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December 23, 2021

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

Ted Uliassi, Senior Special Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Request for Interpretive Guidance Regarding Rule 11a2-2(T) Under the
Securities Exchange Act of 1934

Dear Ms. Countryman and Mr. Uliassi:

In connection with its filing of a proposed rule change to adopt rules to govern the trading of equity securities on BOX Exchange LLC (“BOX” or the “Exchange”) through a facility of the Exchange known as BSTX LLC (“BSTX”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), the Exchange respectfully requests that the staff of the Securities and Exchange Commission (“SEC” or “Commission”) provide interpretive guidance regarding the application of Rule 11a2-2(T) under the Exchange Act to certain transactions effected by Exchange members through BSTX’s fully automated equities trading system. Specifically, the Exchange requests that the Staff of the Commission concur in the Exchange’s conclusion that orders entered into the BSTX trading system will meet the conditions in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of Rule 11a2- 2(T).¹

The BSTX trading system is described in detail in Amendment No. 2 to the Exchange’s proposed rule change to adopt rules governing the trading of equity securities on the Exchange through a facility of the Exchange known as BSTX, which was filed on December 20, 2021.

The Exchange believes that the policy concerns Congress sought to address in Section 11(a) of the Exchange Act – the time and place advantage that members on exchange trading floors may have over non-members off the floor and the general public – are not present in BSTX’s automated trading system, which provides for the buying and selling

¹ BSTX members relying on Rule 11a2-2(T) would be responsible for their own compliance with (a)(2)(iv) of the Rule.

of securities with a continuous, automated matching function. Liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to BSTX electronically by members from remote locations.² The Exchange further believes that members entering orders into its trading system will satisfy the requirements of Rule 11a2-2(T), which provides an exception to Section 11(a)'s general prohibition on proprietary trading.

Section 11(a) of the Exchange Act

Section 11(a)(1) of the Exchange Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts") unless an exception to the prohibition applies. Rule 11a2-2(T) under the Exchange Act, known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution (although the member may participate in clearing and settling the transaction); (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or its associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

The four conditions imposed by the "effect versus execute" rule are designed to put members and non-members of an exchange on the same footing, to the extent practicable, in light of the purpose of Section 11(a). For the reasons set forth below, the Exchange believes the structure and characteristics of its trading system do not result in disparate treatment of members and non-members and places them on the "same footing" as intended by Rule 11a2-2(T).

1. **Off-Floor Transmission.** Rule 11a2-2(T) requires orders for a covered account transaction to be transmitted from off the exchange floor. Over the years the Commission has considered this and other requirements of the rule in the context of automated trading and electronic order handling facilities operated by various national securities exchanges (see the SEC's "1979 Release"³ as well as more recent releases issued in connection with

² BSTX has proposed rules for the registration, obligations and operation of market makers on the Exchange. See, proposed BSTX Rule Series 25200. Market makers would submit quotes in the form of orders in their assigned symbols.

³ See, e.g., Securities Exchange Act Release No. 15533 (January 29, 1979) regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the Pacific Stock Exchange's Communications and Execution System ("COMEX"), and the Philadelphia's Stock Exchange Automated Communications and Execution System ("PACE") ("1979 Release").

the approval of the registrations of national securities exchanges).⁴ In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if an order for a covered account is transmitted from a remote location directly to an exchange's floor by electronic means.⁵ BSTX does not have a physical trading floor, and like other all-electronic exchanges, the BSTX trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces, thus, the Exchange believes that its trading system satisfies the off-floor transmission requirement.

2. **Non-Participation in Order Execution.** The “effect versus execute” rule further provides that neither the exchange member nor an associated person of such member participate in the execution of its order. This requirement was originally intended to prevent members from using their own brokers on an exchange floor to influence or guide the execution of their orders.⁶ The rule, however, does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted; provided, such cancellations or modifications are transmitted from off an exchange floor.⁷ In the 1979 Release discussing both the Pacific Stock Exchange's COMEX system and the Philadelphia Stock Exchange's PACE system, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems, and although the execution is automatic, the design of such systems ensures that members do not possess any special or unique trading advantages in handling orders after transmission to the systems.

⁴ Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (order approving Nasdaq Exchange registration); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving BATS Exchange registration); 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving C2 exchange registration); 78101 (June 17, 2016), 81 FR 41141 (June 26, 2016) (order approving the Investors' Exchange, LLC's exchange registration); 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (order approving the Long-Term Stock Exchange, Inc.'s exchange registration); and 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (ordering approving MEMX LLC's exchange registration).

⁵ See, e.g., Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange (“ArcaEx”) as electronic trading facility of the Pacific Exchange (“PCX”) (“Arca Ex Order”)); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (“1978 Release”)).

⁶ *Id.* (“1978 Release”).

⁷ *Id.*

The BSTX trading system will at no time following the submission of an order allow a member or an associated person of such member to acquire control or influence over the result or timing of an order's execution. The execution of a member's order is determined solely by what quotes and orders are present in the system at the time the member submits the order and the order priority based on BSTX rules. Therefore, the Exchange believes the non-participation requirement is met through the submission and execution of orders in the BSTX trading system.⁸

3. **Execution Through an Unaffiliated Member.** Although Rule 11a2-2(T) contemplates having an order executed by an exchange member unaffiliated with the member initiating the order, the Commission has recognized the requirement is satisfied where automated exchange facilities are used as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. In the 1979 Release, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). The design of the BSTX trading system ensures that no member has any special or unique trading advantages over non-members in the handling of its orders after transmitting its orders to BSTX, thus the Exchange believes that its trading system satisfies this requirement.
4. **Non-Retention of Compensation for Discretionary Accounts.** Finally, Rule 11a2-2(T) states, in the case of a transaction effected for the account for which the initiating member or its associated person exercises investment discretion, in general, the member or its associated person may not retain compensation for effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to both Section 11(a) of the Exchange Act and Rule 11a2-2(T). The Exchange will advise its membership through the issuance of an Information Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.

⁸ The Exchange notes that access to the BSTX Market Data Blockchain will not allow a member or an associated person of such member to acquire control or influence over the result or timing of an order's execution. The term "BSTX Market Data Blockchain" means the private, permissioned blockchain network through which a member may access certain order and transaction data related to trading activity on BSTX (See proposed BSTX Rule 17000(a)(9)).



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In conclusion, the Exchange believes that the BSTX trading system satisfies the four requirements of Rule 11a2-2(T) as well as the general policy objectives of Section 11(a). The BSTX trading system places all users, members and non-members, on the “same footing” with respect to transactions on BSTX for covered accounts as intended by Rule 11a2-2(T). No member will be able to engage in proprietary trading in a manner inconsistent with Section 11(a). If you have any questions or comments regarding this letter or the BSTX trading system, feel free to contact the undersigned.

Best,

A handwritten signature in black ink that reads "L. J. Fall".

Lisa J. Fall
President
BOX Exchange LLC