



April 09, 2020

Via Electronic Mail

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-BOX-2019-19

Dear Ms. Countryman:

BOX Exchange LLC (the “Exchange” or “BOX”) appreciates the opportunity to respond to the recently submitted comment letters on the above-referenced proposed rule change (“BSTX Rulebook Filing”), which would establish the Boston Security Token Exchange (“BSTX”) as a new facility of the Exchange. BSTX would trade equity securities, known as “security tokens,” listed on BSTX, and the security tokens would use distributed ledger (or “blockchain”) technology for ancillary recordkeeping purposes.¹ The Exchange submitted Amendment No. 2 to the BSTX Rulebook Filing on February 19, 2020 to amend and supersede the original filing, as modified by Amendment No. 1, in its entirety (“Amendment No. 2”).² Amendment No. 2 was published in the Federal Register on March 6, 2020 (the “Proposal”).³

The most recent comment letters received in late March 2020 in connection with the Proposal are from two other national securities exchanges – The Nasdaq Stock Market LLC (“Nasdaq”) and the Investors Exchange LLC (“IEX”).⁴ Both of these exchanges would be

¹ Securities Exchange Act Release No. [87287](#) (Oct. 11, 2019), 84 FR 56022 (Oct. 18, 2020). On January 16, 2020, the Commission provided notice of filing of Amendment No. 1 to the BSTX Rulebook Filing (now superseded by Amendment No. 2) and instituted proceedings to determine whether to approve or disapprove the proposed rule change. Securities Exchange Act Release No. [88002](#) (Jan. 16, 2020), 85 FR 4040 (Jan. 23, 2020).

² See Letter from Lisa J. Fall, President, BOX Exchange LLC to Vanessa Countryman, Secretary, Commission, re: File No. SR-BOX-2019-19 (Feb. 19, 2020), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6840937-208871.pdf>.

³ Securities Exchange Act Release No. [88300](#) (Feb. 28, 2020), 85 FR 13242 (Mar. 6, 2020). Amendment 2 to the BSTX Rulebook Filing provided additional clarification and justification in support of the proposed rule change including regarding: (i) the use of an omnibus wallet address for unreported security token balances; (ii) the role and oversight of Wallet Managers; (iii) new authority for the Exchange to suspend end-of-day balance reporting subject to notice to BSTX Participants and the Commission; (iv) other exchanges’ ability to extend unlisted trading privileges to security tokens; and (v) address circumstances under which a security token’s smart contract architecture may need to be modified.

⁴ See Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, The Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, re: File No. SR-BOX-2019-19 (Mar. 27, 2020) (“Nasdaq Letter”), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-7004559-214854.pdf>; Letter from Benjamin Connault,



competitors to BSTX because they currently trade NMS stocks. The Exchange also received two other comment letters from market participants on the BSTX Rulebook Filing prior to its filing of Amendment No. 2 (collectively with the IEX Letter and Nasdaq Letter, the “Comment Letters”).⁵

Under the Proposal, BSTX-listed security tokens would be NMS stocks.⁶ Just like other NMS stocks, security tokens would clear and settle through the facilities of a registered clearing agency, and would be eligible for trading over-the-counter (“OTC”) or on other exchanges.⁷ Security tokens differ from other NMS stocks only with respect to the proposed ancillary recordkeeping process, which would apply only to BSTX Participants and use the public Ethereum blockchain to record end-of-day security token balances reported by them. The ancillary record-keeping process would operate entirely separate from any trading, clearance, and settlement process with respect to security tokens, thus facilitating the ability of security tokens to trade on other markets.

Response to Comment Letters

As described below, many of the questions and issues raised in the Comment Letters are already addressed in the Proposal, as amended. The Exchange continues to firmly believe the Proposal is consistent with the Securities Exchange Act of 1934 (“Exchange Act”) and that the Proposal would not impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.⁸

IEX stated in its letter that in light of recent market volatility and the need to focus on addressing the effects of the coronavirus pandemic, IEX believes the period for review on the Proposal should be extended.⁹ The Exchange strongly rejects this assertion for the following reasons.

Economist, IEX Group, Inc., to Vanessa Countryman, Secretary, Commission, re: File No. SR-BOX-2019-19 (Mar. 26, 2020) (“IEX Letter”) <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-7004560-214855.pdf>.

⁵ See Letter from Letter from Holly Smith, Eversheds Sutherland LLC, to J. Matthew DeLesDernier, Assistant Secretary, Commission re: File No. SR-BOX-2019-19 (Feb. 12, 2020) (“Eversheds Letter”), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6804765-208447.pdf>; Letter from David A. Schrader, Partner, Paykin Krieg & Adams LLP to Vanessa Countryman, Secretary, Commission re: File No. SR-BOX-2019-19 and SR-BOX-2019-37 (February 25, 2020) (“PKA Letter”), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6868335-210601.pdf>. The Exchange notes that the BSTX Rulebook Filing also received two other comment letters that were not substantive and are consequently not addressed in this letter. See Letter from Ellen Green, Managing Director, Securities Industry and Financial Market Association, to Vanessa Countryman, Secretary, Commission, re: File No. SR-BOX-2019-19 and SR-BOX-2019-37 (Jan. 13, 2020), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6640676-203567.pdf>; Comment of Dave G. re: File No. SR-BOX-2019-19 (Jan. 17, 2020), <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6670071-203971.htm>.

⁶ Proposal at 13244 (noting that a NMS security, including NMS stock, is defined as “any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan”).

⁷ *Id.* at 13244-45.

⁸ 15 U.S.C. 78f(b)(8).

⁹ IEX Letter at 1-2.



The Proposal has not materially changed since its original publication in October 2019, with the exception of the removal of a pilot program for security token balance reporting by non-BSTX Participants and newly proposed authority to suspend the ancillary recordkeeping process in certain circumstances. Commenters have now had over 165 calendar days (*i.e.*, more than five months) to review, consider and comment on the Proposal. IEX chose to wait over five months before commenting on the Proposal at all. And, with the exception of the questions on Exchange Act Rule 12f-5 and Amendment No. 2 that are addressed below, IEX has not raised any questions or issues that could not have been raised during the initial comment period or otherwise. The adjustments to ordinary business practices resulting from the coronavirus pandemic do not change these facts. Accordingly, while the Exchange has deep empathy for, and shares in the collective difficulties raised by the coronavirus pandemic, no extension of time is necessary.

The substantive questions and issues raised by Nasdaq and IEX with respect to the Proposal are addressed below. Additionally, while the Exchange believes Amendment No. 2 addresses the other two commenters (the Eversheds Letter and PKA Letter) on the BSTX Rulebook Filing, the Exchange also responds specifically to items raised in those letters below to promote clarity and understanding of the Proposal.

The Nasdaq Letter

The Nasdaq Letter states that the Proposal may inappropriately burden competition and lacks certain details regarding how security tokens and the ancillary recordkeeping process would operate. Each of these statements are addressed below.

The Proposal Does Not Impose a Burden on Competition Not Necessary or Appropriate in Furtherance of the Exchange Act

To address Nasdaq’s argument regarding burden on competition, the Exchange reiterates that security tokens would be able to trade on other exchanges and OTC in the same manner as any other NMS stock.¹⁰ Accordingly, end-of-day security token position balance reporting and the publication of such balance information to the blockchain does not impact the ability of security tokens to trade on other exchanges or OTC. If Nasdaq – or any other exchange – sought to extend unlisted traded privileges (“UTP”) to a security token, this would be possible under the existing regulatory framework. In other words, security tokens would be capable of trading on other markets irrespective of BSTX’s proposed ancillary recordkeeping process. There is likewise no limitation in the Proposal that would limit another exchange’s ability to adopt its own ancillary recordkeeping process. Therefore, trading of security tokens does not impose any additional burden compared to trading of other NMS stocks.

¹⁰ See Amendment No. 2 at 13253. Security tokens would be held in “street name” at the Depository Trust Company (“DTC”), have a Committee on Uniform Securities Identification Procedures (“CUSIP”) number, and would clear through the National Securities Clearing Corporation (“NSCC”) and settle through DTC.



Nasdaq contends that “to avail itself of blockchain technology, the purchaser must be a BSTX Participant.”¹¹ Nasdaq further states that the blockchain technology used “would not have a common distributed ledger,” but would instead “be exclusively available on BOX, thereby putting other exchanges at a competitive disadvantage that cannot be remedied by replicating the blockchain offering.”¹² Nasdaq asserts that because BSTX would not accept end-of-day security token balances from non-BSTX Participants, other exchanges “would be prevented from offering a comparable service.”¹³ Through these statements, Nasdaq suggests that, because BSTX has proposed ancillary recordkeeping requirements for its Participants, this somehow prevents another exchange from adopting its own comparable requirements. This is not accurate.

The Proposal in no way would prevent other exchanges from adopting their own requirements related to the use of distributed ledger technology for ancillary recordkeeping purposes. In fact, the Exchange expressly encourages other exchanges to consider taking steps to promote the use of blockchain technology and help familiarize market participants with its potential uses and benefits. Contrary to Nasdaq’s claim, the Exchange proposes to use a “common distributed ledger” in the form of the public Ethereum blockchain that any other exchange could use to implement its own ancillary recordkeeping process.¹⁴

The fact that BSTX would only require its Participants to report end-of-day security token balances is a reflection of the limits of the Exchange’s legal authority. BSTX is only able to regulate its own Participants. The Exchange cannot directly impose these requirements on non-BSTX Participants over which it has no jurisdiction. While the Exchange has proposed that it would not initially accept voluntary reports from non-BSTX Participants, the Exchange notes in the Proposal that it may consider accepting voluntary reports in the future. Ultimately, the Exchange supports increasingly greater participation in the end-of-day security token balance reporting process.

Finally, Nasdaq asserts that BOX is “using unlisted trading privileges to promote trading in a security that uniquely benefits the BOX exchange.”¹⁵ This is incorrect. The Exchange is not “using” UTP in any manner.¹⁶ Whether an exchange chooses to extend UTP to securities listed on another exchange is entirely up to that exchange. There is no mechanism by which one

¹¹ Nasdaq Letter at 2.

¹² *Id.* at 1.

¹³ *Id.* at 3.

¹⁴ Security tokens listed on BSTX would have to comply with the BSTX Security Token Protocol, which is designed to create the smart contracts that facilitate the ancillary recordkeeping function using distributed ledger technology. Any other exchange that desires to trade security tokens not only has access to this publicly available, open-source code, but would be able to leverage the pre-established security token architecture to facilitate any similar end-of-day balance reporting requirements.

¹⁵ Nasdaq Letter at 2. Nasdaq also argues that “it would be inappropriate . . . to allow national market system plans to be used for the specialized competitive purposes of an individual exchange.” Nasdaq Letter at 3. The Exchange has not proposed any national market system (“NMS”) plan relating to the Proposal, so this statement is not relevant.

¹⁶ The Exchange is also not proposing to extend UTP to securities listed on other exchanges. Proposal at 13243.



exchange can force any other exchange to extend UTP to its listed securities. Any exchange would therefore be free to extend UTP to security tokens consistent with applicable regulatory requirements. Moreover, the Exchange itself does not propose a fee related to reporting of end-of-day balances to the Ethereum blockchain, and therefore security token trading on other exchanges would offer no unique benefits to BOX in this respect.¹⁷ For these reasons, the Exchange believes that the Proposal would not impose any burden on competition because other exchanges would remain free to determine whether to extend UTP to security tokens. If an exchange chooses to extend UTP to security tokens and also adopt an ancillary recordkeeping process, it could do so in a manner that is consistent with the BSTX requirements and end-of-day reporting structure. However, nothing in the Proposal would prevent the exchange from developing and pursuing another approach.

The Proposal Provides Ample Detail and Would Not Cause Investor Confusion

Nasdaq also asserts that the Proposal provides 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 [Exchange] Act, as well as possible investor confusion.”¹⁸ Nasdaq states that the Proposal is not clear regarding the differences between the records maintained by the Exchange, DTC, NSCC and the ancillary records, including how the margin methodology for member-self calculation would be affected or how differences in reporting would be reconciled.¹⁹ The Exchange disagrees with Nasdaq that the Proposal does not adequately explain the pairing of existing market infrastructure with the proposed ancillary recordkeeping mechanism or that there is a likelihood of investor confusion.

As detailed in the Proposal, the ancillary recordkeeping process using distributed ledger technology would be entirely separate from the trading, clearance, and settlement process for security tokens.²⁰ Under the operative proposed BSTX Rules, security tokens would be uncertificated equity securities that have been made eligible for services by DTC, which would serve as the securities depository.²¹ As such, all security tokens would be able to trade, clear, and settle in the same manner as any other NMS stock today. The only interaction between existing

¹⁷ The Exchange notes that the Nasdaq Letter does not appear to specify the nature of any “benefits” that would accrue nor how such benefits would differ from those of an existing listing exchange such as Nasdaq.

¹⁸ Nasdaq Letter at 1. Nasdaq offers no explanation as to what Exchange Act anti-fraud or customer protection provisions it is referring to or how the Proposal would impact such provisions. Accordingly, the Exchange does not address these unsubstantiated claims in this letter. The Exchange considers the protection of investors, the prevention of fraud or other misconduct, and the maintenance of fair and orderly markets among its top priorities and has deep experience in regulating securities markets through its current operation as a self-regulatory organization. The Exchange also notes that its proposed Rules and listing requirements, including the rules applicable to broker-dealers trading on BSTX as Participants, are consistent with similar requirements approved for other exchanges.

¹⁹ The Eversheds Letter also raised a similar question regarding the differences between these records. Eversheds Letter at 2.

²⁰ Proposal at 13244 (“the tokenized ancillary recordkeeping process . . . will occur separate and apart from the clearance and settlement process and the security itself will not exist in tokenized form.”).

²¹ *Id.*



market infrastructure and the ancillary recordkeeping process is that BSTX Participants, either directly or through their carrying firm, would be required to obtain end-of-day security token balances available to them through DTC and report such balances to BSTX. There would be no impact on any margin methodology.

With respect to potential investor confusion, Nasdaq states that the “difference between ‘official’ and ‘ancillary’ recordkeeping is inherently confusing” and that the Proposal does not describe in detail how these two systems will interact or reconcile. It is unclear what Nasdaq finds inherently confusing between “official” and “ancillary.” The former means that the record is authoritative while the latter means that the record is supplementary.

Moreover, the Exchange does not believe that there is likely to be investor confusion between official and ancillary records for several reasons. First, the Exchange has made abundantly clear throughout the Proposal that the end-of-day security token balance information that would be visible on the Ethereum blockchain are ancillary records of end-of-day position balances and that the legal ownership of any security token would be separately established and evidenced by operation of commercial law.²² Second, what would appear on the Ethereum blockchain would be end-of-day security token position balances associated with an anonymous wallet address. As detailed in the Proposal, observers of the Ethereum blockchain would not know which wallet address is associated with a given market participant, whether those security tokens are held by the BSTX Participant on a proprietary basis or on behalf of customers or by a carrying firm reporting on behalf of multiple BSTX Participants, or whether the long position balance includes borrowed security tokens.²³ Third, market participants would not have access to the full position records of DTC regarding security token position balances maintained by its participants. Accordingly, it would not be possible for a market participant to see both sets of records side-by-side and be confused by them.²⁴

The IEX Letter

The IEX Letter also includes statements related to a potential burden on competition and investor confusion, however, it cites different reasons for these considerations. The Exchange addresses these points from the IEX Letter below as well as a number of additional questions posed by IEX (questions six through 17 of the IEX Letter).

The Proposal Does Not Impose a Burden on Competition Not Necessary or Appropriate in Furtherance of the Exchange Act

²² See e.g., Proposal at 13249 (“For the avoidance of doubt, having end-of-day position balance information related to a security token attributed to a particular wallet address would not convey ownership of shareholder equity in the issuer to the person or entity with whom such wallet address is associated.”) and at 13247 (“Having a security token attributed to a particular address, however, would not convey ownership of shareholder equity in the issuer because the official records of ownership would be maintained by participants at DTC.”).

²³ Proposal at 13252.

²⁴ *Id.*



IEX first suggests that security tokens as conceived under the Proposal would burden competition because “Regulation NMS clearly envisions two types of NMS Securities: stocks and options” and does not contemplate “special-purpose infrastructure” for particular types of securities.²⁵ To the contrary, Section 11A of the Exchange Act expressly contemplates a national market system that “may include subsystems for particular types of securities with unique trading systems.”²⁶ IEX’s binary view of a national market system consisting only of stocks and options would also leave no place for American Depository Receipts, exchange-traded products (including bond, commodity, currency, and index-based exchange traded funds), rights and warrants, and any other securities for which transactions reports are made available pursuant to an effective NMS plan.²⁷ Putting aside IEX’s erroneous understanding of the national market system, the Proposal, in any event, does not require any special-purpose infrastructure related to the trading of security tokens otherwise than on BSTX. Under the Proposal, security tokens listed on BSTX could be traded without limitation OTC and on other exchanges that extend UTP to security tokens in accordance with applicable regulatory requirements.

IEX raises additional questions as to whether BSTX believes that Exchange Act Rule 12f-5²⁸ would require other exchanges extending UTP to security tokens to adopt a similar address whitelisting requirement and end-of-day security token balance reporting mechanism, as the Exchange had stated in the BSTX Rulebook Filing prior to Amendment No. 2.²⁹ IEX also asks what guarantees market participants and other exchanges have that the Exchange would not seek to limit UTP in security tokens in the future, such as through an interpretation of Rule 12f-5. Exchange Act Rule 12f-5 is a Commission rule, subject to interpretation and enforcement exclusively by the Commission. In Amendment No. 2, the Exchange removed language suggesting what might be required of other exchanges in order to extend UTP to security tokens to reflect this fact.³⁰ Any future changes to the trading of security tokens or the ancillary recordkeeping process would be subject to the exchange rule filing requirements and public notice and comment consistent with Section 19 of the Exchange Act.³¹

The Ancillary Records Cannot Cause Investor Confusion

²⁵ IEX Letter at 4.

²⁶ 15 U.S.C. 78k-1(a)(2).

²⁷ 17 CFR 242.600(b)(48) (defining NMS security). To the extent IEX views these other securities as types of “stock,” it is unclear why security tokens would not similarly be considered as a type of “stock.” Security tokens would represent equity interests in BSTX-listed companies and would trade in precisely the same manner as other NMS stocks.

²⁸ 17 CFR 240.12f-5.

²⁹ IEX Letter at 4-5.

³⁰ IEX also asks where the changed view is reflected in BSTX’s proposed Rules in Amendment No. 2. The proposed Rules have never addressed requirements of exchanges with respect to extending UTP to security tokens. Part II.K of the Proposal describes the unfettered ability of exchanges to extend UTP to security tokens in accordance with applicable Commission rules.

³¹ 15 U.S.C. 78s.



IEX states that it does not believe that the Exchange has sufficiently addressed the potential for confusion by market participants “because of a discrepancy between DTC’s ownership records” and ancillary records on the Ethereum blockchain. As noted above and described in the Proposal, there is no mechanism by which market participants would be able to identify a discrepancy between DTC records and the ancillary ownership records.³² In order to identify a discrepancy between two different sets of records, one would need to be able to have a complete view of both sets of records. There is simply no possibility of an identifiable discrepancy that could confuse investors because aggregate records regarding DTC position balances are not available.

IEX further asks whether there is a “best-effort” threshold around inaccurate and/or partial records that would sufficiently address investor confusion risk and whether the Proposal meets this threshold. Pursuant to Section 19(g) of the Exchange Act, the Exchange is required, absent reasonable justification or excuse, to comply with the Exchange Act, Commission rules and its own Rules.³³ This would require that the Exchange carry out the ancillary recordkeeping process as set forth in its proposed Rules and as further described in the Proposal or face a potential violation of Section 19(g) of the Exchange Act. As described in detail in the Proposal, there are potential circumstances where the ancillary records reflecting end-of-day security token balances could be inaccurate,³⁴ and, in the event of such circumstances, the Exchange would have authority to suspend the reporting process with prompt notice to BSTX Participants and the Commission.³⁵ However, even in the case of an inaccurate ancillary record report, there is still no risk of investor confusion for the reasons described above.³⁶

Accordingly, the Exchange believes that there is no risk of investor confusion with respect to the ancillary records on the Ethereum blockchain and that all other aspects of the Proposal are also consistent with the Exchange Act.

Other Questions

For ease of reference, the Exchange has restated IEX’s questions not already addressed in this letter below in *italicized* text followed by the Exchange’s response to each question. The

³² See *supra* notes 22-24 and accompanying text.

³³ 15 U.S.C. 78s(g).

³⁴ Proposal at 13251-52.

³⁵ Proposed Rule 17020(e).

³⁶ A BSTX Participant would be able to determine whether its own position as reported to BSTX is ultimately reflected on the Ethereum blockchain (*e.g.*, if for some reason it does not see the quantity it reported to BSTX reflected on the Ethereum blockchain), but would not be able to determine whether any other report by BSTX Participants is accurate or inaccurate. Even in such a case, it is highly unlikely that the BSTX Participant, familiar with the Exchange and the ancillary recordkeeping process, would be “confused” as to which record is official and which is ancillary.



Exchange believes that all of IEX's questions are either already addressed in the Proposal or are irrelevant to whether the Proposal is consistent with the Exchange Act.

6. *What is the purpose of the Secondary Recordkeeping Mechanism? Does it serve any purpose today? If the purpose is to “introduce blockchain technology in a gradual way” (February Proposal), with the belief that “[blockchain] technology may be able to help perfect the mechanism of a free and open market and a national market system” (February Proposal), what are the next steps, and what specifically will the eventual purpose of the Secondary Recordkeeping Mechanism be?*

IEX has identified the purpose of the ancillary recordkeeping mechanism in its question.³⁷ The Exchange may consider a variety of different next steps toward potential further integration of blockchain technology in the future, all of which would be subject to the rule filing requirements and public notice and comment pursuant to Section 19 of the Exchange Act.³⁸

7. *Has any registered broker-dealer that is currently a member of a national securities exchange that trades NMS stocks indicated its intention to become a BSTX Participant?*

This question has no bearing on whether the Proposal is consistent with Exchange Act requirements and is therefore irrelevant. However, the answer is “yes.”

8. *Why does BSTX act as an intermediary between BSTX Participants and Wallet Managers in the reporting of end-of-day positions? Why not direct reporting from BSTX Participants to Wallet Managers? What are the implications in terms of burden on competition for other exchanges who would like to extend UTP to BSTX-listed stocks?*

The Exchange determined to have BSTX act as an intermediary between BSTX Participants and Wallet Managers for several reasons including that the Exchange believes it is less burdensome for a BSTX Participant to report to BSTX rather than a BSTX Participant needing to establish a new relationship with a Wallet Manager. The Exchange may consider alternate models in the future, all of which would be subject to the rule filing requirements and public notice and comment pursuant to Section 19 of the Exchange Act.³⁹

Any other exchange would be free to extend UTP to security tokens. If an exchange chooses to extend UTP to security tokens and also to establish an ancillary recordkeeping process, it could do so in a manner that is consistent with the BSTX

³⁷ See also *infra* n.51 and accompanying text (citing to Part II.L of the Proposal describing the benefits of a security token).

³⁸ 15 U.S.C. 78s.

³⁹ *Id.*



requirements and end-of-day reporting structure. However, nothing in the Proposal would prevent an exchange from developing and pursuing another approach.

9. *What type of information will be publicly observable from the Secondary Recordkeeping Mechanism? For example, will the public be able to track the daily amount of stocks owned by a given BSTX Participant in its (anonymous) wallet? Will BSTX Participants be allowed to use multiple wallets and/or change wallets over time, for example in an effort to limit the public's ability to track their positions?*

The Exchange refers IEX to Part II.J of the Proposal which describes in detail what would be observable on the Ethereum blockchain.⁴⁰ As described there, among other details, observers of the Ethereum blockchain would not be able to determine which BSTX Participant is associated with which particular wallet address, whether an address belongs to a carrying firm reporting on behalf of multiple BSTX Participants or a single BSTX Participant, or whether the long positions include borrowed shares.

The Exchange has not proposed any limitation on the ability of a BSTX Participant to establish multiple wallet addresses. As required by Rule 17020, BSTX Participants must contact BSTX as part of the whitelisting process. The Exchange intends to discuss related operational issues with BSTX Participants as appropriate.

10. *Would end-of-day positions reported to the Secondary Recordkeeping Mechanism reflect the most recent transactions (for example, same-day transactions), or would they match DTC's records, including any reporting lags related to the T+2 settlement cycle?*

The end-of-day security token balances for the ancillary recordkeeping process would represent a moment-in-time snapshot of each BSTX Participant's balance in each security token at the end of the day – either as credited to its DTC account or to its account at its carrying firm.

11. *How would short positions be reflected in the Secondary Recordkeeping Mechanism?*

They would not. As described in the Proposal, the end-of-day position balances would reflect a snapshot of each BSTX Participant's long position in a security token – including any borrowed shares.⁴¹

12. *How would the Secondary Recordkeeping Mechanism impact the locate process, clearing, settling or any other aspect of short sales?*

⁴⁰ Proposal at 13252.

⁴¹ Proposal at 13252.



The ancillary recordkeeping process would have no impact on the locate process, clearance, or settlement of short sales. As stated repeatedly in the Proposal, security tokens would trade, clear and settle in the same manner as other NMS stocks.⁴²

13. *Is there any mechanism to ensure that the positions reported by a BSTX Participant accurately match DTC's records? Would surveillance of the rule that requires a BSTX Participant to accurately report its positions be done by BSTX, or by FINRA pursuant to the Regulatory Services Agreement in place between BSTX and FINRA? In either case, what procedures would be used for surveillance and enforcement of that rule?*

The Exchange has general authority under its proposed Rules to request that a BSTX Participant provide it with copies of records related to its business, which could include the reports provided by DTC to the BSTX Participant that are used to report end-of-day security token balance information to the Exchange.⁴³

14. *How would the Secondary Recordkeeping Mechanism handle overreporting of ownership balances? Would the total number of SRM tokens for a given BSTX stock fluctuate from one day to the next, with extra SRM tokens being created in overreported days, and then destroyed in the next non-overreported day?*

The Exchange refers IEX to Part II.J of the Proposal, which describes a variety of different reporting circumstances, including potential over-reporting.⁴⁴ The total supply of a given security token for purposes of the ancillary recordkeeping process is fixed (subject to adjustment in the case of a new issuance or other corporate action that may impact the total supply) and would not fluctuate day-to-day. The Exchange has also proposed authority to suspend the ancillary recordkeeping process in its discretion, with prompt notice to BSTX Participants and the Commission, which could include circumstances of over-reporting.⁴⁵

15. *Does the "Security Token" terminology, which refers to a BSTX-listed stock, create a risk of confusion with the SRM tokens used in the Secondary Reporting Mechanism?*

For the reasons detailed in the Proposal and described above, the Exchange does not believe that the ancillary records of security token balance information published on the Ethereum blockchain would cause investor confusion.⁴⁶ Resting position balances related to security token ownership of BSTX Participants and other market participants

⁴² See e.g., Proposal at 13252 ("the actual trading, clearance, and settlement of security tokens would occur in the same manner as other NMS stock.").

⁴³ Proposed Rule 20000.

⁴⁴ Proposal at 13251.

⁴⁵ Proposed Rule 17020(e).

⁴⁶ See *supra* notes 22-24 and accompanying text. See also Proposal at 13252.



are not available through another medium (e.g., such as by DTC making such information available) in a manner that could lead to investor confusion.

16. *Is BOX still working “on adoption of a rule(s) by FINRA that would require FINRA members to obtain a wallet address and for end-of-day security token balance reports to be reported in a manner that would facilitate updates to the Ethereum blockchain to reflect ancillary records of security token ownership” (as described in the September Proposal)?*

The Exchange has removed from the Proposal discussion of working with FINRA to establish a rule for OTC reporting of security token balance information for ancillary recordkeeping purposes. To the extent FINRA determines to establish such a rule in the future, it would be subject to the rule filing requirements and public notice and comment consistent with Section 19 of the Exchange Act.⁴⁷

17. *Under which circumstances would a BSTX-listed stock qualify as a “penny stock” and what specifically are the “additional regulation[s]” it would then be subject to (see footnote 283 of the February Proposal)?*

BSTX’s listing rules require that security tokens must meet a variety of qualitative and quantitative thresholds. The thresholds are designed to exclude any security token from being considered a “penny stock,” as that term is defined in Rule 3a51-1 of the Exchange Act.⁴⁸ Consequently, there are no circumstances under which security tokens listed on BSTX would qualify as a penny stock.

The “additional regulation” cited by IEX in footnote 283 of the Proposal is intended to note that *if* BSTX’s listing standards caused security tokens to qualify as penny stocks under Rule 3a51-1 and *if* BSTX did not receive relief from these requirements such as has been previously provided to NYSE American, then additional regulation could apply.

The Eversheds Letter

The Eversheds Letter was submitted by counsel to an anonymous market participant prior to the Exchange having filed Amendment No. 2. The Eversheds Letter (i) seeks clarification on certain aspects of the Proposal; (ii) objects to any limitations (which were since removed in Amendment No. 2) on other exchanges’ ability to extend UTP to security; and (iii) argues that the Proposal is inconsistent with Section 6(b)(5) of the Exchange Act by regulating outside of the

⁴⁷ 15 U.S.C. 78s.

⁴⁸ 17 CFR 240.3a51-1.



Exchange's authority.⁴⁹ The Exchange believes that Amendment No. 2 addresses each of these concerns, as described in greater detail below.

The Purpose and Design Are Fully Described

The Eversheds Letter first states that “the Proposal does not provide sufficient detail regarding the ultimate purpose of the ancillary record and its specific content and design so as to enable a review of the Proposal under Section 6 of the Exchange Act” and to allow for evaluation of the potential benefit to investors and/or any transactional, operation, or other types of risk.⁵⁰ The Exchange notes that Amendment No. 2 was designed to specifically address these and other concerns. In particular, the Exchange added Part II, Section L (Benefits of a Security Token) to the Proposal, which describes the Exchange's belief that promoting use of the functionality of smart contracts and their ability to allocate and re-allocate security token balances across multiple addresses in connection with end-of-day security token position balance information of BSTX Participants will allow market participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that parallels current equity market infrastructure and thereby advance and protect the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities market.⁵¹ The Exchange believes that the proposed ancillary recordkeeping process, which is designed to operate separate and apart from the existing market infrastructure and would not impact trading, clearance or settlement of security tokens, would not pose any transactional or operational risks and that the additional detail provided in Amendment No. 2 provides sufficient information for market participants to independently arrive at this same conclusion.

The Eversheds Letter additionally states, similar to Nasdaq, that the Proposal does not describe the data stored on the blockchain or provide information necessary to identify the differences, if any, between the records maintained by the Exchange, DTC, NSCC, and the ancillary record.⁵² Amendment No. 2 added substantial detail to Part II, Section J (Reporting End-of-Day Security Token Balances to Facilitate Ancillary Recordkeeping) to add additional clarity to the process, describe what observers of the Ethereum blockchain would see and provide examples of a variety of reporting scenarios. As stated in the Proposal, the data appearing on the blockchain would only reflect end-of-day security token balances associated with each BSTX

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ Eversheds Letter at 2.

⁵¹ Proposal at 13253. The PKA Letter also states its view that the purpose of the ancillary recordkeeping mechanism is. PKA Letter at 2-3, which the Exchange believes have been adequately described in this letter and in the Proposal.

⁵² Eversheds Letter at 2. The Eversheds Letter states that the Proposal does not provide detail on the BSTX Security Token Protocol. The Exchange notes that the majority of the discussion in Exhibit 3N was included in the Proposal as Part II.F. Proposal at 13246-48. The Exchange recognizes that the Commission has not posted Exhibit 3N on its website. The Exchange notes that the BSTX Security Token Protocol is found in the version of the Proposal that is posted on the Exchange's website starting on page 333. It is available at.

https://lynxstorageaccount.blob.core.windows.net/boxvr/SE_resources/SR-BOX-2019-19_Amendment_2.pdf



Participant’s anonymized address as well as an omnibus address for unreported positions.⁵³ Specific transaction level details would not be reflected on the blockchain. In this regard, the ancillary records would contain only a small fraction of the records that the Exchange would maintain with respect to transactions on its market. While the Exchange cannot speak for DTC or NSCC’s records directly, the Exchange believes that DTC and NSCC’s records are likewise extensively more detailed than the proposed ancillary records, and likely contain market participant identifying information and individual transaction level information.

The Eversheds Letter additionally states its belief that investor protection concerns are raised by the Proposal. The letter does not explain what investor protector concerns are contemplated, but raises the following items as questions (each *italicized* with the Exchange’s response below).

1. *For whose benefit is the ancillary record?*

The ancillary record is for the public benefit. The Commission has stated that it is “mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation” and that “[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.”⁵⁴ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that “[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.”⁵⁵ Consistent with the purposes described above and in the Proposal, the Exchange believes that blockchain technology may offer benefits to the trading of securities, and the Exchange has proposed a limited use of the technology (that of ancillary recordkeeping) to help it evaluate whether such benefits might be realized.

2. *Who will have access to it?*

The Ethereum blockchain is public, so anyone would have access to the blockchain records. The Exchange refers readers to Part II, Section J of the Proposal for a description of what observers of the blockchain would see.⁵⁶

3. *If access is limited to certain persons, how will the Exchange assure unauthorized users do not have access to it?*

See response immediately above. The ancillary records would be public.

⁵³ See *supra* note 23 and accompanying text (further describing what the content of security token balances would be).

⁵⁴ Securities and Exchange Commission, *The Impact of Recent Technological Advances on the Securities Markets* (Sep. 1997), <https://www.sec.gov/news/studies/techrp97.htm>.

⁵⁵ *Id.*

⁵⁶ Proposal at 13252.

4. *Does the ancillary record have any potential to impact the safeguarding of customer non-public information?*

No. As noted in the Proposal and described above, the records would only reflect an anonymous wallet address with a quantity of a security token associated with it and include no transactional level detail, market participant identifier or other identifiable information (e.g., firm name), or any ability to determine whether the position reflects proprietary or customer positions, borrowed shares, or the balances of multiple BSTX Participants (in the case of a carrying firm reporting on behalf of several BSTX Participants).

5. *Since the transfer of ownership does not take place through the blockchain, what is the utility of the token for investors (in other words, should readers assume that the token is intended to function only as an asset in which one invests with the hope of positive return and is not intended to function as a currency or alternative form of payment)?*

Security tokens are in no way intended to function as a currency or alternative form of payment. Security tokens would be equity interests in companies issuing registered securities in accordance with all applicable regulatory requirements (i.e., Section 12 of the Exchange Act⁵⁷ and Section 6 of the Securities Act of 1933),⁵⁸ and consistent with the Exchange's proposed listing standards. The utility of the ancillary reporting process and its purpose is described above.

6. *Would SEC-approved custodians be insulated from liability for differences in record ownership between records maintained by DTC and the ancillary record?*

The Exchange has stated throughout the Proposal that the ancillary records are not the official records of ownership. To the extent that there were differences between the official records of ownership and the ancillary records of ownership, the official records would govern.⁵⁹

7. *What records would regulators examine and surveil for purposes of determining compliance with all applicable rules?*

This question is ambiguous, failing to specify what regulators or rules it is referring. The relevant regulator and the nature of the entity subject to regulation are necessary to consider the scope of "all applicable rules." To the extent the Eversheds Letter is asking what proposed Rules the Exchange would use to surveil for compliance with the ancillary recordkeeping process, the Exchange notes that it has proposed authority under proposed

⁵⁷ 15 U.S.C. 78l.

⁵⁸ 15 U.S.C. 77f.

⁵⁹ To the extent, however, a SEC-approved custodian were a BSTX Participant and did not accurately report its end-of-day security token balances to BSTX, it could be potentially liable for failing to provide the Exchange with the required reports pursuant to proposed Rule 17020.



Rule 20000 to request records from BSTX Participants, which could include reports received from DTC regarding end-of-day security token balances used to report such information to the Exchange. To the extent the Eversheds Letter is asking what a different regulator, such as the Commission, might examine or surveil for compliance with these or other applicable rules, the Exchange cannot comment on how another regulator might enforce compliance.

No Limitation on OTC Trading or Trading on Another Exchange

The Eversheds Letter also objects to guidance in the BSTX Rule Filing prior to Amendment No. 2, which previously indicated other exchanges may need to adopt a similar ancillary recordkeeping mechanism in order to extend UTP to security tokens.⁶⁰ This concern has been fully addressed in Amendment No. 2, which removes all discussion of any such requirements related to extending UTP.⁶¹ As detailed above, security tokens are fully capable of trading on other exchanges or OTC without an ancillary recordkeeping mechanism. Accordingly, the Exchange believes that the Proposal does not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act with respect to the extension of UTP to security tokens by other exchanges.⁶²

The Proposal is consistent with Section 6(b)(5) of the Exchange Act

Finally, the Eversheds Letter argues that the Proposal is inconsistent with the requirement in Section 6(b)(5) of the Exchange Act that an exchange's rules may not "regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange."⁶³ The Eversheds Letter argues that the ancillary records are inconsistent with Section 6(b)(5) of the Exchange Act because they do not appear to be necessary for the clearance and settlement of security tokens, fair and orderly trading, or other purposes of the Exchange Act.

The Exchange believes the Eversheds Letter is incorrect and that the Proposal is not be designed to regulate matters outside the those contemplated and authorized by the Exchange Act.⁶⁴ As detailed in the Proposal, Congress adopted Section 2 of the Exchange Act to set forth the reasons for the necessity of the Exchange Act, which expressly include that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including . . . to require appropriate reports[.]"⁶⁵ (emphasis added). The Exchange Act and rules of self-regulatory organizations include reporting requirements that regulate and control matters and practices

⁶⁰ Eversheds Letter at 2.

⁶¹ Proposal at 13252. *See also supra* notes 28-31 and accompanying text.

⁶² 15 U.S.C. 78f(b)(8).

⁶³ Eversheds Letter at 3.

⁶⁴ Proposal at 13278.

⁶⁵ 15 U.S.C. 78b.



related to securities transactions conducted on securities exchanges and in the over-the-counter markets. For example, all U.S. options exchanges and Financial Industry Regulatory Authority (“FINRA”) maintain rules approved by the Commission that require their member broker-dealers to prepare and submit daily large options position reports to a third-party administrator that maintains a large options position reporting system.⁶⁶ These large option positions reports are not reports regarding the trading or clearance and settlement of securities transactions themselves but, instead, are reports that are related to end-of-day positions of the members of the options exchange and/or FINRA in a particular class of standardized or over-the-counter securities option. The proposed BSTX Rules regarding the ancillary recordkeeping process would similarly require BSTX Participants to provide reports regarding their end-of-day positions in security tokens. Accordingly, consistent with the proposed framework for options reporting, the Exchange believes that it is not proposing to regulate by virtue of any authority that is not contemplated under the Exchange Act and is therefore consistent with Section 6(b)(5) of the Exchange Act.⁶⁷

The PKA Letter

Similar to the Eversheds Letter, the PKA Letter is written by an anonymous market participant’s counsel and was submitted prior to the Exchange submitting Amendment No. 2. The PKA letter raises a number of items for which it believes great clarity is needed and certain other issues addressed below. The PKA Letter requests additional clarification with respect to the following items (each *italicized* with the Exchange’s response below):

1. *How security tokens would settle.*

As described in detail in Part II.E of the Proposal, security tokens would settle in the same manner as all other NMS stocks in accordance with and through the facilities of a registered clearing agency.⁶⁸ The ancillary recordkeeping process is entirely separate from the trading, clearance and settlement of security tokens.

2. *How market makers would comply with short sale rules.*

Market makers would comply with short sale rules in the same manner as they do today with respect to all other NMS stocks. The ancillary recordkeeping process would not impact the ability to or the manner in which a market maker conducts short sales.

3. *What reporting facility would be used for reporting of trades.*

As stated in the Proposal, the Exchange would join an existing NMS plan for the dissemination of transaction and quotation data.⁶⁹ Quotation and transaction information in security tokens would therefore be available in the same manner as for all other NMS stocks.

⁶⁶ See e.g., FINRA Rule 2360(b)(5) and Cboe Rule 8.43

⁶⁷ 15 U.S.C. 78f(b)(5).

⁶⁸ Proposal at 13244.

⁶⁹ Proposal at 13244 and 13277.



4. *Token ownership verification.*

The PKA Letter does not explain what it views as unclear regarding security token ownership verification. To the extent a market participant sought to verify whether they owned a security token, they would do so in precisely the same manner as they do today to verify ownership of other NMS stock. The ancillary records would not be the official records for purposes of determining ownership.

5. *Security token liquidity.*

Liquidity in security tokens trading on BSTX would be provided by market makers. The Exchange has no control over liquidity on other markets or the OTC market. As detailed in the Proposal, pursuant to proposed Rule 26205, a security token trading on BSTX would be required to have at least one Designated Market Maker (“DMM”) assigned to it, or, in lieu of a DMM, a minimum of three market makers assigned to the security token.⁷⁰ The proposed market maker requirements are the same as those required by other national securities exchanges.

6. *Compliance with AML rules.*

Compliance with AML rules would be carried out in the same manner as it is today by market participants. Nothing in the Proposal, including the ancillary recordkeeping process, would impact AML compliance.

7. *Confirmation reporting rules.*

Transaction confirmations would be carried out in the same manner as it is today by market participants. Nothing in the Proposal, including the ancillary recordkeeping process, would impact transaction confirmation reporting rules, such as Rule 10b-10 of the Exchange Act.⁷¹

8. *Rules regarding Wallet Managers.*

The Exchange added substantial detail regarding Wallet Managers in Amendment No. 2, which are described in Part II.H of the Proposal.⁷² As described there, a Wallet Manager would operate as a third party service provider to the Exchange and perform the function of taking end-of-day security token balances reported by BSTX Participants (or their carrying firms) to BSTX and using that information to update the Ethereum blockchain. The Exchange would perform due diligence on a potential Wallet Manager, including but not limited to checking the list produced by the U.S. Treasury Department of persons with whom U.S. citizens are prohibited from doing business (“OFAC List”). Pursuant to the

⁷⁰ Proposal at 13266.

⁷¹ 17 CFR 240.10b-10.

⁷² Proposal at 13249-50.



service agreement between BSTX and the Wallet Manager, each Wallet Manager would also be required to agree to comply with all applicable securities law.⁷³

9. *Verifying ownership of security tokens for purposes of AML and KYC rules.*

Consistent with the responses to items 4 and 6 of the PKA Letter above, any verification of security token ownership for purposes of AML, KYC, or any other rules would occur in the same manner that it currently does today. The ancillary records would not be the official records for purposes of determining ownership.

The PKA letter additional states that it believes NSCC and DTC should confirm that they are supportive of security tokens and have the infrastructure to support them. The Exchange notes that, because security tokens will clear and trade in the same manner as other NMS stocks, and there is no special infrastructure or other requirements necessary for NSCC and DTC to adopt in order to facilitate clearance and settlement functions with respect to security tokens. The Exchange also notes that it has been in continuous dialogue with NSCC and DTC representatives regarding connectivity and testing to support trading in security tokens.⁷⁴ Moreover, to the extent NSCC and DTC object to supporting trading security tokens, they have had ample opportunity to express such objections in a comment letter but have not done so.

The PKA Letter further notes that the Proposal has “had little dissemination among market participants” and “contain[s] potentially significant changes to the operation and structure of global equity trading.”⁷⁵ The Exchange notes that the Proposal was disseminated in precisely the same manner as any other proposed rule change by a national securities exchange. The Exchange disagrees that the Proposal contains potentially significant changes to the operation of global equity trading. Rather the Exchange proposes no disruption whatsoever to the normal manner of operation for equity trading but would merely add an entirely separate ancillary recordkeeping reporting process for securities listed on its market and applicable only to its members.

Finally, the PKA letter states that that additional disclosure regarding the relationship between the Exchange, Overstock.com (“Overstock”), and t0.com Inc. (“tZERO”). The PKA Letter provides no explanation of what information or disclosures it believes are necessary. The Exchange has described its ownership structure in detail to the Commission in a separate rule filing.⁷⁶ The Exchange is pleased to provide any details regarding its relationship with Overstock and tZERO that commenters believe are missing from the current public record.

* * *

⁷³ *Id.*

⁷⁴ *See e.g.*, Proposal at n.40 (specifically noting conversations between DTC representatives and counsel for the Exchange).

⁷⁵ PKA Letter at 2.

⁷⁶ Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345 (January 3, 2020).



The Exchange once again appreciates the opportunity to respond to commenters on the Proposal. The Exchange firmly believes that the Proposal is consistent with the requirements of the Exchange Act and should therefore be approved.

Please feel free to contact us with us with any questions at [REDACTED]

Sincerely,

A handwritten signature in black ink that reads "L. J. Fall". The signature is written in a cursive, slightly stylized font.

Lisa J. Fall
President
BOX Exchange LLC