Regulatory Funds

Pursuant to Section 9 of the Facility Agreement, the Company will agree that the Exchange has the right to receive all fees, fines and disgorgements imposed upon BSTX Participants with respect to the Company’s trading system (“Regulatory Funds”) and all market

³⁶ 15 U.S.C. 78f(b)(1).

³⁷ As discussed above, the Exchange will appoint a Regulatory Director who may, among other things, serve as a Director of any regulatory committee(s). Such individual will also have insight and access to important information related to the Company; for example, while the Regulatory Director may not serve as a Director on Board committees other than authorized regulatory committees, the Regulatory Director nevertheless shall (A) have the right to attend all meetings of the Board and committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of the meeting materials provided to other Directors, including agendas, action items and minutes for all meetings. (See LLC Agreement §4.2(c).)

³⁸ See Section 3.2(a)(iv) of the BOX Options LLC Agreement.

data fees, tape and other revenues (“Non-regulatory Funds”). All Regulatory Funds and Non-regulatory Funds collected by the Exchange with respect to the Company may be used by the Exchange for regulatory purposes, which will be determined in the sole discretion of the Exchange. To the extent the Company incurs costs and expenses for regulatory purposes, the Exchange may reimburse the Company using Regulatory Funds. In the event the Exchange, at any time, determines that it does not hold sufficient funds to meet all regulatory purposes, the Company will reimburse the Exchange for any such additional costs and expenses. All Regulatory Funds collected by the Exchange will be retained by the Exchange and not transferred to the Company. Non-regulatory funds collected by the Exchange may be transferred to the Company after the Exchange makes adequate provision for all regulatory purposes. These provisions ensure that the Exchange has full control over BSTX with respect to its regulated functions and is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

Capital Contributions and Distributions

In the discussion below, the Exchange describes provisions in the LLC Agreement related to capital contributions and distributions by the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 6.1 of the LLC Agreement, the Members have contributed to the Company initial capital contributions which are reflected on the books and records of the Company. No interest will be paid on any capital contribution to the Company. No Member will have any personal liability for the repayment of the capital contribution of any Member, and no Member will have any obligation to fund any deficit in its Capital Account. Each Member

waived any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the LLC Act. These provisions are substantially the same as those in the BOX Holdings LLC Agreement.³⁹

Under Section 6.2 of the LLC Agreement, the Board, in its sole discretion, will determine the capital needs of the Company. If at any time the Board determines that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by a vote of the Board, including the affirmative vote of at least one Member Director appointed by each Member, but the Board will not have the power to require the Members to make any additional capital contributions. These provisions in the LLC Agreement are substantially the same as those in the BOX Options LLC Agreement, with the exception of the requirement for at least one Member Director appointed by each Member to affirmatively vote on the manner to raise additional working capital.⁴⁰ The Exchange believes that this added provision exists for purposes of commercial fairness and is necessary due to the ownership structure of the Company and that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.⁴¹

Pursuant to Section 8.1 of the LLC Agreement, if at any time and from time to time the Board determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company (“Distributable Cash”), then the Company shall make cash distributions to its Members in the following manner and priority: first, the

³⁹ See Section 6.1 of the BOX Holdings LLC Agreement.

⁴⁰ See Section 6.2 of the BOX Options LLC Agreement.

⁴¹ 15 U.S.C. 78f(b)(5).

Company shall make tax distributions (“Tax Distributions”) to the Members to cover each Member’s estimated income tax for that period (or in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). All tax distributions to a Member will be treated as advances against any subsequent distributions to be made to that Member. Subsequent distributions made to the Member shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed will be equal, as nearly as possible, to the aggregate amount that would have been distributable to that Member pursuant to the LLC Agreement if the LLC Agreement contained no provision for Tax Distributions; second, when, as and if declared by the Board, the Company shall make cash distributions to each of the Members pro rata in accordance with that Member’s respective Interests, expressed as a percentage of all outstanding Interests (“Percentage Interest”). Since the Company does not have the same ownership as BOX Options, the distribution provisions in the LLC Agreement differ from the BOX Options LLC Agreement and BOX Holdings LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Section 8.2 of the LLC Agreement provides that the Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its Interest in the Company if, and to the extent, such distribution would violate the LLC Act or other applicable

law. This provision in the LLC Agreement is the same as the provision in the BOX Options LLC Agreement and BOX Holdings LLC Agreement.⁴²

Section 9.1 of the LLC Agreement provides that all profits, losses and credits of the Company (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) pro rata among the Members based on that Member's respective Percentage Interest, subject to limitations, offsets, chargebacks, deductions and revaluations. Since the Company does not have the same ownership as BOX Options, the allocation of profits and losses provisions in the LLC Agreement differ from the BOX Options LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Under Section 9.9 of the LLC Agreement, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss or deduction incurred by the Company in the fiscal year of the transaction(s)) shall be allocated among the Members so that after those allocations and the allocations required pursuant to capital account adjustments, and immediately before the making of any liquidating distributions to the Members, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled in a winding up. Since the Company does not have the same ownership as BOX Options, the

⁴² See Section 7.1 of the BOX Options LLC Agreement and Section 8.2 of the BOX Holdings LLC Agreement.

termination and special allocation provisions in the LLC Agreement differ from the BOX Options LLC Agreement. These provisions relate to tax and accounting rules to which the Company is subject, due to its ownership structure. As such, these provisions are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.

Pursuant to Section 10.2 of the LLC Agreement, the assets of the Company in winding up shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provisions for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the LLC Act for distributions to those Members and former Members; and third, to the Members in proportion to their respective Percentage Interests. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until the winding up is completed or the reserve is otherwise deemed no longer necessary by the liquidator. These provisions are substantially the same as those in the BOX Holdings LLC Agreement, with the exception of certain provisions that were not included in the LLC Agreement because they are inapplicable to the Company's structure.⁴³

Intellectual Property

In the discussion below, the Exchange describes provisions in the LLC Agreement related to intellectual property of the Company, highlighting areas that vary in comparison to the

⁴³ See Section 10.2 of the BOX Holdings LLC Agreement.

BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 3.2(b) of the LLC Agreement, tZERO will provide to the Company the intellectual property license and services necessary to operate the BSTX trading system as set forth in the LSA and will make the necessary arrangements with any applicable third parties which will permit the Company to be an authorized sublicensee of any required third-party software necessary for Trading on the BSTX trading system. The intellectual property provisions in the LLC Agreement are similar to those in the BOX Options LLC Agreement, but contain certain differences reflecting the license and services of tZERO pursuant to the LSA rather than the software and technology provided by MX pursuant to the TOSA in connection with the BOX Options LLC Agreement.⁴⁴

Under the LSA, tZERO will provide the Company and the Exchange with a perpetual, fully paid up, royalty-free license to use its intellectual property comprising the BSTX trading system. In addition, the LSA provides that tZERO will provide services to the Company, including services related to implementing, administering, maintaining, supporting, hosting, developing, testing and securing the trading system. These services to be provided by tZERO relate to the specialized trading system operated by BSTX and are separate from any administrative or office technology services provided to BSTX by the Exchange discussed above.

Pursuant to the LSA, tZERO retains its ownership of the BSTX trading system and tZERO's trademarks and service marks; provided, however, that the Company will own

⁴⁴ See Article 13 of the BOX Options LLC Agreement.

deliverables, enhancements and other technology that are developed or created by tZERO for the Company, including any related documentation and intellectual property.

Non-competition

In the discussion below, the Exchange describes provisions in the LLC Agreement related to non-competition, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 16.1 of the LLC Agreement provides that, for so long as it holds, directly or indirectly, a combined Percentage Interest in the Company of five percent (5%) or more, a Member will not hold or invest in more than five percent (5%) of, or participate in the creation and/or operation of, any U.S. based market for the secondary trading of security tokens or in any person engaged in the creation and/or operation of any U.S. based market for the secondary trading of security tokens. The non-competition provision is substantially the same as the non-competition provision in the BOX Holdings LLC Agreement.⁴⁵

Changes in Ownership of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to changes in ownership of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 7.1(a) of the LLC Agreement provides that no person will directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner

⁴⁵ See Section 16.1 of the BOX Holdings LLC Agreement.

(each, a “Transfer”) its Interests unless prior to that Transfer the transferee is approved by a vote of the Board. To be eligible for Board approval, a proposed transferee must be of high professional and financial standing, be able to carry out its duties as a Member hereunder, if admitted as a Member, and be under no regulatory or governmental bar or disqualification. Notwithstanding the foregoing, registration as a broker-dealer or self-regulatory organization is not required to be eligible for Board approval. However, the following will not be included in the definition of “Transfer” transfers among Members, transfers to any person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of and equity or beneficial interests in that Member, or transfers to any person that is a wholly owned Affiliate of a transferring Member. A holder of Interests will provide prior written notice to the Exchange of any proposed Transfer. Any Transfer which violates the Transfer restrictions in the LLC Agreement will be void and ineffectual and will not bind or be recognized by the Company.

Section 7.1(b) of the LLC Agreement establishes that a person will be admitted to the Company as an additional or substitute Member of the Company only upon that person’s execution of a counterpart of the LLC Agreement to evidence its written acceptance of the terms and provisions of the LLC Agreement, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board; if that person is a transferee, its agreement in writing to its assumption of the obligations under the LLC Agreement of its assignor, and acceptance thereof by resolution of the Board; if that person is a transferee, a determination by the Board that the Transfer was permitted by the LLC Agreement; and approval of the Board. Whether or not a transferee who acquired any Interests has accepted in writing the terms and provisions of the LLC Agreement and assumed in writing the

obligations hereunder of its predecessor in interest, that transferee will be deemed, by the acquisition of those Interests, to have agreed to be subject to and bound by all the obligations of the LLC Agreement with the same effect and to the same extent as any predecessor in interest of that transferee. Pursuant to Section 7.1(c) of the LLC Agreement, all costs incurred by the Company in connection with the admission of a substituted Member will be paid by the transferor Member. The transfer provisions in Section 7.1 of the LLC Agreement are not contained in the BOX Options LLC Agreement; however, the Exchange notes that the provisions of Section 7.1 are substantially based on provisions in the BOX Holdings Group LLC Agreement.⁴⁶

Pursuant to Section 7.2 of the LLC Agreement, the Company will have a right of first refusal if a Member desires to Transfer its Interests, and obtains a bona fide offer therefor from a third-party transferee. Further, Section 7.3 of the LLC Agreement provides that, if the Company does not elect to exercise its right of first refusal, the non-transferring Member(s) next have a right of first refusal. The provisions in Sections 7.2 and 7.3 of the LLC Agreement are substantially based on provisions found in the BOX Holdings LLC Agreement, with certain variations to account for differences in corporate and ownership structure.⁴⁷ The Exchange believes that such variations are necessary to ensure proper application of the LLC Agreement's provisions to the Company, which serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Act.⁴⁸ Further, the Exchange believes that the variations in Sections 7.2 and 7.3 of the LLC Agreement that tailor those provisions to the corporate and ownership structure of BSTX would

⁴⁶ See Section 7.1 of the BOX Holdings LLC Agreement.

⁴⁷ See Sections 7.2 and 7.3 of the BOX Holdings LLC Agreement.

⁴⁸ 15 U.S.C. 78f(b)(5).

help ensure that persons subject to the Exchange's jurisdiction are able to navigate and more readily understand the LLC Agreement. The Exchange believes that this, in turn, would be consistent with Section 6(b)(1) of the Act⁴⁹ because it would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

Pursuant to Section 7.4 of the LLC Agreement, no Transfer may occur if the Transfer could cause a termination of the Company, could cause a termination of the Company's status as a partnership or cause the Company to be treated as a publicly traded partnership for federal income tax purposes, is prohibited by any securities laws, is prohibited by the LLC Agreement, or is to a minor or incompetent person.

Section 7.4(e) of the LLC Agreement requires that a Member will provide the Company with written notice fourteen (14) days prior, and the Company will provide the Commission and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that results in that Member's Percentage Interest, alone or together with any related person of that Member, meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%. Any person that, either alone or together with its related persons, owns, directly or indirectly, of record or beneficially, five percent (5%) or more of the then outstanding Interests will, immediately upon acquiring knowledge of its ownership of five percent (5%) or more of the then outstanding Interests, give the Company written notice of that ownership. In addition, Section 7.4(f) of the 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 aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5%

⁴⁹ 15 U.S.C. 78f(b)(1).

Percentage Interest level (i.e., 25%, 30%, etc.) is also subject to the rule filing process pursuant to Section 19 of the Act.

Under Section 7.4(g) of the LLC Agreement, unless it does not directly or indirectly hold any interest in a Member, a Controlling Person (as defined below) of a Member will be required to execute an amendment to the LLC Agreement upon establishing a Controlling Interest (as defined below) in any Member that, alone or together with any related persons of that Member, holds a Percentage Interest in the Company equal to or greater than 20%. This amendment will be substantially in the form of the instrument of accession attached as Exhibit 5B hereto [sic] and provide that the Controlling Person will agree to become a party to the LLC Agreement and to abide by all of its provisions, to the same extent and as if they were members. These amendments to the LLC Agreement will be subject to the rule filing process pursuant to Section 19 of the Act. The rights and privileges, including all voting rights, of the Member in whom a Controlling Interest is held, directly or indirectly, under the LLC Agreement and the LLC Act will be suspended until the amendment has become effective pursuant to Section 19 of the Act or the Controlling Person no longer holds, directly or indirectly, a Controlling Interest in the Member.⁵⁰ As a result, any new Member or other direct or indirect owner of an equity interest in BSTX, whether by transfer of such equity interest from an existing owner or otherwise, will be subject to the same requirements as all other Members, namely that it will be required to execute an instrument of accession to the LLC Agreement and be subject to the rule filing process if the new Member holds, directly or indirectly, a Controlling Interest in BSTX.

In accordance with Section 7.4(h) of the LLC Agreement, if a Member, or any related person of that Member, is approved by the Exchange as a BSTX Participant pursuant to the

⁵⁰ See supra note 10.

Exchange Rules, and that Member's Percentage Interest is greater than 20%, alone or together with any Related Person of that Member, the voting rights of the Member and its appointed Member Directors will be limited to 20%; provided, however, that the Member's full Percentage Interest will be counted for quorum purposes and the portion greater than 20% will be voted by the person presiding over quorum and vote matters in the same proportion as the Interests held by the other Members are voted. The Exchange notes that Section 7.4 of the Company's LLC Agreement is identical in substance to provisions of the BOX Holdings LLC Agreement.⁵¹

In addition to the provisions discussed above, Section 5 of the LLC Agreement includes provisions that relate to changes in ownership of the Company. Because BOX Options is wholly-owned by BOX Holdings, the LLC Agreement differs from the BOX Options LLC Agreement. Under Section 5.5 of the LLC Agreement, a Member will cease to be a Member of the Company upon the Bankruptcy or the involuntary dissolution of that Member. Further, Section 5.8 of the LLC Agreement allows the Board, by unanimous vote and after appropriate notice and opportunity for hearing, to suspend or terminate a Member's voting privileges or membership in the Company for three potential reasons: (i) in the event the Board determines in good faith that such Member is subject to a "statutory disqualification," as defined in Section 3(a)(39) of the Act; (ii) in the event the Board determines in good faith that such Member has violated a material provision of this Agreement, or any federal or state securities law; or (iii) in the event the Board determines in good faith that such action is necessary or appropriate in the public interest or for the protection of investors. The Exchange believes that limiting the ability to participate in the Company for Members who may act in contravention of legal or ethical standards may promote just and equitable principles of trade, and, in general, protects investors

⁵¹ See Section 7.4 of the BOX Holdings LLC Agreement.

and the public interest, consistent with Section 6(b)(5) of the Act.⁵² Further, the Exchange believes that the ability to suspend or terminate a Member's voting privileges or membership in the Company as described above would be consistent with Section 6(b)(1) of the Act.⁵³ This is because such measures in respect of Members who act in contravention of legal or ethical standards would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act, including the prevention of inequitable and unfair practices.

Finally, the Exchange notes that Section 18.1 of the Company's LLC Agreement provides that amendments to the LLC Agreement must be approved by the Board, including one Member Director appointed by each of BOX Digital and tZERO, as the sole members of the Company, and any amendment of a provision specific to a Member or the Exchange requires the consent of that party. In addition, the Company shall provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to this Agreement formally presented to the Board for approval and the Exchange shall review each such amendment, modification, waiver or supplement and, if such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.⁵⁴ These provisions are similar to

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78f(b)(1).

⁵⁴ A proposed rule change can also become effective by operation of law. See 15 U.S.C. 78s(b)(2).

provisions in the BOX Holdings LLC Agreement but differ in details related to the different ownership structure of the Company.⁵⁵

Regulation of the Company

In the discussion below, the Exchange describes provisions in the LLC Agreement related to regulation of the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Generally, Section 3.2 of the LLC Agreement, which is identical in substance to a provision in the BOX Options LLC Agreement, provides that the Exchange has authority to act as the SRO for the Company, will provide the regulatory framework for the BSTX Market and will have regulatory responsibility for the activities of the BSTX Market.⁵⁶ In addition, the Exchange will provide regulatory services to the Company pursuant to the Facility Agreement. Nothing in the LLC Agreement shall be construed to prevent the Exchange from allowing the Company to perform activities that support the regulatory framework for the BSTX Market, subject to oversight by the Exchange. This provision ensures that the Exchange has full regulatory control over BSTX, which is designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company.

Section 15 of the LLC Agreement deals with how the Company will govern the handling of confidential information, as it relates to the securities regulations and otherwise. All of the provisions in Section 15 of the LLC Agreement are substantively similar to provisions in the BOX Options LLC Agreement, except where noted below.⁵⁷ Under Sections 15.1 and 15.2(a) of

⁵⁵ See Section 18.1 of the BOX Holdings LLC Agreement.

⁵⁶ See Section 3.2 of the BOX Options LLC Agreement.

⁵⁷ See Article 12 of the BOX Options LLC Agreement.

the LLC Agreement, subject to certain exceptions set forth below, no Member will make any public disclosures concerning the LLC Agreement without the prior approval of the Company. Each Member and the Exchange may only use confidential information of the Company in connection with the activities contemplated by the LLC Agreement and other written agreements and pursuant to the Act and the rules and regulations thereunder. Furthermore, Section 15.4 of the LLC Agreement provides that representatives of the parties will meet to institute confidentiality procedures and discuss confidentiality and disclosure issues.

Pursuant to Section 15.2(b) of the LLC Agreement, each of the Members and the Exchange may disclose confidential information of the Company only to its respective directors, officers, employees and agents who have a reasonable need to know the information. Also, such individuals may disclose confidential information of the Company to the extent required by applicable securities or other laws, a court or securities regulators, including the Commission and the Exchange.

Section 15.3 of the LLC Agreement requires that each Member and the Exchange will hold all non-public information concerning the other Members or the Exchange in strict confidence, unless disclosure to an applicable regulatory authority is necessary or appropriate or unless compelled to disclose by judicial or administrative process or required by law. If a Member or the Exchange is compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, it will promptly notify the disclosing party to allow the disclosing party to seek a protective order.

Pursuant to Section 15.5 of the LLC Agreement, nothing in the LLC Agreement will be interpreted as to limit or impede the rights of the Commission, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine applicable

confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any directors, officers, employees or agents of the Company and any directors, officers, employees or agents of the Members to disclose that confidential information to the Commission or the Exchange. This is substantially the same provision that is contained in the BOX Options LLC Agreement, except that it also provides that the SEC can access and examine Confidential Information, pursuant to the federal securities laws and rules and regulations thereunder.⁵⁸

Under Section 15.6 of the LLC Agreement, confidential information of the Company or the Exchange pertaining to regulatory matters (including but not limited to disciplinary matters, trading data, trading practices and audit information) will not be made available to any persons other than to the Company's Directors, officers, employees and agents that have a reasonable need to know the contents thereof; will be retained in confidence by the Company and the Directors, officers, employees and agents of the Company; and will not be used for any non-regulatory purpose. Nothing in the LLC Agreement will be interpreted as to limit or impede the rights of the Commission and the Exchange to access and examine that confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any Directors, officers, employees and agents of the Company to disclose that confidential information to the Commission or the Exchange.

Finally, Section 18.8 of the LLC Agreement establishes that the Company will not operate as a facility of the Exchange until this rule filing is effective. Upon effectiveness, the Commission and the Exchange will then have regulatory oversight responsibilities with respect to the Company and references in the LLC Agreement to the Exchange, the Commission, any

⁵⁸ See Section 12.5 of the BOX Options LLC Agreement.

regulation or oversight of the Company by the Commission or the Exchange, and any participation in the affairs of the Company by the Commission or the Exchange, will take effect. The execution of the LLC Agreement by the Exchange will not be required until the approval is obtained, at which time the Exchange will become a party to the LLC Agreement. This provision is not included in the BOX Options LLC Agreement because it would not be applicable. By not operating the Company until this rule filing is effective, the Exchange believes it is fostering cooperation and coordination with persons engaged in regulating (e.g., the Commission), clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.⁵⁹

Regulatory Jurisdiction Over Members

In the discussion below, the Exchange describes provisions in the LLC Agreement related to regulatory jurisdiction over members by the Company, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Pursuant to Section 11.1 of the LLC Agreement, which is similar in substance to a provision in the BOX Holdings LLC Agreement, the Board will cause to be entered in appropriate books, kept at the Company's principal place of business, all transactions of or relating to the Company.⁶⁰ Each Member will have the right to inspect and copy those books and records, excluding regulatory and disciplinary information. The Board will not have the right to keep confidential from the Members any information that the Board would otherwise be permitted to keep confidential pursuant to §18-305(c) of the LLC Act, except for information required by law or by agreement with any third party to be kept confidential. The Company's

⁵⁹ 15 U.S.C. 78f(b)(5).

⁶⁰ See Section 11.1 of the BOX Holdings LLC Agreement.

independent auditor will be an independent public accounting firm selected by the Board. To the extent related to the operation or administration of the Exchange or the BSTX Market, all books and records of the Company and its Members will be maintained at a location within the United States, the books, records, premises, directors, officers, employees and agents of the Company and its Members will be deemed to be the books, records, premises, directors, officers, employees and agents of the Exchange for the purposes of, and subject to oversight pursuant to, the Act, and the books and records of the Company and its Members will be subject at all times to inspection and copying by the Commission and the Exchange.

Under Section 18.6(a) of the LLC Agreement, to the extent they are related to Company activities, the books, records, premises, officers, directors, agents, and employees of the Member will be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for the purpose of and subject to oversight pursuant to the Act. Further, pursuant to Section 18.6(b) of the LLC Agreement, the Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of those positions, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and the Exchange for purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, activities of the Exchange and the Company, and Delaware state courts for any matter relating to the organization or internal affairs of the Company, and will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission, the Exchange or Delaware state courts, as applicable, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof

may not be enforced in or by those courts or agencies. The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of those positions, also agree that they will maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of the Exchange and the Company. These provisions are substantially similar to provisions of the BOX Options LLC Agreement.⁶¹

Pursuant to Section 18.6(c) of the LLC Agreement, with respect to obligations under the LLC Agreement related to confidentiality regulation, jurisdiction and books and records, the Company, the Exchange and each Member will ensure that directors, officers and employees of the Company, the Exchange and each Member consent in writing to the applicability of the applicable provisions to the extent related to the operation or administration of the Exchange or the BSTX Market. This provision is substantially the same as the provision contained in the BOX Options LLC Agreement, with the exception of the deletion of a reference to privacy rules in Canada, which are not applicable to the current Members of the Company.⁶² The Exchange believes that allowing only applicable laws to be referenced in the LLC Agreement helps to ensure that proper legal standards apply to the Company, which may foster cooperation and coordination with persons engaged in regulating transactions in securities, consistent with Section 6(b)(5) of the Act.⁶³ Further, the Exchange believes that basing the provisions described above on the BOX Options LLC Agreement but omitting terms that are not applicable would help ensure that persons subject to the Exchange's jurisdiction are able to navigate and more readily understand the LLC Agreement. The Exchange believes that this, in turn, would be

⁶¹ See Section 14.6 of the BOX Options LLC Agreement.

⁶² See Section 14.6(c) of the BOX Options LLC Agreement.

⁶³ 15 U.S.C. 78f(b)(5).

consistent with Section 6(b)(1) of the Act⁶⁴ because it would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

Amendments to LLC Agreement

In the discussion below, the Exchange describes provisions in the LLC Agreement related to amendments to the LLC Agreement, highlighting areas that vary in comparison to the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and provides the statutory basis for such variation.

Section 18.1 of the LLC Agreement, which is substantially similar to a provision in the BOX Holdings LLC Agreement,⁶⁵ provides that the LLC Agreement may only be amended by an agreement in writing approved by the Board, including at least one Member Director appointed by each Member, without the consent of any Member or other person. In addition, any terms specific to any Member or to the Exchange may not be altered or adversely affect that Member or the Exchange without the prior written consent of that Member or the Exchange as applicable. The Company will provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to the LLC Agreement formally presented to the Board for approval and the Exchange will review each amendment, modification, waiver or supplement and, if that amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before that amendment may be effective, then that amendment will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. If the Exchange ceases to be the SRO authority of the Company, the Exchange will no longer be a party to the LLC Agreement

⁶⁴ 15 U.S.C. 78f(b)(1).

⁶⁵ See Section 18.1 of the BOX Holdings LLC Agreement.

and thereafter the provisions of the LLC Agreement will not apply to the Exchange except for the provisions referenced in Section 18.12 which will survive.

Additional Provisions

As previously mentioned, BSTX is a Delaware limited liability company. As such, the LLC Agreement contains numerous provisions that are standard or not novel for a similarly situated commercial business registered as a limited liability company under the laws of the state of Delaware.⁶⁶ The Exchange believes that these provisions are consistent with Section 6(b)(1) of the Act⁶⁷ because they are consistent with corporate governance practices, generally, and they would help ensure that the Exchange, including in its operation of facilities, is so organized and has the capacity to be able to carry out the purposes of the Act.

2. Statutory Basis

In addition to the sections above that discuss variations from the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and their associated statutory bases, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶⁸ in general, and furthers the objectives of Section 6(b)(1),⁶⁹ in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and

⁶⁶ See LLC Agreement Sections 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 3.1, 4.2, 4.5, 4.6, 4.7, 4.8, 4.9, 4.11, 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 6.3, 6.4, 6.5, 7.5, 7.6, 7.7, 8.3, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 10.3, 10.4, 11.2, 11.3, 11.4, 11.5, 11.6, 12, 13.1, 14, 16.2, 17, 18.2, 18.3, 18.4, 18.5, 18.7, 18.9, 18.10, 18.11, and 18.12.

⁶⁷ 15 U.S.C. 78f(b)(1).

⁶⁸ 15 U.S.C. 78f(b).

⁶⁹ 15 U.S.C. 78f(b)(5).

the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act⁷⁰ in that it is designed to facilitate transactions in securities, 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.

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.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

⁷⁰ 15 U.S.C. 78f(b)(5).

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 e-mail to 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 e-mail 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 on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷¹

J. Matthew DeLesDernier,
Assistant Secretary.

⁷¹ 17 CFR 200.30-3(a)(12).

