



Joan C. Conley
Senior Vice President and Corporate
Secretary
805 King Farm Boulevard
Rockville, MD 20850
P: (301) 978-8735
E: joan.conley@nasdaq.com

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Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Proposed Rule Change to Govern the Trading of Equity Securities through the Boston Security Token Exchange LLC, Securities Exchange Act Release No. 88300 (February 28, 2020), 85 FR 13242 (March 6, 2020) (SR-BOX-2019-19)

Dear Ms. Countryman:

The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) appreciates the opportunity to comment on the above-captioned proposal by BOX Exchange LLC (“BOX”) to adopt rules governing the listing and trading of security tokens under the designation Boston Security Token Exchange LLC (“BSTX”).

BOX defines “security tokens” as securities coupled with “ancillary” ownership records which are created and maintained using blockchain technology,¹ and proposes that they be eligible for trading on other national securities exchanges under unlisted trading privileges.²

Nasdaq respectfully submits that the BOX proposal may place an unreasonable burden on competition because the blockchain (ledger) technology used to track ownership of the security token—the only aspect of this instrument that is unique—would not have a common distributed ledger. Rather, the distributed ledger would be exclusively available on BOX, thereby placing other exchanges at a competitive disadvantage that cannot be remedied by replicating the blockchain offering. Furthermore, the proposal appears to provide insufficient detail regarding: (1) digital securities infrastructure and technology pairing with the existing equities market infrastructure, and (2) its impact on the anti-fraud and customer protection provisions of the Act, as well as possible investor confusion. Nasdaq recommends that BOX submit additional detail addressing these concerns before the proposal is approved.

¹ Securities Exchange Act Release No. 88300 (February 28, 2020), 85 FR 13242, 13242 (March 6, 2020) (SR-BOX-2019-19) (“BOX Proposal”).

² *Id.* at 13253.

Under the BOX proposal, each security token would be accompanied by ancillary ownership records that are created and maintained using blockchain technology.³ The blockchain technology “would not be official records of security token ownership,” but rather would be “ancillary records that would reflect certain end-of-day security token position balance information as reported by market participants.”⁴ The term “security token” is intended to distinguish these instruments “from other securities for which there is no related legal and regulatory structure that is designed to use blockchain technology as an ancillary recordkeeping mechanism.”⁵

The blockchain records would be managed by BOX. To utilize the blockchain function, BSTX Participants would be “required under [proposed] BSTX Rule 17020 to obtain a whitelisted wallet address and report certain end-of-day security token position balance information to BSTX.”⁶ At the end of each trading day, BSTX Participants would be required to send security token position balance information to BSTX.⁷ Through use of the wallet function, “[a]n observer of security token balances associated with a particular [wallet] address would not be able to determine whether a particular address represented, for example, a carrying firm reporting end-of-day balances on behalf of multiple BSTX Participants, an individual BSTX Participant, or the omnibus wallet address.”⁸

The wallet function would only be available to BSTX Participants. The exchange “will not accept end-of-day security token balances from non-BSTX Participants, but may consider doing so in the future.”⁹ Positions taken by security token holders who are not BSTX Participants would be recorded on an “omnibus wallet address” on the blockchain.¹⁰

The Proposal places an unreasonable burden on competition

The most salient characteristic—indeed, the only unique characteristic—of the security token is its use of blockchain technology. To avail itself of blockchain technology, the purchaser must be a BSTX Participant. Non-BSTX Participants would be subject to “omnibus” blockchain reporting. Notwithstanding the exchange-specific nature of the proposal, BOX proposes that these security tokens be eligible for trading on other national securities exchanges, effectively using unlisted trading privileges to promote trading in a security that uniquely benefits the BOX exchange.

³ *Id.* at 13242.

⁴ *Id.* at 13242-13243; *see also id.* at 13253 (“security tokens would be held in “street name” at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (*i.e.*, NSCC and DTC respectively).”); *id.* at 13246 (“Ethereum blockchain would serve as a complementary recordkeeping mechanism to official records of security token ownership maintained by market participants”).

⁵ *Id.* at 13243-13244.

⁶ *Id.*

⁷ *Id.* at 13249.

⁸ *Id.* at 13252.

⁹ *Id.* at 13249.

¹⁰ *Id.* at 13251.

As Nasdaq has said before, it would be inappropriate, and possibly beyond the scope of the Commission's authority, to allow national market system plans to be used for the specialized competitive purposes of an individual exchange. In creating the National Market System, Congress authorized the Commission "to authorize or require self-regulatory organizations to act *jointly* with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof."¹¹ Regulation NMS itself defines a national market system plan as a "*joint* self-regulatory organization plan."¹² In adopting former Rule 11Aa3-2, which included the predecessor version of this definition, the Commission explained that it "added the term 'joint self-regulatory organization plan' to the Rule in order to remove any doubt that the Rule was not intended to apply to facilities which relate solely to an individual SRO."¹³

The security token proposal is designed to provide an advantage to BOX as the exclusive provider of blockchain technology for these securities. Other exchanges would be prevented from offering a comparable service because BOX will not accept end-of-day security token balances from non-BSTX participants except in the "omnibus wallet address," given that "security tokens listed on BSTX will be uncertificated." As such, the BOX security token proposal places an unreasonable burden on competition.

The Proposal provides insufficient information to assess compliance with the Act or the costs to market participants.

The BOX proposal is not clear regarding the differences between the records maintained by the Exchange, the Depository Trust Company ("DTC"), the National Securities Clearing Corporation and the ancillary record, or how the margin methodology for member self-calculation would be affected, or how differences in reporting would be reconciled. Without this detail, the impact of the proposal on the anti-fraud and customer protection provisions of the Act, other regulations promulgated by the Commission, as well as Anti-Money Laundering statutes and regulations cannot be determined.

Nasdaq is also concerned that the security token proposal may confuse Main Street investors. The difference between "official" and "ancillary" recordkeeping is inherently confusing. The proposal does not describe in detail how these two systems will interact or reconcile, and this failing is likely to render the proposal confusing to market participants and investors alike.

* * *

Nasdaq appreciates this opportunity to comment on the BOX proposal. For the reasons described above, Nasdaq believes that BOX has provided insufficient information concerning the proposal's impact on competition, how it complies with other aspects of the Exchange Act and Anti-Money Laundering statutes, and how BOX intends to avoid investor confusion. Nasdaq recommends that BOX submit additional detail addressing these concerns before the proposal is approved.

¹¹ 15 U.S.C. § 78k-1(a)(3)(B) (emphasis added)

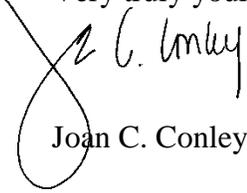
¹² 17 C.F.R. § 242.600(b)(44) (emphasis added)

¹³ Securities Exchange Act Release No. 17580, 46 FR 15866 (March 10, 1981).

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Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is written in a cursive style with a large, looping initial "J".

Joan C. Conley