BOX℠ EXCHANGE

January 18, 2022

Via Electronic Mail

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

Re: File No. SR-BOX-2021-14

Dear Ms. Countryman:

BOX Exchange LLC filed Amendment No. 2 to the above-referenced filing on January 18, 2022 to amend and supersede the original filing, as amended by Amendment 1, in its entirety.

Sincerely,

L. J. Fall

Lisa J. Fall
President
BOX Exchange LLC

Encl. (Amendment No. 2 to SR-BOX-2021-14)

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 14
Amendment No. (req. for Amendments *) 2

Filing by BOX Exchange LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Alanna	Last Name *	Barton
Title *	General Counsel		
E-mail *	[redacted]		
Telephone *	[redacted]	Fax	

Signature

Pursuant to the requirements of the Securities Exchange of 1934, BOX Exchange LLC.
has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/18/2022

By Alanna Barton
(Name *)

(Title *)
General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add / Remove / View SR-BOX-2021-14 (19b-2) Amendmen	The self-regulatory organization must provide all required information, presented in a clear and comprehens ble manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add / Remove / View SR-BOX-2021-14 (Ex 1) Amendment	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies * Add / Remove / View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add / Remove / View	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add / Remove / View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add / Remove / View SR-BOX-2021-14 (Ex 4A) Amendmen SR-BOX-2021-14 (Ex 4B) Amendmen	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add / Remove / View SR-BOX-2021-14 (Ex 5A) Amendmen SR-BOX-2021-14 (Ex 5B) Amendmen	The self-regulatory organization may choose to attach as Exh bit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add / Remove / View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of Proposed Rule Change

a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] BOX Exchange LLC (the "Exchange") is submitting this rule filing (the "Proposed Rule Change") to the Commission in connection with the establishment of BSTX LLC, a Delaware limited liability company (the "Company" or "BSTX"), as a facility, as that term is defined in Section 3(a)(2) of the Act, of the Exchange. BSTX will be a facility of the Exchange that operates a market for the trading of securities (the "BSTX Market"). The Company proposes to adopt the Third Amended and Restated Limited Liability Company Agreement of the Company in the form attached as Exhibit 5A hereto (the "LLC Agreement") prior to commencement of operations as a facility of the Exchange. 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 function for a corporation.

b) Not applicable to any other Exchange rule.

c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

The Proposed Rule Change was approved by officers of the Exchange pursuant to authority delegated by the Exchange Board of Directors ("Board"). No further action is necessary for the filing of the Proposed Rule Change.

Please refer questions and comments on the Proposed Rule Change to Alanna Barton, General Counsel for the Exchange, at [redacted].

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a) Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed establishment of BSTX as a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Act.[3] Pending trading rules filed as part of a separate rule filing pursuant to the rule filing process under Section 19 of the Act and approved by the Commission, BSTX will operate the BSTX Market.[4] The Proposed Rule Change is to establish BSTX as a facility of the Exchange and, without trading rules approved by the Commission, will not permit BSTX to commence operations of the BSTX Market. However, the approval of the Proposed Rule Change, and BSTX as a facility of the Exchange, will trigger the regulatory oversight responsibilities of the Exchange with respect to BSTX.

BSTX, when approved as a facility of the Exchange, will be subject to regulatory oversight by the Exchange. In addition, the Exchange will enter into a facility agreement with BSTX (the "Facility Agreement") prior to commencement of operations 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

[3] 15 U.S.C. 78c(a)(2).

[4] See Securities Exchange Act Releases No. 92017 (May 25, 2021), 86 FR 29634 (June 2, 2021) and 92796, 86 FR 49416 (September 2, 2021) (collectively with any amendments, "BSTX Rulebook Proposal"). Amendment No. 2 is available on the Commission's website at https://www.sec.gov/comments/sr-box-2021-06/srbox202106.htm.

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 submitted a separate filing to establish rules relating to trading on BSTX.[5] The Exchange also submitted a separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX in addition to the Exchange's existing facility,[6] which was approved (the "Multiple Facilities Filing").[7] With the addition of BSTX as a facility of the Exchange, BSTX Participants[8] will have the same representation, rights and responsibilities as Exchange Facility Participants[9] 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 Amended and Restated Limited Liability Company Agreement of BOX Options Market

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[5] See BSTX Rulebook Proposal.
[6] Currently, there is only one facility of the Exchange, BOX Options Market LLC.
[7] See Securities Exchange Act Release No. 88934 May 22, 2020, 85 FR 32085 May 28, 2020.
[8] A "BSTX Participant" is a firm or organization that is registered with the Exchange pursuant to Exchange Rules for the purposes of participating in Trading on the BSTX Market as an order flow provider or market maker. "Trading" means the availability of the BSTX System to authorized users for entering, modifying, and canceling orders of BSTX Products. "BSTX System" means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market. "BSTX Product" means a Security, as defined in the Exchange Rules, trading on the BSTX System. "Exchange Rules" means the rules of the Exchange that constitute the 'rules of an exchange' within the meaning of Section 3 of the Act, and that pertain to the BSTX Market. "BSTX Market" means the market operated by BSTX. See Section 1.1, LLC Agreement.
[9] "Exchange Facility Participant" means a firm or organization (including a BSTX Participant) that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on any Exchange Facility. See the Second Amended and Restated Limited Liability Company Agreement of BOX Exchange LLC, dated as of May 29, 2020, as amended, (the "Exchange LLC Agreement") Section 1.1.

LLC, dated as of August 15, 2018 (the "BOX Options LLC Agreement") or, where indicated herein, are the same as provisions of the Second Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC ("BOX Holdings"), dated as of September 13, 2018, as amended (the "BOX Holdings LLC Agreement") or the Exchange LLC Agreement or the bylaws of the Exchange (the "Exchange Bylaws").[10] Currently, BOX Holdings has seven 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 multiple owners, including BOX Digital Markets LLC ("BOX Digital"), a Delaware limited liability company and a subsidiary of BOX Holdings, and tZERO Group, Inc. ("tZERO"), a Delaware corporation and an affiliate of Overstock.com, Inc. 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, processing

[10] The Exchange notes, as further described in the Proposed Rule Change, that certain provisions of the BOX Holdings LLC Agreement 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 voting classes of ownership are not present in the LLC Agreement because BSTX has only one voting class of ownership. See, e.g., Sections 4.1, 4.4, 4.13 and 7 of the BOX Holdings LLC Agreement.

information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[11]

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

Ownership interests of the Company are represented by Units.[12] The Company will have two classes of Units: Economic Units[13] and Voting Units.[14] All Economic Units are identical to each other and accord the holders thereof the same obligations, rights, and privileges as accorded to each other holder thereof. Similarly, all Voting Units are identical to each other and accord the holder thereof the same obligations, rights, and privileges as accorded to each other holder thereof. The duly admitted holders of Units are referred to as the members of the Company ("Members").[15] Economic Units represent equity interests in the Company and entitle the duly admitted holders thereof to

[11] 15 U.S.C. 78f(b)(5).
[12] "Units" means Economic Units and/or Voting Units. See Section 1.1, LLC Agreement. References herein to "Units" refer to Economic Units and Voting Units of the Company unless a separate class is specified.
[13] "Economic Units" are equal units of limited liability company interest in the Company collectively comprising all interests in the profits and losses of the Company and all rights to receive distributions from the Company. Economic Units shall not include any right to vote. Each Economic Unit is identical to each other Economic Unit and accords a Member holding such Economic Unit the same obligations, rights and privileges as are accorded to each other holder thereof. See Section 2.5(a), LLC Agreement.
[14] "Voting Units" are equal units of limited liability company interest in the Company collectively comprising all voting interests of Members with respect to Company matters. For the avoidance of doubt, the ownership or possession of Voting Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights shall be vested only in duly admitted Members of the Company), or to exercise any right of a Member of the Company under the LLC Agreement, the LLC Act or other applicable law. See Sections 1.1 and 2.5, LLC Agreement. Members vote on admitting additional or substitute Members (Section 7.1(b), LLC Agreement), admitting personal representatives and successors in interest of a Member (Section 7.5, LLC Agreement) and the dissolution and winding up of the Company (Section 10.1(a)(iii), LLC Agreement).
[15] All Members are already parties to the LLC Agreement.

participate in the Company's allocations and distributions. Voting Units represent voting interests in the Company and entitle the duly admitted holders thereof to participate in votes of the Company's Members. Each Member will be a holder of Voting Units and Economic Units.[16] The Company has eleven Members. Upon adoption of the LLC Agreement, existing ownership interests in the Company will convert into Economic Units and Voting Units such that BOX Digital will own 40% Economic Percentage Interest,[17] tZERO will own 40% Economic Percentage Interest, FBP Digital LLC will own 11.1% Economic Percentage Interest [18] and each of the following will own less than 5% Economic Percentage Interest: Susan Chamberlin (1.9%),[19] Saum Noursalehi (0.4%), Will Easley (0.4%),[20] Alan Konevsky (0.7%),[21] Jay Fraser (1.4%), Enid Acquisition LLC (1.9%),[22] Chris Zaremba (1.4%), and Todd Treworgy (0.4%). Upon adoption of the LLC Agreement, BOX Digital will own 20% Voting Percentage Interest,[23] tZERO will own 20% Voting Percentage Interest, FBP Digital LLC will own 19.6% Voting Percentage Interest and each of the following will own less than 10% Voting Percentage Interest: Susan Chamberlin (8.8%), Saum Noursalehi (2.1%), Will Easley (2.1%), Alan Konevsky (3.1%), Jay Fraser (6.6.%), Enid Acquisition LLC (8.8%), Chris Zaremba (6.6%), and

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[16] See Section 2.5(c), LLC Agreement.

[17] "Economic Percentage Interest" means, with respect to a Member, the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage. See Section 1.1, LLC Agreement.

[18] Lisa Fall wholly owns FBP Digital LLC. Ms. Fall is a Director and CEO of BSTX and is a director of BOX Digital.

[19] Susan Chamberlin is a Director and Chairman of BSTX.

[20] Will Easley wholly owns Aragon Solutions Ltd. Mr. Easley is a director of BOX Holdings, BOX Options and BOX Digital.

[21] Alan Konevsky is a Director of BSTX and CEO of tZERO.

[22] Enid Acquisition LLC is wholly owned by Glen Openshaw.

[23] "Voting Percentage Interest" means, with respect to a Member, the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage. Voting Units held by a Member that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio. See Section 1.1, LLC Agreement.

Todd Treworgy (2.2%). Accordingly, no Person will own more than 40% of the Economic Units or 20% of the Voting Units and no Person has the ability, unilaterally, to exert control over the Company. Pursuant to Section 1.1 of the LLC Agreement, a record of the Members is maintained by the Secretary of the Company and updated from time to time as necessary and as provided in the LLC Agreement ("Membership Record").[24] These provisions are substantially the same as those in the Exchange LLC Agreement.[25]

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 seven separate, unaffiliated owners, including MX US 2, Inc. ("MXUS2"), a wholly owned, indirect subsidiary of TMX Group Limited ("TMX"), which holds 47.89% of the outstanding units of BOX Holdings, IB Exchange Corp. ("IB"), which holds 25.50% of the outstanding units of BOX Holdings, and Citadel Securities Principal Investments LLC ("Citadel"), which holds 15.50%. The other four owners of BOX Holdings, UBS Americas Inc., JPMC Strategic Investments I Corporation, Wolverine Holdings, L.P. and Aragon Solutions Ltd, each hold less than 5% of the outstanding units of BOX Holdings.[26]

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[24] The Membership Record shall include the name and address of each Member and the number of Economic Units and Voting Units held by each Member.

[25] See Exchange LLC Agreement Sections 1.1 and 2.5.

[26] Current equity ownership, including voting power, of Members of BOX Holdings are reflected in Securities Exchange Act Release No. 93778 December 14, 2021, 86 FR 241 December 20, 2021.

Owners of BOX Holdings ("BOX Holdings Members") hold Class A and Class B Units (together, "Holdings Units").[27] Holdings Units represent equal units of economic rights in BOX Holdings. Voting rights of BOX Holdings Members generally follow the ownership percentage (the "Holdings Ownership Percentage") based on the ratio of the number of Holdings Units held by each BOX Holdings Member to the total number of Holdings Units issued and outstanding.[28] As discussed above, the Holdings Ownership Percentage of each BOX Holdings Member greater than 5% is as follows:
MXUS2: 47.89%; IB: 25.50% and Citadel: 15.50%.

However, BOX Options Participants[29] are limited to a maximum of 20% voting power for votes of BOX Holdings Members and votes of directors appointed by an BOX Options Participant on the BOX Holdings board of directors.[30] IB holds a Holdings Ownership Percentage greater than 20% and therefore, as a BOX Options Participant, is limited to voting power with respect to BOX Holdings of no greater than 20%. As a result, IB's voting power with respect to votes of BOX Holdings Members that would otherwise be greater than 20% is counted for quorum purposes and voted by the person presiding over quorum and vote matters in the same proportion as the remainder of the vote. This limitation effectively automatically reallocates IB's voting power above 20% to the other BOX Holdings Members and, as a result, each of the other BOX Holdings Members has greater voting power at BOX Holdings than its Holdings Ownership

[27] Class B Units of BOX Holdings are identical to Class A Units except Class B Units include conversion rights, a liquidation preference and class voting rights with respect to those matters. See BOX Holdings LLC Agreement §§1.1 and 2.5.
[28] See BOX Holdings LLC Agreement Section 1.1.
[29] "BOX Options Participant" means an Exchange Facility Participant that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on the BOX Options Market. See BOX Holdings LLC Agreement Section 1.1.
[30] See BOX Holdings LLC Agreement Section 7.4(h).

Percentage. The respective voting power of each BOX Holdings Member that is greater than 5% is as follows: MXUS2: 51.43%; IB: 20.00% and Citadel: 16.65%.

Further, one BOX Holdings Member, Wolverine Holdings, L.P. ("Wolverine"), does not currently have a right to designate a director to the BOX Holdings board of directors, where the voting power of each director is tied to the voting power of the BOX Holdings Member that appointed such director.[31] As a result of IB's limited voting power and Wolverine's lack of board representation, the voting power of the respective BOX Holdings directors designated by each of the other BOX Holdings Members is greater than the respective BOX Holdings Member's voting power with respect to BOX Holdings Member matters. The BOX Holdings board voting power of directors designated by each of the BOX Holdings Members greater than 5% is as follows: MXUS2: 53.34%; IB: 20.00% and Citadel: 17.27%.

Medici Ventures, L.P. ("Medici"), a Delaware limited partnership, owns 44% of the outstanding shares of tZERO, Overstock.com, Inc. ("Overstock"), a publicly held corporation organized under the laws of the state of Delaware, owns 43% of the outstanding shares of tZERO, Joseph Cammarata holds 7.53% of the outstanding shares of tZERO, 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,

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[31] See BOX Holdings LLC Agreement Section 4.3(b).

Anthony Bove, Ralph Daiuto, Rob Christiansen, Amanda Gervase, Derek Tobacco, Steve Bailey, and Dinosaur Financial. Pelion MV GP, L.L.C. ("Medici GP"), a Delaware limited liability company, serves as the general partner of Medici and has the sole right to manage its affairs. Medici GP owns 1% of the partnership interests in Medici (along with a profits interest in Medici), and Overstock owns 99% of the partnership interests in Medici. Membership interests in Medici GP are held by the following, each of which holds less than 25% of Medici GP: Carine Clark, Susannah Duke, Steve Glover, Brad Hintze, Jeff Kearl, Trevor Lund, Matt Mosman, Erika Nash, Zain Rizavi, Laura Summerhays, The Blake G Modersitzki 2020 Irrevocable Trust (affiliated with Blake G. Modersitzki), The Capitola Trust (affiliated with Chad Packard), The GP Investment Trust (affiliated with Chris Cooper) and The Oaxaca Dynasty Trust (affiliated with Ben Lambert). Therefore, both tZERO and the Company are affiliates of Overstock, Medici and Medici GP.

Pursuant to Section 7.4(h)(i) of the LLC Agreement, any Controlling Person[32] is required to become a party to the LLC Agreement and abide by its provisions, to the

[32] 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(h)(iv)(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(h)(iv)(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 agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (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

same extent and as if they were Members. This provision and the associated definitions of Controlling Person and Controlling Interest are the same as currently apply to BOX Holdings.[33] Accordingly, prior to commencing operations as a facility of the Exchange, BSTX will obtain, from each Controlling Person, an instrument of accession substantially in the form attached hereto as Exhibit 5B. 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. Medici, Medici GP and Overstock are indirect owners of the Company. Medici GP owns 1% of the partnership interests and a profits interest in Medici and acts as Medici's general partner. Overstock owns 43% of tZERO directly and 99% of Medici, which owns 44% of tZERO. As a result, Overstock owns, directly or indirectly, more than 80% of tZERO, which will own 40% of the Economic Units and 20% of the Voting Units of BSTX. Overstock, Medici and Medici GP will be required to become parties to the Company's 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. Similarly, BOX Holdings, MXUS2, 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

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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." A "Person" is defined as "any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof." See Section 1.1, LLC Agreement.

[33] See Section 7.4(g), BOX Holdings LLC Agreement.

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 100% of MX US 1, Inc., which owns 100% of MXUS2, which owns more than 40% of BOX Holdings. Each of these upstream owners of BOX Holdings is a Controlling Person of BOX Holdings required to be, and is, a party to, and be subject to, the BOX Holdings LLC Agreement. BOX Holdings owns 98% of BOX Digital, which will own 40% of the Economic Units and 20% of the Voting Units of BSTX. There are no other Controlling Persons of BSTX.

Pursuant to Section 7.4(i) of the LLC Agreement, [34] in the event any Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%, alone or together with any Related Person of such Member (Voting Units owned in excess of 20% being referred to as "Excess Voting Units"), the Member and its designated Director, if applicable, shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Voting Units held by such Member; provided, however, that whether or not such Member otherwise participates in a meeting in person or by proxy, such Member's Excess Voting Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). In addition, an effective rule filing pursuant to Section 19 of

[34] LLC Agreement Section 7.4(i) is based on Section 7.4(h) of the BOX Holdings LLC Agreement.

the Act shall be required prior to any Member, or any Related Person of such Member, becoming a BSTX Participant if such Member, alone or together with any Related Persons of such Member, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more than 20% of the Directors and, unless a rule filing authorizing the foregoing is first effective, such Member, or any Related Person of such Member, shall not be registered as a BSTX Participant. These limitations are designed to prevent a market participant from exerting undue influence on a facility of the Exchange. Related Persons will be grouped together when applying these limits. Accordingly, any Related Persons of tZERO or another Member, together holding greater than 20% Economic Percentage Interest or Voting Percentage Interest, will not be a BSTX Participant without completing the rule filing process. The Exchange believes this proposed 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.[35] 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.

Any Member shall provide the Company with written notice fourteen (14) days prior, and the Company shall provide the SEC and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that would result in such Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any Related Person of such Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting Percentage Interest levels

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[35] 15 U.S.C. 78f(b)(1).

of 10% and 15%.[36] Further, rule filings are required for any transfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Economic Percentage Interest or Voting Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% level (i.e., 25%, 30%, etc.).[37] 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.[38] In particular, SEC notification of ownership 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. Similarly, Exchange notification of ownership interests exceeding certain percentage thresholds can help improve the Exchange's ability to effectively monitor and surveil for potential undue influence and control over the operation of the Exchange and the Company.

Pursuant to Section 7.4(f) of the LLC Agreement, no Transfer[39] or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Economic Percentage Interest greater

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[36] See LLC Agreement, Section 7.4(e). LLC Agreement Section 7.4(e) is based on Section 7.4(e) of the BOX Holdings LLC Agreement.

[37] See LLC Agreement, Section 7.4(e). LLC Agreement Section 7.4(e) is based on Section 7.4(f) of the BOX Holdings LLC Agreement.

[38] 15 U.S.C. 78f(b)(1).

[39] "Transfer" means the actions of a Person to "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" its Units but does not include "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, such Member, or transfers to any Person that is a wholly owned Affiliate of such Member." See LLC Agreement, Section 7.1(a).

than 40% (such Person's "Economic Ownership Limit") shall be effective without both the approval of the Exchange and an effective the rule filing pursuant to Section 19 of the Exchange Act (an "Economic Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have an Economic Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of an Economic Ownership Limit Waiver. The Exchange may only approve an Economic Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, an "Economic Waiver Determination") that such Economic Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, such Economic Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, such Economic Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and, if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making an Economic Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Economic Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire an Economic Percentage Interest in excess of the Economic Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on

which such Person intends to acquire an Economic Percentage Interest in excess of the applicable Economic Ownership Limit. Any Member may voluntarily set a lower Economic Ownership Limit for itself upon providing written notice thereof to the Secretary.

Similarly, pursuant to Section 7.4(g) of the LLC Agreement, no Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest greater than 20% (such Person's "Voting Ownership Limit") or having the power to vote, direct the vote or give any consent or proxy in excess of the Voting Ownership Limit, or entering into any agreement, plan or other arrangement with any other Person under circumstances that would result in the Voting Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit, and no Transfer or other event that would result in exceeding such Voting Ownership Limit shall be effective without both the approval of the Exchange and an effective rule filing pursuant to Section 19 of the Exchange Act (a "Voting Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have a Voting Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of a Voting Ownership Limit Waiver. The Exchange may only approve a Voting Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, a "Voting Waiver Determination") that

such Voting Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, such Voting Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, such Voting Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and, if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making a Voting Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Voting Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire a Voting Percentage Interest in excess of the Voting Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire a Voting Percentage Interest in excess of the applicable Voting Ownership Limit. Any Member may voluntarily set a lower Voting Ownership Limit for itself upon providing written notice thereof to the Secretary. No Person shall enter into any agreement, plan or other arrangement with any other Person where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit. Except as required by the Voting

Units Adjustment (defined below), each Member will hold the number of Voting Units equal to the number of Economic Units held by such Member. Notwithstanding the foregoing, the following adjustment shall be made to the allocation of Voting Units among the Members (the "Voting Units Adjustment"): At all times, to the extent any Member holds an Economic Percentage Interest in excess of such Member's applicable Voting Ownership Limit, the number of Voting Units held by such Member shall be automatically reduced and the excess Voting Units shall be automatically redistributed among the remaining Members pro rata according to each such Members' respective Economic Percentage Interest. In calculating the Voting Units Adjustment, any applicable Voting Ownership Limit with respect to each Member shall be observed and no Member may hold Voting Units in excess of such Member's applicable Voting Ownership Limit. Upon any change in the ownership of Economic Units for any reason, the Voting Units held by the Members shall be recalculated simultaneously so that each Member holds the number of Voting Units equal to the number of Economic Units held by such Member, subject to any automatic reallocation of Voting Units as required by the Voting Units Adjustment.

The Exchange is the entity that will have regulatory oversight of BSTX. All owners of the Exchange are limited to 40% economic ownership and 20% voting power on the Exchange.[40] In addition, owners of the Exchange that are also Exchange Facility Participants are further limited to a maximum of 20% economic ownership of the Exchange and are still subject to the general limitation of 20% voting power of the

[40] See Exchange LLC Agreement Section 7.3.

Exchange.[41] The Exchange notes these existing ownership limits applicable to owners of the Exchange are not changing.[42] The Exchange believes these 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.[43]

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.

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,[44] 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)

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[41] See Exchange LLC Agreement Section 7.3.
[42] See Securities Exchange Act Release No. 34-66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange) and Securities Exchange Act Release No. 34–88934 (May 22, 2020) 85 FR 32085 (May 28, 2020).
[43] 15 U.S.C. 78f(b)(1).
[44] See BOX Options LLC Agreement Section 2.3.

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;[45] however, the Company may also be dissolved by the affirmative vote of Members holding a majority of all of the then outstanding Voting Percentage Interests (excluding any Voting Percentage Interests held directly or indirectly by tZERO and its Affiliates[46] 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 tZERO and the Company (the "LSA") and described in more detail below.[47]

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[45] See BOX Options LLC Agreement Section 8.1.
[46] An "Affiliate" is defined as "with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership." See Section 1.1, LLC Agreement.
[47] 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 system availability issues 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

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.[48]

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. Section 4.9 of the LLC Agreement provides that, except and only to the extent expressly provided for in the LLC Agreement and the Related Agreements[49] 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 the Company or

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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."

[48] 15 U.S.C. 78f(b)(5).

[49] Related Agreements are referenced in Section 4.9 of the LLC Agreement but are not included in the corresponding Section 4.10 of the BOX Holdings LLC Agreement.

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 4.11 of the LLC Agreement provides that each of the Members and the Directors, Officers, employees and agents of the Company 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 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 Exchange Act. 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 and the BOX Holdings LLC Agreement.[50] 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.

Section 4.1 of the LLC Agreement provides that no Person shall serve as a Director if such Person is subject to a Statutory Disqualification[51] and that the Board will consist of five (5) directors (each a "Director"), comprised of one (1) Director appointed by BOX Digital, so long as BOX Digital holds an Economic Percentage Interest equal to or greater than 35%, one (1) Director appointed by tZERO, so long as tZERO holds an

[50] See BOX Options LLC Agreement Sections 4.1, 4.12 and 3.2 and BOX Holdings LLC Agreement Section 4.10.

[51] "Statutory Disqualification" means a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act. See Section 1.1 of the LLC Agreement.

Economic Percentage Interest equal to or greater than 35% (together with the Director appointed by BOX Digital, each a "Member Director"),[52] one (1) Director who is the CEO,[53] one (1) Director who is the "Regulatory Director," and one (1) Director who is the "Independent Director"[54] appointed by the affirmative vote of a majority of the other Directors. 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, as discussed above. By comparison, the BOX Holdings board of directors uses a tiered system in which board voting is based on ownership percentage of the BOX Holdings owner that appointed each director. Specifically, in the BOX Holdings system, each owner of BOX Holdings is entitled to appoint a number of directors based on the percentage of total outstanding units of BOX Holdings held by such owner[55] and all of the BOX Holdings directors appointed by a single owner of BOX Holdings, together, possess voting power on the BOX Holdings board of directors commensurate with the percentage of outstanding units of BOX

[52] A Member Director will not have more than 20% of the total voting power on any committee of the Board. See Section 4.2(c), LLC Agreement.
[53] Section 4.5 of the LLC Agreement provides that no Person subject to Statutory Disqualification may serve as an Officer of the Company.
[54] The "Independent Director" will be "an individual who is: (i) not an employee of the Company, (ii) not an officer, director or employee of any Member that has the right to appoint a Member Director, and (iii) not associated with any BSTX Participant or broker or dealer." See Section 1.1, LLC Agreement.
[55] See Section 4.1(a), BOX Holdings LLC Agreement.

Holdings held by the owner appointing such directors.[56] The Exchange believes the organization of the BSTX Board is simple and effective in appropriately limiting voting power on the full Board held by any Member to not more than 20% while Major Actions still require the vote of at least four Directors, which means any single Director will not be able to block a Major Action. The Exchange believes this organization of the BSTX Board is consistent with Section 6(b)(1) of the Act by helping to 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. The Company has an Independent Director, who is the Chairman,[57] to avoid any Member or group of Members from controlling or creating deadlock on the Board. The presence of a Regulatory Director selected by the Exchange on the Board is similar to the longstanding practice at the Exchange's other facility, BOX Options, except that the Regulatory Director at BSTX will be a voting Director. 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, 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.[58] 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

[56] See Section 4.3(b), BOX Holdings LLC Agreement.
[57] See Section 4.6, LLC Agreement.
[58] 15 U.S.C. 78f(b)(5).

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.[59] 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, the CEO (as 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 office. 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

[59] LLC Agreement Section 4.3 is based on Section 4.3 of the BOX Options LLC Agreement.

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.[60] 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 foregoing provisions related to the proposed Board structure will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, all consistent with Section 6(b)(5) of the Act.[61]

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 at least four Directors, in each case acting at a

[60] Section 4.3 of the BOX Options LLC Agreement varies from Section 4.3 of the LLC Agreement in that the corresponding sentence in Section 4.3 of the BOX Options LLC Agreement references BOX Holdings Members rather than Members of the existing facility, BOX Options, while Section 4.3 of the LLC Agreement references Members of the proposed facility, BSTX. This difference is because BOX Options is wholly-owned by BOX Holdings and, therefore, BOX Options has only one owner. Accordingly, ownership of the existing facility, BOX Options, diverges with the Members of BOX Holdings while ownership of the proposed facility, BSTX, diverges with the Members of BSTX.

[61] 15 U.S.C. 78f(b)(5).

meeting.[62] 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 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)(iii)) 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 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

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[62] This provision is analogous to Section 4.4 of the BOX Holdings LLC Agreement, pursuant to which MXUS2 and IB have similar rights with respect to major actions of BOX Holdings.

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 Units 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 Agreement[63] with the exception of deletions to references to BOX Options affiliates and owners; deletion of a reference to the BOX Options Facility Agreement; deletion of an event in which any Person, together with its Affiliates, newly holds 20% ownership or more; deletion of an event in which board representation is granted to a Member holding less than 4%; to include cross references to other provisions of the LLC Agreement; to include provisions (x), and (xi) as described above; and to simplify language. The Exchange believes that the listed events should be deemed Major Actions for commercial fairness. The Exchange believes

[63] See Section 4.4 of the BOX Options LLC Agreement and Section 4.4 of the BOX Holdings LLC Agreement.

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, 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.[64] In addition, such requirements enhance the ability of the Exchange and its proposed facility, BSTX, to effectively carry out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.

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 Independent Director may be removed by the affirmative vote of a majority vote of the other Directors, with or without cause. Any Director may be removed by the Board if the Director is subject to a Statutory Disqualification, 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 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

[64] 15 U.S.C. 78f(b)(5).

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, 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 Directors to be removed from the Board in the circumstances described above would be consistent with Section 6(b)(1) of the Act.[65] This is because removal of Directors who have violated the LLC Agreement or federal or state laws 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.

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, 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

[65] 15 U.S.C. 78f(b)(1).

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.[66] 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 Act[67] 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 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.[68]

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[66] 15 U.S.C. 78f(b)(5).
[67] 15 U.S.C. 78f(b)(1).
[68] See Section 4.1(d) of the BOX Options LLC Agreement.

Section 4.11(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, agree to comply and 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.[69]

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 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 System) which will require an affirmative approval by the Exchange prior to implementation, not inconsistent with the LLC Agreement. Planned changes include,

[69] See Section 4.12(b) of the BOX Options LLC Agreement and Section 4.12(b) of the BOX Holdings LLC Agreement.

without limitation: (a) planned or proposed changes to the BSTX System means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market.; (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.[70] These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.[71]

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 System) set forth in Section 3.2(a)(ii) of the LLC Agreement could cause a Regulatory Deficiency[72] 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

[70] The language providing that procedures for requesting and approving changes shall be established by the mutual agreement of the Company and the Exchange does not diminish the power and authority of the Exchange to regulate such changes because, if the Company and the Exchange cannot agree on procedure, the Exchange simply will not approve any such change. By the terms of Section 3.2(a)(ii) of the LLC Agreement, planned or proposed changes to the Company will require an affirmative approval by the Exchange prior to implementation and such affirmative approval will not be given.

[71] See Section 3.2(a)(ii) of the BOX Options LLC Agreement.

[72] "Regulatory Deficiency" is defined as "the operation of the Company (in connection with matters that are not Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX System) in a manner that is not consistent with the Exchange Rules and/or the SEC Rules governing the BSTX Market or BSTX Participants, or that otherwise impedes the Exchange's ability to regulate the BSTX Market or BSTX Participants or to fulfill its obligations under the Act as an SRO. See Section 1.1, LLC Agreement.

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.[73] These provisions ensure the Exchange maintains full regulatory control and authority over BSTX while it operates as a facility of the Exchange.

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 or the BSTX Market (including, but not limited to, the BSTX 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.[74] 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.[75]

The Exchange believes the provisions of Section 3.2(a) help 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.[76]

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[73] See Section 3.2(a)(iii) of the BOX Options LLC Agreement. See Section 1.1, LLC Agreement.
[74] As discussed above, the Exchange will appoint a Regulatory Director who may serve as a Director on any committee(s). Such individual will also have insight and access to important information related to the Company. The Regulatory Director shall (A) have the right to attend all meetings of the Board and any committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of all meeting materials provided to other Directors, including agendas, action items and minutes for all meetings. (See LLC Agreement §4.2(c).)
[75] See Section 3.2(a)(iv) of the BOX Options LLC Agreement.
[76] 15 U.S.C. 78f(b)(1).

Section 3.2(c) of the LLC Agreement states that BOX Digital has provided executive leadership and will provide exclusive rights to the regulatory services of the Exchange with respect to BSTX Products; provided, however, that the foregoing shall limit neither the regulatory authority of the Exchange with respect to BSTX nor the oversight of BSTX by the Exchange. With the consent of the Exchange, BOX Digital holds exclusive rights to the regulatory services of the Exchange with respect to BSTX Products. A BOX Digital director, Lisa Fall, is an experienced executive manager of SROs and exchange facilities. In becoming a Member of BSTX and becoming a party to the LLC Agreement, BOX Digital agreed to contribute these assets to the Company.

Regulatory Funds

The Exchange represents that the Facility Agreement will require the Company to provide adequate funding for the Exchange's operations with respect to the Company, including the regulation of the Exchange. The Facility Agreement will provide that the Exchange receives all fees, including regulatory fees and trading fees, payable by BSTX Participants, as well as any funds received from any applicable market data fees, tape and other revenue. The Exchange represents that fees received from all Exchange facilities, including fees from BSTX Participants, will be adequate to operate the Exchange and to regulate the Company. The Facility Agreement will further provide that the Company will reimburse the Exchange for its costs and expenses to the extent the Exchange's assets are insufficient. The Exchange will require the Company to allocate sufficient available funds to adequately operate the facility until it begins receiving revenues from operations. Prior to commencing operations as a facility of the Exchange, the Company will have all such necessary funds and assets, including furnishings, equipment and

servers to adequately operate the facility. To the extent the Company needs any additional funding to meet this requirement, such funds will be provided to the Company by one or more of its Members.

The Exchange will have sufficient funds to operate and fulfill its regulatory obligations, including regulation of BSTX. Pursuant to Section 9 of the Facility Agreement, the Company will agree that the Exchange has the right to receive all fees, fines and penalties imposed upon BSTX Participants with respect to the Company's trading system ("Regulatory Funds") and all listing fees, market data revenues and transaction 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. In determining the excess funds to remit to the Company, the Exchange will exercise prudent financial management (including cash flow management) and may retain funds for anticipated and unanticipated expenses. 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 with respect to BSTX, 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. The Exchange will not make distributions of

Regulatory Funds to its owners.[77] These provisions ensure Regulatory Funds are used for regulatory purposes and that the Exchange has full control over BSTX with respect to its regulated functions and are designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company. The Exchange believes these proposed provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and has the capacity to be able to carry out the purposes of the Act.

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, all capital contributions contributed to the Company by holders of Units shall be 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.[78]

[77] Regulatory Funds will be used for regulatory purposes and not for non-regulatory purposes. See Section 8.1 of the Exchange LLC Agreement.

[78] See Section 6.2 of the BOX Holdings LLC Agreement.

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 the Board, including the affirmative vote of at least four Directors, 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 all Member Directors to affirmatively vote on the manner to raise additional working capital.[79] 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.[80]

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 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

[79] See Section 6.2 of the BOX Options LLC Agreement.
[80] 15 U.S.C. 78f(b)(5).

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 Economic 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 ownership 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.[81]

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[81] See Section 7.1 of the BOX Options LLC Agreement and Section 8.2 of the BOX Holdings LLC Agreement.

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 Economic 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 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 Economic 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.[82]

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

[82] See Section 10.2 of the BOX Holdings LLC Agreement.

comparison to the 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 System. The intellectual property provisions in the LLC Agreement are materially similar to those in the BOX Options LLC Agreement, although these documents contain certain differences reflecting the fact that, under the LLC Agreement, BSTX has a license with, and receives services from, tZERO pursuant to the LSA and, under the BOX Options LLC Agreement, the software and technology were provided to BOX Options by MX pursuant to a TOSA. The rights of the Members of each of BOX Options and BSTX with respect to their respective intellectual property are substantially similar.[83]

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.

[83] See Article 17 of the LLC Agreement and Article 13 of the BOX Options LLC Agreement.

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

Employees of tZERO will provide to the Company the services discussed above under the LSA. This relationship will be similar to the employees of any other technology service provider providing services to the Exchange or a facility of the Exchange. Pursuant to the LSA and Article 15 of the LLC Agreement, in order to protect the confidential information of the Exchange, tZERO directors, officers and employees will only receive confidential information[84] of the Company or the Exchange, pertaining to regulatory matters of the Company or the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company or any of its subsidiaries, on a need-to-know basis as it relates to the technology services being provided or specific roles with respect to the Company and the Exchange. Directors, officers and employees of tZERO will be subject to confidentiality obligations with respect to any confidential information they receive in the course of performing their services, including regulatory information. tZERO employees providing technology services to the Company or the Exchange will have

[84] "Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data, trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure. See Section 1.1, LLC Agreement.

offices physically separate from employees of the Company and the Exchange. As discussed below, the Exchange will continue to have all authority to direct its facilities and service providers, including tZERO. tZERO and its employees will not have operational control of the Company or its systems and will not have authority to make changes to the BSTX System except under the direction of, and after receiving the consent of, the facility under the direction of the Exchange or the Exchange itself. All operational control of BSTX and the BSTX System will be retained by BSTX, under the regulatory authority of the Exchange, except for regulatory and surveillance systems which will be controlled directly by the Exchange. tZERO will provide technology support services to the Exchange and the proposed facility, BSTX.

Non-competition

Section 16.1 of the LLC Agreement provides that, for so long as it holds, directly or indirectly, a combined Voting 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 securities with a blockchain component or in any person engaged in the creation and/or operation of any U.S.-based market for the secondary trading of securities with a blockchain component. The non-competition provision is substantially the same as the non-competition provision in the BOX Holdings LLC Agreement.[85]

[85] See Section 16.1 of the BOX Holdings LLC Agreement. The scope of activities triggering noncompetition obligations is different between the LLC Agreement and BOX Holdings LLC due to the different type of securities being traded on each facility.

<u>Changes in Ownership of the Company</u>

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 (each, a "Transfer") its Units 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, including any Statutory 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, such Member, and transfers to any Person that is a wholly owned Affiliate of such Member.[86] Voting Units may not be disposed of, sold, alienated, assigned, exchanged, participated, subparticipated, encumbered, or otherwise transferred in any manner separately from

[86] See Section 7.1(a) of the BOX Holdings LLC Agreement. The provisions of BOX Holdings LLC Agreement include additional exceptions to the definition of "Transfer" in order to accommodate formerly existing Class C Units and rights of IB to transfer Units that are special to BOX Holdings.

their related Economic Units. A holder of Units will provide prior written notice to the Exchange of any proposed Transfer. Any Transfer or other ownership transaction which violates the Transfer restrictions in the LLC Agreement will be void and ineffectual and will not bind or be recognized by the Company.[87]

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 by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member; 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 by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member; and if that person is a transferee, a determination by the Company that the Transfer was permitted by the LLC Agreement. Whether or not a transferee who acquired any Units 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 Units, 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

[87] See LLC Agreement, Section 7.4(d).

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 LLC Agreement.[88]

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 Economic Units, 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.[89] 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.[90] 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 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 Act[91] because it would help ensure that the

[88] See Section 7.1 of the BOX Holdings LLC Agreement.
[89] See Sections 7.2 and 7.3 of the BOX Holdings LLC Agreement.
[90] 15 U.S.C. 78f(b)(5).
[91] 15 U.S.C. 78f(b)(1).

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 or other ownership transaction that results in that Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any related person of that Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting 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, a Voting Percentage Interest or Economic Percentage Interest of five percent (5%) or more will, immediately upon acquiring knowledge of its ownership thereof, give the Company written notice of that ownership. In addition, any transfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Voting Percentage Interest or Economic Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% 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(h) 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 an Economic Percentage Interest or Voting Percentage Interest in the Company equal to or greater than 20%. Exhibit 5B attached hereto contains instruments of accession that will be executed by all Controlling Persons prior, and as a condition, to commencement of operations of BSTX as a facility of the Exchange. Following commencement of operations as a facility of the Exchange, any new Controlling Person will be required to execute an amendment in substantially the same form as the instruments of accession attached as Exhibit 5B hereto 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 further amendments to the LLC Agreement will then 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 respective 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. As a result, any new Member or other direct or indirect owner of an equity interest in BSTX that is subject to the requirements of Section 7.4(h), 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.[92] The Exchange will implement policies and procedures, including annual attestations by Members, to ensure potential direct and indirect owners of BSTX are required to provide any required notice to BSTX or to take other actions, such as executing an amendment to the LLC Agreement upon establishing a Controlling Interest, if applicable, and to monitor compliance with the proposed provisions related to changes in ownership and control.

In accordance with Section 7.4(i) of the LLC Agreement and as discussed above, in the event that a Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%, alone or together with any Related Person of such Member (Voting Units so owned in excess of 20% being referred to as "Excess Voting Units"), the Member, and its designated Director, if applicable, will have no voting rights with respect to any action relating to the Company nor will the Member be entitled to give any proxy in relation to a vote of the Members, with respect to the Excess Voting Units held by such Member. The Member's Excess Voting Units will be counted for quorum purposes and will be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). An effective rule filing pursuant to Section 19 of the Exchange Act will be required before any Member, or any Related Person of such Member, becomes a BSTX Participant if the Member, alone or together with its Related Persons, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more

[92] See Section 7.1(b)(i), LLC Agreement.

than 20% of the Directors and, unless a rule filing authorizing the foregoing is first effective, the Member, or any of its Related Persons, will not be registered as a BSTX Participant. The Exchange notes that Section 7.4 of the Company's LLC Agreement is similar in substance to provisions of the BOX Holdings LLC Agreement, subject to changes related to different Company structure.[93] Section 7.4(f) and (g) are similar in substance to provisions of the BOX Exchange LLC Agreement.[94]

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 excluding the vote of any Director appointed by such Member subject to sanction, 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 such Member is subject to a Statutory Disqualification; (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

[93] See Section 7.4 of the BOX Holdings LLC Agreement.
[94] See Sections 7.3(f) and (g) of the BOX Exchange LLC Agreement.

general, protects investors and the public interest, consistent with Section 6(b)(5) of the Act.[95] 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.[96] 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 the affirmative vote of at least four Directors, and any amendment of a provision specific to any Member or the Exchange requires the consent of such Member or the Exchange (as applicable). In addition, the Company shall provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to the 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.[97] These provisions are similar to provisions in the BOX Holdings

[95] 15 U.S.C. 78f(b)(5).
[96] 15 U.S.C. 78f(b)(1).
[97] A proposed rule change can also become effective by operation of law. See 15 U.S.C. 78s(b)(2).

LLC Agreement but differ in details related to the different ownership structure of the Company.[98]

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.[99] 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,[100] as it relates to the securities regulations and

[98] See Section 18.1 of the BOX Holdings LLC Agreement.
[99] See Section 3.2 of the BOX Options LLC Agreement.
[100] "Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data,

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.[101] Under Sections 15.1 and 15.2(a) of 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

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trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure. See Section 1.1 of the LLC Agreement.

[101] See Article 12 of the BOX Options LLC Agreement.

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[102] 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 SEC, 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 SEC or the Exchange. 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 SEC, and the Exchange to access and examine that Confidential Information pursuant to the federal

[102] "Member Information" means all non-public records, books, contracts, reports, instruments, computer data and other data and information concerning the other Members or the Exchange. See Section 15.3, LLC Agreement.

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 SEC or the Exchange. These are substantially the same provisions that are contained in the BOX Options LLC Agreement.[103] The Exchange believes its ability to protect against inappropriate disclosure and dissemination of its Confidential Information is essential to preserving and protecting the Exchange's ability to effectively carry out its regulatory obligations.

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 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.[104]

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[103] See Sections 12.5 and 12.6 of the BOX Options LLC Agreement.
[104] 15 U.S.C. 78f(b)(5).

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. The ability of the Exchange to maintain regulatory jurisdiction over the Company's Members permits the Exchange and the SEC to exercise their respective regulatory oversight responsibilities and allows the Exchange to comply with its obligations to maintain orderly markets. The Exchange believes that this would be consistent with Section 6(b)(1) of the Act[105] 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 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.[106] 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 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

[105] 15 U.S.C. 78f(b)(1).
[106] See Section 11.1 of the BOX Holdings LLC Agreement.

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.[107]

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.[108] 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.[109] 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

[107] See Section 14.6 of the BOX Options LLC Agreement.
[108] See Section 14.6(c) of the BOX Options LLC Agreement.
[109] 15 U.S.C. 78f(b)(5).

that this, in turn, would be consistent with Section 6(b)(1) of the Act[110] 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,[111] provides that the LLC Agreement may only be amended by an agreement in writing approved by the Board, including the affirmative vote of at least four Directors, 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 such 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

[110] 15 U.S.C. 78f(b)(1).
[111] See Section 18.1 of the BOX Holdings LLC Agreement.

the Company, the Exchange will no longer be a party to the 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.[112] The Exchange believes that these provisions are consistent with Section 6(b)(1) of the Act[113] 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.

Exchange Organization

As more fully described in the Multiple Facilities Filing,[114] the Exchange Bylaws require that, upon the Company becoming a facility of the Exchange, at least one member of the Board would be selected from among the officers, directors and employees of BSTX Participants (a "Participant Director").[115] The Executive Committee of the Exchange, if any, is required to include at least one Participant Director from BSTX and a quorum for the transaction of business must include at least one Participant Director from one of the Exchange's facilities. At least twenty percent (20%) of the members of

[112] 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, 4.10, 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.
[113] 15 U.S.C. 78f(b)(1).
[114] See Securities Exchange Act Release No. 888934 May 22, 2020, 85 FR 32085 May 28, 2020.
[115] See Exchange Bylaws Section 4.02.

the Executive Committee must be Participant Directors and at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each then existing Exchange Facility.[116] A Participant Director could serve on other Board committees but would be prohibited from serving on the Compensation and Regulatory Oversight Committees.[117] The Exchange's Hearing Committee is not comprised of directors of the Exchange but does include Exchange Facility Participants, which could include one or more BSTX Participants.[118] The Exchange Bylaws also provide that each facility of the Exchange be entitled to designate a "Facility Director" to serve on the Board. The Facility Director could serve on Board committees, including any Executive Committee of the Board,[119] but would be prohibited from serving on the Compensation and Regulatory Oversight Committees.[120]

Also as more fully described in the Multiple Facilities Filing, the Exchange Bylaws require that, upon the Company becoming a facility of the Exchange, at least one member of the Exchange Nominating Committee would be selected from among the officers, directors and employees of BSTX Participants (a "Participant Representative").[121] The Exchange Bylaws also provide that each facility of the Exchange be entitled to designate a "Facility Representative" to serve on the Exchange Nominating Committee.[122]

As soon as practicable after the commencement of operations of BSTX as a new facility of the Exchange, a Participant Director, Participant Representative, Facility

[116] See Exchange Bylaws Section 6.04.
[117] See Exchange Bylaws Sections 6.06 and 6.07.
[118] See Exchange Bylaws Section 6.08(a).
[119] See Exchange Bylaws Section 6.04.
[120] See Exchange Bylaws Sections 6.06 and 6.07.
[121] See Exchange Bylaws Section 4.06(a).
[122] See Exchange Bylaws Section 4.06(a).

Director and Facility Representative will be appointed by the Exchange Board from among the eligible individuals with respect to the new facility and such individuals shall serve in such respective capacities until the first annual meeting of the Exchange Members following such appointment, when the regular selection processes shall govern.[123]

b) Statutory Basis

In addition to the sections above that discuss provisions of the LLC Agreement, amendments to the LLC Agreement and 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,[124] in general, and furthers the objectives of Section 6(b)(1),[125] 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 Facility Participants and persons associated with its Exchange Facility Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[126] 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

[123] See Section 4.02, Exchange Bylaws.
[124] 15 U.S.C. 78f(b).
[125] 15 U.S.C. 78f(b)(5).
[126] 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the provisions in the Exchange Bylaws that BSTX Participants will be represented by a Participant Director on the BOX Exchange Board and a Participant Representative on the Exchange Nominating Committee and that they will be chosen by BSTX Participants provides for the fair representation of BSTX Participants in the selection of directors and the administration of BOX Exchange and is consistent with the requirement in Section 6(b)(3) of the Act.[127] This requirement helps to ensure that BSTX Participants have a voice in the use of self-regulatory authority and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[128] In addition, the Exchange believes the provision in the Exchange Bylaws that a Facility Director representing the Company would serve on the BOX Exchange Board and a Facility Representative would serve on the BOX Exchange Nominating Committee provides additional protection for both the Company and BSTX Participants and helps to ensure these entities have a voice in the use of self-regulatory authority and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

No Members of BSTX and no Affiliates of such Members are currently Exchange Facility Participants. No Members of BSTX are expected to be BSTX Participants when BSTX begins operations as a facility of the Exchange. Nevertheless, the Exchange believes the provisions discussed above, limiting BSTX Participants to a maximum of 20%

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[127] 15 U.S.C. 78f(b)(3).

[128] See, e.g., Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006 (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order"), and BATS Order, supra note 21. See also Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) ("NYSE/Archipelago Merger Approval Order").

economic ownership and 20% voting ownership at the proposed facility, BSTX, and limiting Exchange Facility Participants to a maximum of 20% economic ownership in the Exchange and 20% voting power at the Exchange, are consistent with the requirements of the Act and Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.[129] These limitations are designed to help prevent a BSTX Participant from exercising undue control over the operation of the facility and help prevent an Exchange Facility Participant from exercising undue control over the operation of the Exchange. These limitations are also designed to help ensure the Exchange is able to effectively carry out its regulatory obligations under the Act and its facility, BSTX, is able to effectively carry out its regulatory obligations as a facility of the Exchange under the Act. In addition, these limitations are designed to address conflicts of interests that could arise from a BSTX Participant owning interests in BSTX, a proposed facility of the Exchange, or in the Exchange itself. Without such limitations, a BSTX Participant's interest in the Exchange or its facility, BSTX, could become so large as to cast doubts on whether the Exchange and its facility, BSTX, may fairly and objectively exercise self-regulatory responsibilities with respect to such BSTX Participant.[130] If a BSTX Participant became a controlling owner of the Exchange, BSTX could seek to exercise the controlling influence by directing the Exchange or its facility, BSTX, to refrain from, or the Exchange or BSTX could hesitate to, diligently monitor and conduct surveillance of the BSTX Participant's conduct or diligently enforce the Exchange's rules and the federal securities laws with respect to conduct by a BSTX Participant that violates such provisions. As such, these requirements are expected to minimize the potential that a BSTX Participant

[129] 15 U.S.C. 78f(b)(1).
[130] See, e.g., DirectEdge Exchanges Order and BATS Order, supra note 21.

or any other Exchange Facility Participant could use its ownership to improperly interfere with or restrict the ability of the Exchange or its facility, BSTX, to effectively carry out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act. [131]

As discussed above, the Exchange at all times has, and will continue to have, regulatory authority over its facilities, including the proposed facility, BSTX. 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 shall receive notice of all planned or proposed changes to BSTX (other than Non-Market Matters). This authority ensures that while BSTX operates as a facility of the Exchange, it will be required to submit any such changes to the Exchange for approval and the Exchange will have the right to direct BSTX to make any modifications deemed necessary or appropriate by the Exchange to resolve any Regulatory Deficiency. This regulatory authority overrides any authority of BSTX management, its Members or its Board regardless of any Member's level of ownership or control of the Board at the facility level.

The Exchange is the entity that will have and exercise regulatory oversight of the proposed facility, BSTX. As discussed above, the Exchange notes the existing ownership limits of 20% voting power and 40% economic ownership currently applicable to all owners of the Exchange are not changing. Accordingly, the Exchange believes these

[131] 15 U.S.C. 78f(b)(1).

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. Similarly, the 20% voting power and 40% economic ownership limits applicable to BSTX achieve the same objectives at the facility. The Exchange further believes these limits, which apply to its current facility, continue to be appropriate in connection with the proposed new facility and are consistent with the requirements of the Act and Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act. [132]

As discussed above, the SEC will be required to be notified if a Member of the facility exceeds 5%, 10% or 15% Economic Percentage Interest or Voting Percentage Interest levels in the Company and rule filings are required when a Person, together with its Related Persons, crosses above 20% Economic Percentage Interest or Voting Percentage Interest or any subsequent 5% increment thereof. These are the same provisions as are contained in the BOX Holdings LLC Agreement. The Exchange believes these proposed notification provisions are consistent with existing provisions in the BOX Holdings LLC Agreement for the Exchange's current facility and are also 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.[133] In particular, SEC notification of ownership 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.

[132] 15 U.S.C. 78f(b)(1).
[133] 15 U.S.C. 78f(b)(1).

Subject to the regulatory oversight by the Exchange, the proposed facility's Board has full authority to manage the development, operations, business and affairs of the Company without the need for any approval of the Members. A Member does not have authority to decide matters related to the operations of the Company, except by exercising its right, if any, to appoint Directors. As discussed above, the Board of the proposed facility will consist of five (5) Directors, including a Regulatory Director appointed by the Exchange, the CEO and one Independent Director. So long as it owns at least 35% Economic Percentage Interest, each of tZERO and BOX Digital will have the right to appoint one Member Director, comprising a maximum of 20% of all Directors on the facility's Board. Accordingly, the Exchange believes the proposed facility, BSTX, will be so organized as to avoid undue influence by a Member and to ensure the Exchange has the capacity to carry out the purposes of the Act.

As discussed above, 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. The presence of a Regulatory Director selected by the Exchange on the Board is similar 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, 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.[134] 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.

As discussed above, the Company is not permitted to take any action with respect to a Major Action unless approved by the Board, including the affirmative vote of at least four Directors acting at a meeting. The Exchange believes that, in addition to the regulatory oversight of the Exchange and the other safeguards described above, the requirement that all Member Directors of the facility, not just the Member Director appointed by a single Member, must approve Major Actions will promote just and equitable principles of trade, 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act. In addition, such requirements enhance the ability of the Exchange and its proposed facility, BSTX, to effectively carry

[134] 15 U.S.C. 78f(b)(5).

out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.

Although the Company is not independently responsible for regulation, its activities with respect to the operation of the Company must be consistent with, and not interfere with, the self-regulatory obligations of the Exchange. The Exchange believes the requirements in the BSTX LLC Agreement applicable to direct and indirect changes in control of the Company described above, the provisions of the Facility Agreement establishing the Exchange's regulatory control over the Company, as well as the voting limitation imposed on owners of the Company who also are BSTX Participants described above, are appropriate to help ensure that the Exchange is able to effectively carry out its self-regulatory responsibilities, including over the Company, and are consistent with the requirements of the Act.

In addition, each Member of BSTX and each Controlling Person thereof must give due regard to the preservation of the independence of the self-regulatory function of the Exchange and must not take any action that would interfere with the effectuation of decisions by the Exchange Board or interfere with the Exchange's ability to carry out its responsibilities under the Act.[135] Each Member of BSTX and each Controlling Person thereof[136] also is required to take such action as is necessary to ensure that its directors, officers and employees consent to giving due regard to the preservation of the independence of the self-regulatory function of the Exchange and to not taking any action that would interfere with the effectuation of decisions by the Exchange Board or interfere with the

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[135] See Section 4.6(a) of the Exchange LLC Agreement and Section 4.11(a) of the BSTX LLC Agreement.
[136] See the LLC Agreement Section 7.4(h)(i)

Exchange's ability to carry out its responsibilities under the Act to the extent related to the operation or administration of the Exchange or the Company. The Exchange believes these provisions which are designed to help maintain the independence of BOX Exchange's regulatory function, are appropriate and consistent with the requirements of the Act, particularly 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.[137]

Item 4. 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.

Item 5. 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 from members, participants, or others on the Proposed Rule Change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The Proposed Rule Change is based on the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement.

[137] 15 U.S.C. 78f(b)(1).

Item 9. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 4A - Proposed changes to LLC Agreement by amendment

Exhibit 4B - Proposed changes to Form of Instrument of Accession by amendment

Exhibit 5A - Form of Third Amended and Restated BSTX LLC Agreement

Exhibit 5B - Form of Instruments of Accession

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-BOX-2021-14)

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change in connection with the proposed commencement of operations of Boston Security Token Exchange LLC ("BSTX")

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 [DATE], 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 establishment of Boston Security Token Exchange LLC (the "Company" or "BSTX"), as a facility, of the Exchange. 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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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 establishment of BSTX as a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Act.[3] Pending trading rules filed as part of a separate rule filing pursuant to the rule filing process under Section 19 of the Act and approved by the Commission, BSTX will operate the BSTX Market.[4] The Proposed Rule Change is to establish BSTX as a facility of the Exchange and, without trading rules approved by the Commission, will not permit BSTX to commence operations of the BSTX Market. However, the approval of the Proposed Rule Change, and BSTX as a facility of the Exchange, will trigger the regulatory oversight responsibilities of the Exchange with respect to BSTX.

BSTX, when approved as a facility of the Exchange, will be subject to regulatory oversight by the Exchange. In addition, the Exchange will enter into a facility agreement with BSTX (the "Facility Agreement") prior to commencement of operations 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

[3] 15 U.S.C. 78c(a)(2).

[4] See Securities Exchange Act Releases No. 92017 (May 25, 2021), 86 FR 29634 (June 2, 2021) and 92796, 86 FR 49416 (September 2, 2021) (collectively with any amendments, "BSTX Rulebook Proposal"). Amendment No. 2 is available on the Commission's website at https://www.sec.gov/comments/sr-box-2021-06/srbox202106.htm.

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 submitted a separate filing to establish rules relating to trading on BSTX.[5] The Exchange also submitted a separate filing to introduce structural changes to the Exchange to accommodate regulation of BSTX in addition to the Exchange's existing facility,[6] which was approved (the "Multiple Facilities Filing").[7] With the addition of BSTX as a facility of the Exchange, BSTX Participants[8] will have the same representation, rights and responsibilities as Exchange Facility Participants[9] 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 Amended and Restated Limited Liability Company Agreement of BOX Options Market

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[5] See BSTX Rulebook Proposal.
[6] Currently, there is only one facility of the Exchange, BOX Options Market LLC.
[7] See Securities Exchange Act Release No. 88934 May 22, 2020, 85 FR 32085 May 28, 2020.
[8] A "BSTX Participant" is a firm or organization that is registered with the Exchange pursuant to Exchange Rules for the purposes of participating in Trading on the BSTX Market as an order flow provider or market maker. "Trading" means the availability of the BSTX System to authorized users for entering, modifying, and canceling orders of BSTX Products. "BSTX System" means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market. "BSTX Product" means a Security, as defined in the Exchange Rules, trading on the BSTX System. "Exchange Rules" means the rules of the Exchange that constitute the 'rules of an exchange' within the meaning of Section 3 of the Act, and that pertain to the BSTX Market. "BSTX Market" means the market operated by BSTX. See Section 1.1, LLC Agreement.
[9] "Exchange Facility Participant" means a firm or organization (including a BSTX Participant) that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on any Exchange Facility. See the Second Amended and Restated Limited Liability Company Agreement of BOX Exchange LLC, dated as of May 29, 2020, as amended, (the "Exchange LLC Agreement") Section 1.1.

LLC, dated as of August 15, 2018 (the "BOX Options LLC Agreement") or, where indicated herein, are the same as provisions of the Second Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC ("BOX Holdings"), dated as of September 13, 2018, as amended (the "BOX Holdings LLC Agreement") or the Exchange LLC Agreement or the bylaws of the Exchange (the "Exchange Bylaws").[10] Currently, BOX Holdings has seven 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 multiple owners, including BOX Digital Markets LLC ("BOX Digital"), a Delaware limited liability company and a subsidiary of BOX Holdings, and tZERO Group, Inc. ("tZERO"), a Delaware corporation and an affiliate of Overstock.com, Inc. 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, processing

[10] The Exchange notes, as further described in the Proposed Rule Change, that certain provisions of the BOX Holdings LLC Agreement 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 voting classes of ownership are not present in the LLC Agreement because BSTX has only one voting class of ownership. See, e.g., Sections 4.1, 4.4, 4.13 and 7 of the BOX Holdings LLC Agreement.

information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Act.[11]

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

Ownership interests of the Company are represented by Units.[12] The Company will have two classes of Units: Economic Units[13] and Voting Units.[14] All Economic Units are identical to each other and accord the holders thereof the same obligations, rights, and privileges as accorded to each other holder thereof. Similarly, all Voting Units are identical to each other and accord the holder thereof the same obligations, rights, and privileges as accorded to each other holder thereof. The duly admitted holders of Units are referred to as the members of the Company ("Members").[15] Economic Units represent equity interests in the Company and entitle the duly admitted holders thereof to participate in the Company's allocations and distributions. Voting Units represent voting

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[11] 15 U.S.C. 78f(b)(5).

[12] "Units" means Economic Units and/or Voting Units. See Section 1.1, LLC Agreement. References herein to "Units" refer to Economic Units and Voting Units of the Company unless a separate class is specified.

[13] "Economic Units" are equal units of limited liability company interest in the Company collectively comprising all interests in the profits and losses of the Company and all rights to receive distributions from the Company. Economic Units shall not include any right to vote. Each Economic Unit is identical to each other Economic Unit and accords a Member holding such Economic Unit the same obligations, rights and privileges as are accorded to each other holder thereof. See Section 2.5(a), LLC Agreement.

[14] "Voting Units" are equal units of limited liability company interest in the Company collectively comprising all voting interests of Members with respect to Company matters. For the avoidance of doubt, the ownership or possession of Voting Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights shall be vested only in duly admitted Members of the Company), or to exercise any right of a Member of the Company under the LLC Agreement, the LLC Act or other applicable law. See Sections 1.1 and 2.5, LLC Agreement. Members vote on admitting additional or substitute Members (Section 7.1(b), LLC Agreement), admitting personal representatives and successors in interest of a Member (Section 7.5, LLC Agreement) and the dissolution and winding up of the Company (Section 10.1(a)(iii), LLC Agreement).

[15] All Members are already parties to the LLC Agreement.

interests in the Company and entitle the duly admitted holders thereof to participate in votes of the Company's Members. Each Member will be a holder of Voting Units and Economic Units.[16] The Company has eleven Members. Upon adoption of the LLC Agreement, existing ownership interests in the Company will convert into Economic Units and Voting Units such that BOX Digital will own 40% Economic Percentage Interest,[17] tZERO will own 40% Economic Percentage Interest, FBP Digital LLC will own 11.1% Economic Percentage Interest [18] and each of the following will own less than 5% Economic Percentage Interest: Susan Chamberlin (1.9%),[19] Saum Noursalehi (0.4%), Will Easley (0.4%),[20] Alan Konevsky (0.7%),[21] Jay Fraser (1.4%), Enid Acquisition LLC (1.9%),[22] Chris Zaremba (1.4%), and Todd Treworgy (0.4%). Upon adoption of the LLC Agreement, BOX Digital will own 20% Voting Percentage Interest,[23] tZERO will own 20% Voting Percentage Interest, FBP Digital LLC will own 19.6% Voting Percentage Interest and each of the following will own less than 10% Voting Percentage Interest: Susan Chamberlin (8.8%), Saum Noursalehi (2.1%), Will Easley (2.1%), Alan Konevsky (3.1%), Jay Fraser (6.6.%), Enid Acquisition LLC (8.8%), Chris Zaremba (6.6%), and Todd Treworgy (2.2%). Accordingly, no Person will own more than 40% of the Economic Units or 20% of the Voting Units and no Person has the ability, unilaterally, to

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[16] See Section 2.5(c), LLC Agreement.

[17] "Economic Percentage Interest" means, with respect to a Member, the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage. See Section 1.1, LLC Agreement.

[18] Lisa Fall wholly owns FBP Digital LLC. Ms. Fall is a Director and CEO of BSTX and is a director of BOX Digital.

[19] Susan Chamberlin is a Director and Chairman of BSTX.

[20] Will Easley wholly owns Aragon Solutions Ltd. Mr. Easley is a director of BOX Holdings, BOX Options and BOX Digital.

[21] Alan Konevsky is a Director of BSTX and CEO of tZERO.

[22] Enid Acquisition LLC is wholly owned by Glen Openshaw.

[23] "Voting Percentage Interest" means, with respect to a Member, the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage. Voting Units held by a Member that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio. See Section 1.1, LLC Agreement.

exert control over the Company. Pursuant to Section 1.1 of the LLC Agreement, a record of the Members is maintained by the Secretary of the Company and updated from time to time as necessary and as provided in the LLC Agreement ("Membership Record").[24] These provisions are substantially the same as those in the Exchange LLC Agreement.[25]

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 seven separate, unaffiliated owners, including MX US 2, Inc. ("MXUS2"), a wholly owned, indirect subsidiary of TMX Group Limited ("TMX"), which holds 47.89% of the outstanding units of BOX Holdings, IB Exchange Corp. ("IB"), which holds 25.50% of the outstanding units of BOX Holdings, and Citadel Securities Principal Investments LLC ("Citadel"), which holds 15.50%. The other four owners of BOX Holdings, UBS Americas Inc., JPMC Strategic Investments I Corporation, Wolverine Holdings, L.P. and Aragon Solutions Ltd, each hold less than 5% of the outstanding units of BOX Holdings.[26]

Owners of BOX Holdings ("BOX Holdings Members") hold Class A and Class B Units (together, "Holdings Units").[27] Holdings Units represent equal units of economic

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[24] The Membership Record shall include the name and address of each Member and the number of Economic Units and Voting Units held by each Member.
[25] See Exchange LLC Agreement Sections 1.1 and 2.5.
[26] Current equity ownership, including voting power, of Members of BOX Holdings are reflected in Securities Exchange Act Release No. 93778 December 14, 2021, 86 FR 241 December 20, 2021.
[27] Class B Units of BOX Holdings are identical to Class A Units except Class B Units include conversion rights, a liquidation preference and class voting rights with respect to those matters. See BOX Holdings LLC Agreement §§1.1 and 2.5.

rights in BOX Holdings. Voting rights of BOX Holdings Members generally follow the ownership percentage (the "Holdings Ownership Percentage") based on the ratio of the number of Holdings Units held by each BOX Holdings Member to the total number of Holdings Units issued and outstanding.[28] As discussed above, the Holdings Ownership Percentage of each BOX Holdings Member greater than 5% is as follows: MXUS2: 47.89%; IB: 25.50% and Citadel: 15.50%.

However, BOX Options Participants[29] are limited to a maximum of 20% voting power for votes of BOX Holdings Members and votes of directors appointed by an BOX Options Participant on the BOX Holdings board of directors.[30] IB holds a Holdings Ownership Percentage greater than 20% and therefore, as a BOX Options Participant, is limited to voting power with respect to BOX Holdings of no greater than 20%. As a result, IB's voting power with respect to votes of BOX Holdings Members that would otherwise be greater than 20% is counted for quorum purposes and voted by the person presiding over quorum and vote matters in the same proportion as the remainder of the vote. This limitation effectively automatically reallocates IB's voting power above 20% to the other BOX Holdings Members and, as a result, each of the other BOX Holdings Members has greater voting power at BOX Holdings than its Holdings Ownership Percentage. The respective voting power of each BOX Holdings Member that is greater than 5% is as follows: MXUS2: 51.43%; IB: 20.00% and Citadel: 16.65%.

Further, one BOX Holdings Member, Wolverine Holdings, L.P. ("Wolverine"), does not currently have a right to designate a director to the BOX Holdings board of directors, where the voting power of each director is tied to the voting power of the BOX

[28] See BOX Holdings LLC Agreement Section 1.1.

[29] "BOX Options Participant" means an Exchange Facility Participant that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on the BOX Options Market. See BOX Holdings LLC Agreement Section 1.1.

[30] See BOX Holdings LLC Agreement Section 7.4(h).

Holdings Member that appointed such director.[31] As a result of IB's limited voting power and Wolverine's lack of board representation, the voting power of the respective BOX Holdings directors designated by each of the other BOX Holdings Members is greater than the respective BOX Holdings Member's voting power with respect to BOX Holdings Member matters. The BOX Holdings board voting power of directors designated by each of the BOX Holdings Members greater than 5% is as follows: MXUS2: 53.34%; IB: 20.00% and Citadel: 17.27%.

Medici Ventures, L.P. ("Medici"), a Delaware limited partnership, owns 44% of the outstanding shares of tZERO, Overstock.com, Inc. ("Overstock"), a publicly held corporation organized under the laws of the state of Delaware, owns 43% of the outstanding shares of tZERO, Joseph Cammarata holds 7.53% of the outstanding shares of tZERO, 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. Pelion MV GP, L.L.C. ("Medici GP"), a Delaware limited liability company, serves as the general partner of Medici and has the sole right to manage its affairs. Medici GP owns 1% of the partnership interests in Medici (along with a profits interest in Medici), and Overstock owns 99% of the partnership interests in Medici. Membership interests in Medici GP are held by the following, each of which

[31] See BOX Holdings LLC Agreement Section 4.3(b).

holds less than 25% of Medici GP: Carine Clark, Susannah Duke, Steve Glover, Brad Hintze, Jeff Kearl, Trevor Lund, Matt Mosman, Erika Nash, Zain Rizavi, Laura Summerhays, The Blake G Modersitzki 2020 Irrevocable Trust (affiliated with Blake G. Modersitzki), The Capitola Trust (affiliated with Chad Packard), The GP Investment Trust (affiliated with Chris Cooper) and The Oaxaca Dynasty Trust (affiliated with Ben Lambert). Therefore, both tZERO and the Company are affiliates of Overstock, Medici and Medici GP.

Pursuant to Section 7.4(h)(i) of the LLC Agreement, any Controlling Person[32] is required to become a party to the LLC Agreement and abide by its provisions, to the same extent and as if they were Members. This provision and the associated definitions of Controlling Person and Controlling Interest are the same as currently apply to BOX Holdings.[33] Accordingly, prior to commencing operations as a facility of the Exchange, BSTX will obtain, from each Controlling Person, an instrument of accession substantially

[32] 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(h)(iv)(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(h)(iv)(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 agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (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." A "Person" is defined as "any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof." See Section 1.1, LLC Agreement.
[33] See Section 7.4(g), BOX Holdings LLC Agreement.

in the form attached hereto as Exhibit 5B. 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. Medici, Medici GP and Overstock are indirect owners of the Company. Medici GP owns 1% of the partnership interests and a profits interest in Medici and acts as Medici's general partner. Overstock owns 43% of tZERO directly and 99% of Medici, which owns 44% of tZERO. As a result, Overstock owns, directly or indirectly, more than 80% of tZERO, which will own 40% of the Economic Units and 20% of the Voting Units of BSTX. Overstock, Medici and Medici GP will be required to become parties to the Company's 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. Similarly, BOX Holdings, MXUS2, 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 100% of MX US 1, Inc., which owns 100% of MXUS2, which owns more than 40% of BOX Holdings. Each of these upstream owners of BOX Holdings is a Controlling Person of BOX Holdings required to be, and is, a party to, and be subject to, the BOX Holdings LLC Agreement. BOX Holdings owns 98% of BOX Digital, which will own 40% of the Economic Units and 20% of the Voting Units of BSTX. There are no other Controlling Persons of BSTX.

Pursuant to Section 7.4(i) of the LLC Agreement, [34] in the event any Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%, alone or together with any Related Person of such Member (Voting Units owned in excess of 20% being referred to as "Excess Voting Units"), the Member and its designated Director, if applicable, shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Voting Units held by such Member; provided, however, that whether or not such Member otherwise participates in a meeting in person or by proxy, such Member's Excess Voting Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). In addition, an effective rule filing pursuant to Section 19 of the Act shall be required prior to any Member, or any Related Person of such Member, becoming a BSTX Participant if such Member, alone or together with any Related Persons of such Member, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more than 20% of the Directors and, unless a rule filing authorizing the foregoing is first effective, such Member, or any Related Person of such Member, shall not be registered as a BSTX Participant. These limitations are designed to prevent a market participant from exerting undue influence on a facility of the Exchange. Related Persons will be grouped together when applying these limits. Accordingly, any Related Persons of tZERO or another Member, together holding

[34] LLC Agreement Section 7.4(i) is based on Section 7.4(h) of the BOX Holdings LLC Agreement.

greater than 20% Economic Percentage Interest or Voting Percentage Interest, will not be a BSTX Participant without completing the rule filing process. The Exchange believes this proposed 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.[35] 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.

Any Member shall provide the Company with written notice fourteen (14) days prior, and the Company shall provide the SEC and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that would result in such Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any Related Person of such Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting Percentage Interest levels of 10% and 15%.[36] Further, rule filings are required for any transfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Economic Percentage Interest or Voting Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% level (i.e., 25%, 30%, etc.).[37] 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

[35] 15 U.S.C. 78f(b)(1).
[36] See LLC Agreement, Section 7.4(e). LLC Agreement Section 7.4(e) is based on Section 7.4(e) of the BOX Holdings LLC Agreement.
[37] See LLC Agreement, Section 7.4(e). LLC Agreement Section 7.4(e) is based on Section 7.4(f) of the BOX Holdings LLC Agreement.

purposes of the Act.[38] In particular, SEC notification of ownership 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. Similarly, Exchange notification of ownership interests exceeding certain percentage thresholds can help improve the Exchange's ability to effectively monitor and surveil for potential undue influence and control over the operation of the Exchange and the Company.

Pursuant to Section 7.4(f) of the LLC Agreement, no Transfer[39] or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Economic Percentage Interest greater than 40% (such Person's "Economic Ownership Limit") shall be effective without both the approval of the Exchange and an effective the rule filing pursuant to Section 19 of the Exchange Act (an "Economic Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have an Economic Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of an Economic Ownership Limit Waiver. The Exchange may only approve an Economic Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, an "Economic Waiver Determination") that such Economic Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, such Economic Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX,

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[38] 15 U.S.C. 78f(b)(1).

[39] "Transfer" means the actions of a Person to "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" its Units but does not include "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, such Member, or transfers to any Person that is a wholly owned Affiliate of such Member." See LLC Agreement, Section 7.1(a).

such Economic Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and, if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making an Economic Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Economic Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire an Economic Percentage Interest in excess of the Economic Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire an Economic Percentage Interest in excess of the applicable Economic Ownership Limit. Any Member may voluntarily set a lower Economic Ownership Limit for itself upon providing written notice thereof to the Secretary.

Similarly, pursuant to Section 7.4(g) of the LLC Agreement, no Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest greater than 20% (such Person's "Voting Ownership Limit") or having the power to vote, direct the vote or give any consent or proxy in excess of the Voting Ownership Limit, or entering into any agreement, plan or other arrangement with any other Person under circumstances that would result in the Voting Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being

withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit, and no Transfer or other event that would result in exceeding such Voting Ownership Limit shall be effective without both the approval of the Exchange and an effective rule filing pursuant to Section 19 of the Exchange Act (a "Voting Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have a Voting Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of a Voting Ownership Limit Waiver. The Exchange may only approve a Voting Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, a "Voting Waiver Determination") that such Voting Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, such Voting Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, such Voting Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and, if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making a Voting Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Voting Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire a Voting Percentage Interest in excess of the Voting Ownership Limit shall have

delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire a Voting Percentage Interest in excess of the applicable Voting Ownership Limit. Any Member may voluntarily set a lower Voting Ownership Limit for itself upon providing written notice thereof to the Secretary. No Person shall enter into any agreement, plan or other arrangement with any other Person where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit. Except as required by the Voting Units Adjustment (defined below), each Member will hold the number of Voting Units equal to the number of Economic Units held by such Member. Notwithstanding the foregoing, the following adjustment shall be made to the allocation of Voting Units among the Members (the "Voting Units Adjustment"): At all times, to the extent any Member holds an Economic Percentage Interest in excess of such Member's applicable Voting Ownership Limit, the number of Voting Units held by such Member shall be automatically reduced and the excess Voting Units shall be automatically redistributed among the remaining Members pro rata according to each such Members' respective Economic Percentage Interest. In calculating the Voting Units Adjustment, any applicable Voting Ownership Limit with respect to each Member shall be observed and no Member may hold Voting Units in excess of such Member's applicable Voting Ownership Limit. Upon any change in the ownership of Economic Units for any reason, the Voting Units held by the Members shall be recalculated simultaneously so that each Member holds the number of Voting Units equal to the number of Economic Units held

by such Member, subject to any automatic reallocation of Voting Units as required by the Voting Units Adjustment.

The Exchange is the entity that will have regulatory oversight of BSTX. All owners of the Exchange are limited to 40% economic ownership and 20% voting power on the Exchange.[40] In addition, owners of the Exchange that are also Exchange Facility Participants are further limited to a maximum of 20% economic ownership of the Exchange and are still subject to the general limitation of 20% voting power of the Exchange.[41] The Exchange notes these existing ownership limits applicable to owners of the Exchange are not changing.[42] The Exchange believes these 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.[43]

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.

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

[40] See Exchange LLC Agreement Section 7.3.
[41] See Exchange LLC Agreement Section 7.3.
[42] See Securities Exchange Act Release No. 34-66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange) and Securities Exchange Act Release No. 34–88934 (May 22, 2020) 85 FR 32085 (May 28, 2020).
[43] 15 U.S.C. 78f(b)(1).

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,[44] 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;[45] however, the Company may also be dissolved by the affirmative vote of Members holding a majority of all of the then outstanding Voting Percentage Interests (excluding any Voting Percentage Interests held directly or indirectly by tZERO and its Affiliates[46] from the numerator and the denominator for such calculation) taken within 180 calendar days after the occurrence of any "Trigger Event"

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[44] See BOX Options LLC Agreement Section 2.3.

[45] See BOX Options LLC Agreement Section 8.1.

[46] An "Affiliate" is defined as "with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership." See Section 1.1, LLC Agreement.

as such term is defined in the IP License and Services Agreement entered into by and between tZERO and the Company (the "LSA") and described in more detail below.[47] 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.[48]

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. Section 4.9 of the LLC Agreement provides that, except and only to the extent expressly provided for in the LLC Agreement and the Related

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[47] 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 system availability issues 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."

[48] 15 U.S.C. 78f(b)(5).

Agreements[49] 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 the 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 4.11 of the LLC Agreement provides that each of the Members and the Directors, Officers, employees and agents of the Company 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 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 Exchange Act. 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 and the BOX Holdings LLC Agreement.[50] 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.

Section 4.1 of the LLC Agreement provides that no Person shall serve as a Director if such Person is subject to a Statutory Disqualification[51] and that the Board will

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[49] Related Agreements are referenced in Section 4.9 of the LLC Agreement but are not included in the corresponding Section 4.10 of the BOX Holdings LLC Agreement.

[50] See BOX Options LLC Agreement Sections 4.1, 4.12 and 3.2 and BOX Holdings LLC Agreement Section 4.10.

[51] "Statutory Disqualification" means a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act. See Section 1.1 of the LLC Agreement.

consist of five (5) directors (each a "Director"), comprised of one (1) Director appointed by BOX Digital, so long as BOX Digital holds an Economic Percentage Interest equal to or greater than 35%, one (1) Director appointed by tZERO, so long as tZERO holds an Economic Percentage Interest equal to or greater than 35% (together with the Director appointed by BOX Digital, each a "Member Director"),[52] one (1) Director who is the CEO,[53] one (1) Director who is the "Regulatory Director," and one (1) Director who is the "Independent Director"[54] appointed by the affirmative vote of a majority of the other Directors. 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, as discussed above. By comparison, the BOX Holdings board of directors uses a tiered system in which board voting is based on ownership percentage of the BOX Holdings owner that appointed each director. Specifically, in the BOX Holdings system, each owner of BOX Holdings is entitled to appoint a number of directors based on the percentage of total outstanding units of BOX Holdings held by such owner[55] and all of the BOX Holdings directors appointed by a

[52] A Member Director will not have more than 20% of the total voting power on any committee of the Board. See Section 4.2(c), LLC Agreement.
[53] Section 4.5 of the LLC Agreement provides that no Person subject to Statutory Disqualification may serve as an Officer of the Company.
[54] The "Independent Director" will be "an individual who is: (i) not an employee of the Company, (ii) not an officer, director or employee of any Member that has the right to appoint a Member Director, and (iii) not associated with any BSTX Participant or broker or dealer." See Section 1.1, LLC Agreement.
[55] See Section 4.1(a), BOX Holdings LLC Agreement.

single owner of BOX Holdings, together, possess voting power on the BOX Holdings board of directors commensurate with the percentage of outstanding units of BOX Holdings held by the owner appointing such directors.[56] The Exchange believes the organization of the BSTX Board is simple and effective in appropriately limiting voting power on the full Board held by any Member to not more than 20% while Major Actions still require the vote of at least four Directors, which means any single Director will not be able to block a Major Action. The Exchange believes this organization of the BSTX Board is consistent with Section 6(b)(1) of the Act by helping to 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. The Company has an Independent Director, who is the Chairman,[57] to avoid any Member or group of Members from controlling or creating deadlock on the Board. The presence of a Regulatory Director selected by the Exchange on the Board is similar to the longstanding practice at the Exchange's other facility, BOX Options, except that the Regulatory Director at BSTX will be a voting Director. 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, 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.[58] Further, the Exchange believes that inclusion of the Regulatory Director on the BSTX

[56] See Section 4.3(b), BOX Holdings LLC Agreement.
[57] See Section 4.6, LLC Agreement.
[58] 15 U.S.C. 78f(b)(5).

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.[59] 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, the CEO (as 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 office. 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

[59] LLC Agreement Section 4.3 is based on Section 4.3 of the BOX Options LLC Agreement.

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.[60] 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 foregoing provisions related to the proposed Board structure will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, all consistent with Section 6(b)(5) of the Act.[61]

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 at least four Directors, in each case acting at a meeting.[62] A vacancy on the Board will not prevent approval of a Major Action. No

[60] Section 4.3 of the BOX Options LLC Agreement varies from Section 4.3 of the LLC Agreement in that the corresponding sentence in Section 4.3 of the BOX Options LLC Agreement references BOX Holdings Members rather than Members of the existing facility, BOX Options, while Section 4.3 of the LLC Agreement references Members of the proposed facility, BSTX. This difference is because BOX Options is wholly-owned by BOX Holdings and, therefore, BOX Options has only one owner. Accordingly, ownership of the existing facility, BOX Options, diverges with the Members of BOX Holdings while ownership of the proposed facility, BSTX, diverges with the Members of BSTX.

[61] 15 U.S.C. 78f(b)(5).

[62] This provision is analogous to Section 4.4 of the BOX Holdings LLC Agreement, pursuant to which MXUS2 and IB have similar rights with respect to major actions of BOX Holdings.

other Member votes are required for a Major Action. For purposes of the LLC Agreement, "Major Action" means any of 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)(iii)) 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 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 Units 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 Agreement[63] with the exception of deletions to references to BOX Options affiliates and owners; deletion of a reference to the BOX Options Facility Agreement; deletion of an event in which any Person, together with its Affiliates, newly holds 20% ownership or more; deletion of an event in which board representation is granted to a Member holding less than 4%; to include cross references to other provisions of the LLC Agreement; to include provisions (x), and (xi) as described above; and to simplify language. The Exchange believes that the listed 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, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free

[63] See Section 4.4 of the BOX Options LLC Agreement and Section 4.4 of the BOX Holdings LLC Agreement.

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.[64] In addition, such requirements enhance the ability of the Exchange and its proposed facility, BSTX, to effectively carry out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.

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 Independent Director may be removed by the affirmative vote of a majority vote of the other Directors, with or without cause. Any Director may be removed by the Board if the Director is subject to a Statutory Disqualification, 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 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, processing information with respect to, and facilitating transactions in securities, to

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[64] 15 U.S.C. 78f(b)(5).

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 Directors to be removed from the Board in the circumstances described above would be consistent with Section 6(b)(1) of the Act.[65] This is because removal of Directors who have violated the LLC Agreement or federal or state laws 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.

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, 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.[66] 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)

[65] 15 U.S.C. 78f(b)(1).
[66] 15 U.S.C. 78f(b)(5).

of the Act[67] 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 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.[68]

Section 4.11(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, agree to comply and 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,

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[67] 15 U.S.C. 78f(b)(1).

[68] See Section 4.1(d) of the BOX Options LLC Agreement.

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.[69]

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 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 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 System means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market.; (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

[69] See Section 4.12(b) of the BOX Options LLC Agreement and Section 4.12(b) of the BOX Holdings LLC Agreement.

Company and the Exchange.[70] These provisions in the LLC Agreement are the same as those in the BOX Options LLC Agreement.[71]

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 System) set forth in Section 3.2(a)(ii) of the LLC Agreement could cause a Regulatory Deficiency[72] 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.[73] These provisions ensure the Exchange maintains full regulatory control and authority over BSTX while it operates as a facility of the Exchange.

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 or the BSTX Market

[70] The language providing that procedures for requesting and approving changes shall be established by the mutual agreement of the Company and the Exchange does not diminish the power and authority of the Exchange to regulate such changes because, if the Company and the Exchange cannot agree on procedure, the Exchange simply will not approve any such change. By the terms of Section 3.2(a)(ii) of the LLC Agreement, planned or proposed changes to the Company will require an affirmative approval by the Exchange prior to implementation and such affirmative approval will not be given.

[71] See Section 3.2(a)(ii) of the BOX Options LLC Agreement.

[72] "Regulatory Deficiency" is defined as "the operation of the Company (in connection with matters that are not Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX System) in a manner that is not consistent with the Exchange Rules and/or the SEC Rules governing the BSTX Market or BSTX Participants, or that otherwise impedes the Exchange's ability to regulate the BSTX Market or BSTX Participants or to fulfill its obligations under the Act as an SRO. See Section 1.1, LLC Agreement.

[73] See Section 3.2(a)(iii) of the BOX Options LLC Agreement. See Section 1.1, LLC Agreement.

(including, but not limited to, the BSTX 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.[74] 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.[75]

The Exchange believes the provisions of Section 3.2(a) help 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.[76]

Section 3.2(c) of the LLC Agreement states that BOX Digital has provided executive leadership and will provide exclusive rights to the regulatory services of the Exchange with respect to BSTX Products; provided, however, that the foregoing shall limit neither the regulatory authority of the Exchange with respect to BSTX nor the oversight of BSTX by the Exchange. With the consent of the Exchange, BOX Digital holds exclusive rights to the regulatory services of the Exchange with respect to BSTX Products. A BOX Digital director, Lisa Fall, is an experienced executive manager of SROs and exchange facilities. In becoming a Member of BSTX and becoming a party to the LLC Agreement, BOX Digital agreed to contribute these assets to the Company.

Regulatory Funds

[74] As discussed above, the Exchange will appoint a Regulatory Director who may serve as a Director on any committee(s). Such individual will also have insight and access to important information related to the Company. The Regulatory Director shall (A) have the right to attend all meetings of the Board and any committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of all meeting materials provided to other Directors, including agendas, action items and minutes for all meetings. (See LLC Agreement §4.2(c).)

[75] See Section 3.2(a)(iv) of the BOX Options LLC Agreement.

[76] 15 U.S.C. 78f(b)(1).

The Exchange represents that the Facility Agreement will require the Company to provide adequate funding for the Exchange's operations with respect to the Company, including the regulation of the Exchange. The Facility Agreement will provide that the Exchange receives all fees, including regulatory fees and trading fees, payable by BSTX Participants, as well as any funds received from any applicable market data fees, tape and other revenue. The Exchange represents that fees received from all Exchange facilities, including fees from BSTX Participants, will be adequate to operate the Exchange and to regulate the Company. The Facility Agreement will further provide that the Company will reimburse the Exchange for its costs and expenses to the extent the Exchange's assets are insufficient. The Exchange will require the Company to allocate sufficient available funds to adequately operate the facility until it begins receiving revenues from operations. Prior to commencing operations as a facility of the Exchange, the Company will have all such necessary funds and assets, including furnishings, equipment and servers to adequately operate the facility. To the extent the Company needs any additional funding to meet this requirement, such funds will be provided to the Company by one or more of its Members.

The Exchange will have sufficient funds to operate and fulfill its regulatory obligations, including regulation of BSTX. Pursuant to Section 9 of the Facility Agreement, the Company will agree that the Exchange has the right to receive all fees, fines and penalties imposed upon BSTX Participants with respect to the Company's trading system ("Regulatory Funds") and all listing fees, market data revenues and transaction 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. In determining the excess funds to remit to the Company, the Exchange will exercise prudent financial management (including cash flow management) and may retain funds for anticipated and unanticipated expenses. 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 with respect to BSTX, 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. The Exchange will not make distributions of Regulatory Funds to its owners.[77] These provisions ensure Regulatory Funds are used for regulatory purposes and that the Exchange has full control over BSTX with respect to its regulated functions and are designed to prevent any owner of BSTX from exercising undue influence over the regulated activities of the Company. The Exchange believes these proposed provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and has the capacity to be able to carry out the purposes of the Act.

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.

[77] Regulatory Funds will be used for regulatory purposes and not for non-regulatory purposes. See Section 8.1 of the Exchange LLC Agreement.

Pursuant to Section 6.1 of the LLC Agreement, all capital contributions contributed to the Company by holders of Units shall be 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.[78]

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 the Board, including the affirmative vote of at least four Directors, 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 all Member Directors to affirmatively vote on the manner to raise additional working capital.[79] 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.[80]

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[78] See Section 6.2 of the BOX Holdings LLC Agreement.
[79] See Section 6.2 of the BOX Options LLC Agreement.
[80] 15 U.S.C. 78f(b)(5).

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 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 Economic 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 ownership 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.[81]

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 Economic 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

[81] See Section 7.1 of the BOX Options LLC Agreement and Section 8.2 of the BOX Holdings LLC Agreement.

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 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 Economic 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.[82]

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 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 System. The intellectual property provisions in the LLC Agreement are materially similar to those in the BOX Options LLC Agreement, although these documents contain certain differences reflecting the fact that, under the LLC Agreement, BSTX has a license with, and receives services from, tZERO pursuant to the LSA and, under the BOX Options LLC Agreement, the software and technology were provided to BOX Options by MX pursuant to a TOSA. The rights of the Members of each of BOX Options and BSTX with respect to their respective intellectual property are substantially similar.[83]

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,

[82] See Section 10.2 of the BOX Holdings LLC Agreement.
[83] See Article 17 of the LLC Agreement and Article 13 of the BOX Options LLC Agreement.

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

Employees of tZERO will provide to the Company the services discussed above under the LSA. This relationship will be similar to the employees of any other technology service provider providing services to the Exchange or a facility of the Exchange. Pursuant to the LSA and Article 15 of the LLC Agreement, in order to protect the confidential information of the Exchange, tZERO directors, officers and employees will only receive confidential information[84] of the Company or the Exchange, pertaining to regulatory matters of the Company or the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company or any of its subsidiaries, on a need-to-know basis as it relates to the technology services being provided or specific roles with respect to the Company and the Exchange. Directors, officers and employees of tZERO will be subject

[84] "Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data, trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure. See Section 1.1, LLC Agreement.

to confidentiality obligations with respect to any confidential information they receive in the course of performing their services, including regulatory information. tZERO employees providing technology services to the Company or the Exchange will have offices physically separate from employees of the Company and the Exchange. As discussed below, the Exchange will continue to have all authority to direct its facilities and service providers, including tZERO. tZERO and its employees will not have operational control of the Company or its systems and will not have authority to make changes to the BSTX System except under the direction of, and after receiving the consent of, the facility under the direction of the Exchange or the Exchange itself. All operational control of BSTX and the BSTX System will be retained by BSTX, under the regulatory authority of the Exchange, except for regulatory and surveillance systems which will be controlled directly by the Exchange. tZERO will provide technology support services to the Exchange and the proposed facility, BSTX.

Non-competition

Section 16.1 of the LLC Agreement provides that, for so long as it holds, directly or indirectly, a combined Voting 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 securities with a blockchain component or in any person engaged in the creation and/or operation of any U.S.-based market for the secondary trading of securities with a blockchain component. The non-competition provision is substantially the same as the non-competition provision in the BOX Holdings LLC Agreement.[85]

[85] See Section 16.1 of the BOX Holdings LLC Agreement. The scope of activities triggering noncompetition obligations is different between the LLC Agreement and BOX Holdings LLC due to the different type of securities being traded on each facility.

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 (each, a "Transfer") its Units 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, including any Statutory 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, such Member, and transfers to any Person that is a wholly owned Affiliate of such Member.[86] Voting Units may not be disposed of, sold, alienated, assigned, exchanged, participated, subparticipated, encumbered, or otherwise transferred in any manner separately from their related Economic Units. A holder of Units will provide prior written notice to the

[86] See Section 7.1(a) of the BOX Holdings LLC Agreement. The provisions of BOX Holdings LLC Agreement include additional exceptions to the definition of "Transfer" in order to accommodate formerly existing Class C Units and rights of IB to transfer Units that are special to BOX Holdings.

Exchange of any proposed Transfer. Any Transfer or other ownership transaction which violates the Transfer restrictions in the LLC Agreement will be void and ineffectual and will not bind or be recognized by the Company.[87]

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 by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member; 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 by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member; and if that person is a transferee, a determination by the Company that the Transfer was permitted by the LLC Agreement. Whether or not a transferee who acquired any Units 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 Units, 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

[87] See LLC Agreement, Section 7.4(d).

Exchange notes that the provisions of Section 7.1 are substantially based on provisions in the BOX Holdings LLC Agreement.[88]

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 Economic Units, 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.[89] 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.[90] 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 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 Act[91] 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

[88] See Section 7.1 of the BOX Holdings LLC Agreement.
[89] See Sections 7.2 and 7.3 of the BOX Holdings LLC Agreement.
[90] 15 U.S.C. 78f(b)(5).
[91] 15 U.S.C. 78f(b)(1).

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 or other ownership transaction that results in that Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any related person of that Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting 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, a Voting Percentage Interest or Economic Percentage Interest of five percent (5%) or more will, immediately upon acquiring knowledge of its ownership thereof, give the Company written notice of that ownership. In addition, any transfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Voting Percentage Interest or Economic Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% 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(h) 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 an Economic Percentage

Interest or Voting Percentage Interest in the Company equal to or greater than 20%. Exhibit 5B attached hereto contains instruments of accession that will be executed by all Controlling Persons prior, and as a condition, to commencement of operations of BSTX as a facility of the Exchange. Following commencement of operations as a facility of the Exchange, any new Controlling Person will be required to execute an amendment in substantially the same form as the instruments of accession attached as Exhibit 5B hereto 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 further amendments to the LLC Agreement will then 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 respective 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. As a result, any new Member or other direct or indirect owner of an equity interest in BSTX that is subject to the requirements of Section 7.4(h), 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.[92] The Exchange will implement policies and procedures, including annual attestations by Members, to ensure potential direct and indirect owners of BSTX are required to provide any required notice to BSTX or to take other actions, such as executing an amendment to

[92] See Section 7.1(b)(i), LLC Agreement.

the LLC Agreement upon establishing a Controlling Interest, if applicable, and to monitor compliance with the proposed provisions related to changes in ownership and control.

In accordance with Section 7.4(i) of the LLC Agreement and as discussed above, in the event that a Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%, alone or together with any Related Person of such Member (Voting Units so owned in excess of 20% being referred to as "Excess Voting Units"), the Member, and its designated Director, if applicable, will have no voting rights with respect to any action relating to the Company nor will the Member be entitled to give any proxy in relation to a vote of the Members, with respect to the Excess Voting Units held by such Member. The Member's Excess Voting Units will be counted for quorum purposes and will be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). An effective rule filing pursuant to Section 19 of the Exchange Act will be required before any Member, or any Related Person of such Member, becomes a BSTX Participant if the Member, alone or together with its Related Persons, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more than 20% of the Directors and, unless a rule filing authorizing the foregoing is first effective, the Member, or any of its Related Persons, will not be registered as a BSTX Participant. The Exchange notes that Section 7.4 of the Company's LLC Agreement is similar in substance to provisions of the BOX Holdings LLC Agreement, subject to

changes related to different Company structure.[93] Section 7.4(f) and (g) are similar in substance to provisions of the BOX Exchange LLC Agreement.[94]

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 excluding the vote of any Director appointed by such Member subject to sanction, 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 such Member is subject to a Statutory Disqualification; (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 and the public interest, consistent with Section 6(b)(5) of the Act.[95] 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

[93] See Section 7.4 of the BOX Holdings LLC Agreement.
[94] See Sections 7.3(f) and (g) of the BOX Exchange LLC Agreement.
[95] 15 U.S.C. 78f(b)(5).

with Section 6(b)(1) of the Act.[96] 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 the affirmative vote of at least four Directors, and any amendment of a provision specific to any Member or the Exchange requires the consent of such Member or the Exchange (as applicable). In addition, the Company shall provide prompt notice to the Exchange of any amendment, modification, waiver or supplement to the 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.[97] These provisions are similar to provisions in the BOX Holdings LLC Agreement but differ in details related to the different ownership structure of the Company.[98]

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

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[96] 15 U.S.C. 78f(b)(1).
[97] A proposed rule change can also become effective by operation of law. See 15 U.S.C. 78s(b)(2).
[98] See Section 18.1 of the BOX Holdings LLC Agreement.

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.[99] 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,[100] 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.[101] Under Sections 15.1 and 15.2(a) of the LLC Agreement, subject to certain exceptions set

[99] See Section 3.2 of the BOX Options LLC Agreement.
[100] "Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data, trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure. See Section 1.1 of the LLC Agreement.
[101] See Article 12 of the BOX Options LLC Agreement.

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[102] 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.

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[102] "Member Information" means all non-public records, books, contracts, reports, instruments, computer data and other data and information concerning the other Members or the Exchange. See Section 15.3, LLC Agreement.

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 SEC, 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 SEC or the Exchange. 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 SEC, 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 SEC or the Exchange. These are substantially the same provisions that are contained in the BOX Options LLC Agreement.[103] The Exchange believes its ability to protect against inappropriate disclosure and dissemination of its Confidential Information is essential to preserving and protecting the Exchange's ability to effectively carry out its regulatory obligations.

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[103] See Sections 12.5 and 12.6 of the BOX Options LLC Agreement.

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 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.[104]

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. The ability of the Exchange to maintain regulatory jurisdiction over the Company's Members permits the Exchange and the SEC to exercise their respective regulatory oversight responsibilities and allows the Exchange to comply with its obligations to maintain orderly markets. The

[104] 15 U.S.C. 78f(b)(5).

Exchange believes that this would be consistent with Section 6(b)(1) of the Act[105] 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 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.[106] 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 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,

[105] 15 U.S.C. 78f(b)(1).

[106] See Section 11.1 of the BOX Holdings LLC Agreement.

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.[107]

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

[107] See Section 14.6 of the BOX Options LLC Agreement.

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.[108] 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.[109] 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 consistent with Section 6(b)(1) of the Act[110] 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.

[108] See Section 14.6(c) of the BOX Options LLC Agreement.
[109] 15 U.S.C. 78f(b)(5).
[110] 15 U.S.C. 78f(b)(1).

Section 18.1 of the LLC Agreement, which is substantially similar to a provision in the BOX Holdings LLC Agreement,[111] provides that the LLC Agreement may only be amended by an agreement in writing approved by the Board, including the affirmative vote of at least four Directors, 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 such 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 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.[112] The Exchange believes that these provisions are

[111] See Section 18.1 of the BOX Holdings LLC Agreement.
[112] 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, 4.10, 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,

consistent with Section 6(b)(1) of the Act[113] 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.

Exchange Organization

As more fully described in the Multiple Facilities Filing,[114] the Exchange Bylaws require that, upon the Company becoming a facility of the Exchange, at least one member of the Board would be selected from among the officers, directors and employees of BSTX Participants (a "Participant Director").[115] The Executive Committee of the Exchange, if any, is required to include at least one Participant Director from BSTX and a quorum for the transaction of business must include at least one Participant Director from one of the Exchange's facilities. At least twenty percent (20%) of the members of the Executive Committee must be Participant Directors and at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each then existing Exchange Facility.[116] A Participant Director could serve on other Board committees but would be prohibited from serving on the Compensation and Regulatory Oversight Committees.[117] The Exchange's Hearing Committee is not comprised of directors of the Exchange but does include Exchange Facility Participants, which could include one or more BSTX Participants.[118] The Exchange Bylaws also provide that each facility of the Exchange be entitled to designate a "Facility Director" to serve on the Board. The Facility Director could serve on Board committees, including any Executive

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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.

[113] 15 U.S.C. 78f(b)(1).

[114] See Securities Exchange Act Release No. 888934 May 22, 2020, 85 FR 32085 May 28, 2020.

[115] See Exchange Bylaws Section 4.02.

[116] See Exchange Bylaws Section 6.04.

[117] See Exchange Bylaws Sections 6.06 and 6.07.

[118] See Exchange Bylaws Section 6.08(a).

Committee of the Board,[119] but would be prohibited from serving on the Compensation and Regulatory Oversight Committees.[120]

Also as more fully described in the Multiple Facilities Filing, the Exchange Bylaws require that, upon the Company becoming a facility of the Exchange, at least one member of the Exchange Nominating Committee would be selected from among the officers, directors and employees of BSTX Participants (a "Participant Representative").[121] The Exchange Bylaws also provide that each facility of the Exchange be entitled to designate a "Facility Representative" to serve on the Exchange Nominating Committee.[122]

As soon as practicable after the commencement of operations of BSTX as a new facility of the Exchange, a Participant Director, Participant Representative, Facility Director and Facility Representative will be appointed by the Exchange Board from among the eligible individuals with respect to the new facility and such individuals shall serve in such respective capacities until the first annual meeting of the Exchange Members following such appointment, when the regular selection processes shall govern.[123]

2. Statutory Basis

Insert

In addition to the sections above that discuss provisions of the LLC Agreement, amendments to the LLC Agreement and variations from the BOX Options LLC Agreement and/or BOX Holdings LLC Agreement and their associated statutory bases, the Exchange

[119] See Exchange Bylaws Section 6.04.
[120] See Exchange Bylaws Sections 6.06 and 6.07.
[121] See Exchange Bylaws Section 4.06(a).
[122] See Exchange Bylaws Section 4.06(a).
[123] See Section 4.02, Exchange Bylaws.

believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[124] in general, and furthers the objectives of Section 6(b)(1),[125] 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 Facility Participants and persons associated with its Exchange Facility Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[126] 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.

The Exchange believes that the provisions in the Exchange Bylaws that BSTX Participants will be represented by a Participant Director on the BOX Exchange Board and a Participant Representative on the Exchange Nominating Committee and that they will be chosen by BSTX Participants provides for the fair representation of BSTX Participants in the selection of directors and the administration of BOX Exchange and is consistent with the requirement in Section 6(b)(3) of the Act.[127] This requirement helps to ensure that BSTX Participants have a voice in the use of self-regulatory authority and that an exchange is administered in a way that is equitable to all those who trade on its market or through its

[124] 15 U.S.C. 78f(b).
[125] 15 U.S.C. 78f(b)(5).
[126] 15 U.S.C. 78f(b)(5).

[127] 15 U.S.C. 78f(b)(3).

facilities.[128] In addition, the Exchange believes the provision in the Exchange Bylaws that a Facility Director representing the Company would serve on the BOX Exchange Board and a Facility Representative would serve on the BOX Exchange Nominating Committee provides additional protection for both the Company and BSTX Participants and helps to ensure these entities have a voice in the use of self-regulatory authority and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

No Members of BSTX and no Affiliates of such Members are currently Exchange Facility Participants. No Members of BSTX are expected to be BSTX Participants when BSTX begins operations as a facility of the Exchange. Nevertheless, the Exchange believes the provisions discussed above, limiting BSTX Participants to a maximum of 20% economic ownership and 20% voting ownership at the proposed facility, BSTX, and limiting Exchange Facility Participants to a maximum of 20% economic ownership in the Exchange and 20% voting power at the Exchange, are consistent with the requirements of the Act and Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.[129] These limitations are designed to help prevent a BSTX Participant from exercising undue control over the operation of the facility and help prevent an Exchange Facility Participant from exercising undue control over the operation of the Exchange. These limitations are also designed to help ensure the Exchange is able to effectively carry out its regulatory obligations under the Act and its facility, BSTX, is able to effectively carry out its regulatory obligations as a facility of the Exchange under the Act. In addition, these limitations are designed to address conflicts of

[128] See, e.g., Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006 (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order"), and BATS Order, supra note 21. See also Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) ("NYSE/Archipelago Merger Approval Order").
[129] 15 U.S.C. 78f(b)(1).

interests that could arise from a BSTX Participant owning interests in BSTX, a proposed facility of the Exchange, or in the Exchange itself. Without such limitations, a BSTX Participant's interest in the Exchange or its facility, BSTX, could become so large as to cast doubts on whether the Exchange and its facility, BSTX, may fairly and objectively exercise self-regulatory responsibilities with respect to such BSTX Participant.[130] If a BSTX Participant became a controlling owner of the Exchange, BSTX could seek to exercise the controlling influence by directing the Exchange or its facility, BSTX, to refrain from, or the Exchange or BSTX could hesitate to, diligently monitor and conduct surveillance of the BSTX Participant's conduct or diligently enforce the Exchange's rules and the federal securities laws with respect to conduct by a BSTX Participant that violates such provisions. As such, these requirements are expected to minimize the potential that a BSTX Participant or any other Exchange Facility Participant could use its ownership to improperly interfere with or restrict the ability of the Exchange or its facility, BSTX, to effectively carry out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act. [131]

As discussed above, the Exchange at all times has, and will continue to have, regulatory authority over its facilities, including the proposed facility, BSTX. 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 shall receive notice of all planned or proposed changes to BSTX (other than Non-Market Matters). This authority ensures that while BSTX operates as a facility of the

[130] See, e.g., DirectEdge Exchanges Order and BATS Order, supra note 21.
[131] 15 U.S.C. 78f(b)(1).

Exchange, it will be required to submit any such changes to the Exchange for approval and the Exchange will have the right to direct BSTX to make any modifications deemed necessary or appropriate by the Exchange to resolve any Regulatory Deficiency. This regulatory authority overrides any authority of BSTX management, its Members or its Board regardless of any Member's level of ownership or control of the Board at the facility level.

The Exchange is the entity that will have and exercise regulatory oversight of the proposed facility, BSTX. As discussed above, the Exchange notes the existing ownership limits of 20% voting power and 40% economic ownership currently applicable to all owners of the Exchange are not changing. Accordingly, the Exchange believes these 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. Similarly, the 20% voting power and 40% economic ownership limits applicable to BSTX achieve the same objectives at the facility. The Exchange further believes these limits, which apply to its current facility, continue to be appropriate in connection with the proposed new facility and are consistent with the requirements of the Act and Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act. [132]

As discussed above, the SEC will be required to be notified if a Member of the facility exceeds 5%, 10% or 15% Economic Percentage Interest or Voting Percentage Interest levels in the Company and rule filings are required when a Person, together with its Related Persons, crosses above 20% Economic Percentage Interest or Voting

[132] 15 U.S.C. 78f(b)(1).

Percentage Interest or any subsequent 5% increment thereof. These are the same provisions as are contained in the BOX Holdings LLC Agreement. The Exchange believes these proposed notification provisions are consistent with existing provisions in the BOX Holdings LLC Agreement for the Exchange's current facility and are also 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.[133] In particular, SEC notification of ownership 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.

Subject to the regulatory oversight by the Exchange, the proposed facility's Board has full authority to manage the development, operations, business and affairs of the Company without the need for any approval of the Members. A Member does not have authority to decide matters related to the operations of the Company, except by exercising its right, if any, to appoint Directors. As discussed above, the Board of the proposed facility will consist of five (5) Directors, including a Regulatory Director appointed by the Exchange, the CEO and one Independent Director. So long as it owns at least 35% Economic Percentage Interest, each of tZERO and BOX Digital will have the right to appoint one Member Director, comprising a maximum of 20% of all Directors on the facility's Board. Accordingly, the Exchange believes the proposed facility, BSTX, will be so organized as to avoid undue influence by a Member and to ensure the Exchange has the capacity to carry out the purposes of the Act.

As discussed above, 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

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[133] 15 U.S.C. 78f(b)(1).

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. The presence of a Regulatory Director selected by the Exchange on the Board is similar 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, 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.[134] 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.

As discussed above, the Company is not permitted to take any action with respect to a Major Action unless approved by the Board, including the affirmative vote of at least four Directors acting at a meeting. The Exchange believes that, in addition to the regulatory oversight of the Exchange and the other safeguards described above, the

[134] 15 U.S.C. 78f(b)(5).

requirement that all Member Directors of the facility, not just the Member Director appointed by a single Member, must approve Major Actions will promote just and equitable principles of trade, 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, protect investors and the public interest, consistent with Section 6(b)(5) of the Act. In addition, such requirements enhance the ability of the Exchange and its proposed facility, BSTX, to effectively carry out its regulatory responsibilities under the Act, particularly with Section 6(b)(1) thereof, which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act.

Although the Company is not independently responsible for regulation, its activities with respect to the operation of the Company must be consistent with, and not interfere with, the self-regulatory obligations of the Exchange. The Exchange believes the requirements in the BSTX LLC Agreement applicable to direct and indirect changes in control of the Company described above, the provisions of the Facility Agreement establishing the Exchange's regulatory control over the Company, as well as the voting limitation imposed on owners of the Company who also are BSTX Participants described above, are appropriate to help ensure that the Exchange is able to effectively carry out its self-regulatory responsibilities, including over the Company, and are consistent with the requirements of the Act.

In addition, each Member of BSTX and each Controlling Person thereof must give due regard to the preservation of the independence of the self-regulatory function of the Exchange and must not take any action that would interfere with the effectuation of

decisions by the Exchange Board or interfere with the Exchange's ability to carry out its responsibilities under the Act.[135] Each Member of BSTX and each Controlling Person thereof[136] also is required to take such action as is necessary to ensure that its directors, officers and employees consent to giving due regard to the preservation of the independence of the self-regulatory function of the Exchange and to not taking any action that would interfere with the effectuation of decisions by the Exchange Board or interfere with the Exchange's ability to carry out its responsibilities under the Act to the extent related to the operation or administration of the Exchange or the Company. The Exchange believes these provisions which are designed to help maintain the independence of BOX Exchange's regulatory function, are appropriate and consistent with the requirements of the Act, particularly 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.[137]

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

[135] See Section 4.6(a) of the Exchange LLC Agreement and Section 4.11(a) of the BSTX LLC Agreement.
[136] See the LLC Agreement Section 7.4(h)(i)
[137] 15 U.S.C. 78f(b)(1).

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

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-2021-14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2021-14. 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 Web site (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 Web site viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such 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-2021-14 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[138]

Kevin M. O'Neill
Deputy Secretary

[138] 17 CFR 200.30-3(a)(12).

EXHIBIT 4A

This Exhibit 4A shows amendments to the proposed rule text as originally set forth in Exhibit 5A of Amendment 1 to SR-BOX-2021-14, published on the Commission's website on September 21, 2021.

New text appears double underlined in blue. Deleted text appears in red with a strikethrough.

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* All text set forth in this Exhibit 5A is new and therefore underling of the text is omitted to improve readability.

BSTX LLC

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

EXHIBIT 4A

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BSTX LLC

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

This Third Amended and Restated Limited Liability Company Agreement of BSTX LLC (together with the schedules attached hereto, this "Agreement") is made as of [______________], by and among each of the members set forth on the Membership Record (the "Members"), BSTX LLC (the "Company") and the Exchange.

WHEREAS, on July 17, 2018, a Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company (f/~~ka~~k/a StokynX LLC) to TokynX LLC; on January 29, 2019, a further Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company to Boston Security Token Exchange LLC; and on [______________], a further Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company to BSTX LLC; and

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, and the Second Amended and Restated Limited Liability Company Agreement of the Company entered into as of December 24, 2019 is hereby amended in accordance with the requirements of Section 18.1 thereof and restated in its entirety, as follows:

Article 1

Definitions

1.1. **Certain Defined Terms**. As used in this Agreement, the following capitalized terms have the following meanings.

"Additional Capital Contribution" means any Capital Contribution effected pursuant to Section 6.2 hereof.

"Advisors" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means

the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person**.** A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

"Agreement" has the meaning set forth in the preamble hereto.

~~"Audit Committee" has the meaning set forth in Section 4.2(c)(i) hereof.~~

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the LLC Act.

"Board" has the meaning set forth in Section 4.1 hereof. The Board, acting collectively as provided in this Agreement, shall be a "manager" within the meaning of the LLC Act.

"BOX Digital" means BOX Digital Markets LLC, a Delaware limited liability company.

"BSTX Market" means the market operated by the Company pursuant to Section 3.1 hereof.

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

"BSTX Product" means a Security, as defined in the Exchange Rules, trading on the BSTX System.

"BSTX System" means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market.

"Capital Account" means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member's Capital Account (i) its Capital Contributions; (ii) the share of income and gain of the Company allocated to the Member pursuant to Article 9 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Article 9 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes; (iii) the

amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, the Board may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)*(f)* upon the occurrence of any event described in subparagraph (5) of such Regulations. The Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations §1.704-1(b)(2)(iv)(*g)* in the event of a revaluation of Company property pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(*f*), or if required by Treasury Regulations §1.704-1(b)(2)(iv)(*d*)(3). Any reference in this Agreement to the Capital Account of a then Member shall include the Capital Account of any prior Member in respect of the same Economic Unit or Economic Units.

"Capital Contribution" means the amount of cash and the fair market value of all property and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company. Any reference in this Agreement to the Capital Contribution of a Member shall include the Capital Contribution of any prior Member in respect of the same Unit or Units.

"CEO" has the meaning set forth in Section ~~4.8~~4.7 hereof.

"Chairman" has the meaning set forth in Section 4.6 hereof.

~~"Class A Member" shall mean (i) each of the parties identified as holders of Class A Units in the Membership Record, provided such party has executed a counterpart of this Agreement, (ii) any Transferee of all or any portion of the Class A Units of a Class A Member who has been admitted to the Company as an additional Member in accordance with the terms of this Agreement, (iii) any Class B Member whose Class B Units have been converted into Class A Units pursuant to Section 2.5(b) hereof, or (iv) any other Person who has been admitted to the Company as a Class A Member in accordance with the terms of this Agreement.~~

~~"Class A Units" shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement.~~

~~"Class B Member" shall mean (i) each of the parties identified as holders of Class B Units in the Membership Record, provided such party has executed a counterpart of this Agreement and the Members Agreement, (ii) any Transferee of all or any portion of the Class B Units of a Class B Member who has been admitted to the Company as an additional Member in accordance with the terms of this Agreement, or (iii) any other Person who has been admitted to the Company as a Class B Member in accordance with the terms of this Agreement.~~

~~"Class B Units" shall be identical to Class A Units except that Class B Members shall not have the right to vote on any matter related to the Company as a result of holding Class B Units.~~

"Code" means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

"Company" has the meaning set forth in the preamble hereto.

"Company Minimum Gain" means partnership minimum gain with respect to the Company, as determined under Treasury Regulations §1.704-2(d).

~~"Compensation Committee" has the meaning set forth in Section 4.2(c)(ii) hereof.~~

"Competing Business" means any U.S. based market for the secondary trading of securities with a blockchain component. For clarity, "Competing Business" does not include the design and issuance of securities with a blockchain component or broker-dealer or transfer agent services to issuers of securities with a blockchain component and does not include the trading on an electronic market of cryptocurrencies or securities with a blockchain component not eligible for, or rejected by BSTX for, trading on the BSTX Market.

"Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data, trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure.

"Controlling Interest" has the meaning set forth in Section 7.4(~~g~~h)(~~v~~iv)(A).

"Controlling Person" has the meaning set forth in Section 7.4(~~g~~h)(~~v~~iv)(B).

"Delaware UCC" has the meaning set forth in Section ~~2.6~~2.7 hereof.

"DGCL" has the meaning set forth in Section 4.2(b) hereof.

"Director" has the meaning set forth in Section 4.1(a) hereof. For the avoidance of doubt, the Regulatory Director is considered a Director, as set forth in Section 4.1(a) hereof.

"Disclosing Party" has the meaning set forth in Section 15.3 hereof.

"Distributable Cash" has the meaning set forth in Section 8.1 hereof.

"Economic Ownership Limit" has the meaning set forth in Section 7.4(f) hereof.

"Economic Ownership Limit Waiver" has the meaning set forth in Section 7.4(f) hereof.

"Economic Percentage Interest" with respect to a Member means the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage.

"Economic Unit" has the meaning set forth in Section 2.5(a) hereof.

"Economic Waiver Determination" has the meaning set forth in Section 7.4(f) hereof.

"Excess Voting Units" has the meaning set forth in Section 7.4(~~h~~i) hereof.

"Exchange" means BOX Exchange LLC as the non-equity, non-member SRO authority of the Company as approved by the SEC.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Rules" means the rules of the Exchange that constitute the "rules of an exchange" within the meaning of Section 3 of the Exchange Act, and that pertain to the BSTX Market.

"Facility Agreement" means the Facility Agreement entered into, or to be entered into, by and between the Company and the Exchange, as it may be amended from time to time.

"Fiscal Year" has the meaning set forth in Section 11.3 hereof.

~~"Governmental Authority" means any Unites States federal, state or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self regulated organization or other non governmental regulatory authority or quasi governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.~~

"Indemnified Claims" has the meaning set forth in Section 13.1(b) hereof.

"Indemnified Person" has the meaning set forth in Section 13.1(a) hereof.

"Independent Director" ~~has the meaning set forth in Section 4.1(a) hereof.~~means an individual who is: (i) not an employee of the Company, (ii) not an officer, director or employee of any Member that has the right to appoint a Member Director, and (iii) not associated with any BSTX Participant or broker or dealer.

"Liquidator" has the meaning set forth in Section 10.1(b) hereof.

"LLC Act" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et. seq.,* as amended and in effect from time to time, and any successor statute.

"LSA" means the IP License and Services Agreement entered into by and between tZERO and the Company, as may be amended from time to time.

"Major Action" has the meaning set forth in Section 4.4(b) hereof.

"Members" has the meaning set forth in the preamble hereto and includes any Person admitted to the Company after the date of this Agreement as an additional or substitute Member of the Company as provided by this Agreement, in such Person's capacity as a Member of the Company. For the avoidance of doubt, a transferee or an assignee (including, without limitation, the personal representatives (as defined in the LLC Act) of a Member) of a limited liability company interest in the Company, other than a duly admitted Member of the Company, shall not be a Member of the Company, and no transferee or assignee, other than a duly admitted Member of the Company, shall have any right whatsoever to vote or consent to any action with respect to the Company, and shall not be entitled to exercise any rights of a Member held by a Member by virtue of such transferee's or assignee's admission to the Company as a Member of the Company, whether any such rights arise under this Agreement, the LLC Act or other applicable law, unless and until such transferee or assignee is admitted as a Member of the Company in accordance with the provisions of this Agreement.

"Member Director" has the meaning set forth in Section 4.1(a) hereof.

"Member Entities" has the meaning set forth in Section 5.6 hereof.

"Member Information" has the meaning set forth in Section 15.3 hereof.

"Member Nonrecourse Deductions" means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations §1.704-2(i)(2).

"Member Nonrecourse Debt Minimum Gain" means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations §1.704-2(i)(2).

"Membership Record" means a record of the Members, maintained by the Secretary of the Company and updated from time to time as necessary and as provided in this Agreement, which shall include the name and address of each Member and the number of Economic Units ~~of each class~~and Voting Units held by each Member.

"Neutral Arbitrators" has the meaning set forth in Article 12 hereof.

"Non-Market Matters" has the meaning set forth in Section 3.2(a)(ii).

"Nonrecourse Debt" means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations §1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations §1.752-2).

"Nonrecourse Deductions" means, for any taxable year of the Company, the net increase in Company Minimum Gain during the year (as determined under Treasury Regulations §1.704-2(d)), reduced (but not below zero) by the aggregate distributions made during the year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain (as determined under Treasury Regulations §1.704-2(h)), excluding increases in Company Minimum Gain

resulting from conversions, refinancings or other changes to a debt instrument, as described in Treasury Regulations §1.704-2(g)(3).

"Non-Transferring Members" has the meaning set forth in Section 7.3 hereof.

"Officer" has the meaning set forth in Section 4.5 hereof.

"Other State UCC" has the meaning set forth in Section ~~2.6~~2.7 hereof.

~~"Percentage Interest" with respect to a Member, means the ratio of the number of Units held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.~~

"Person" means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.

"Regulatory Deficiency" means the operation of the Company (in connection with matters that are not Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX System) in a manner that is not consistent with the Exchange Rules and/or the SEC Rules governing the BSTX Market or BSTX Participants, or that otherwise impedes the Exchange's ability to regulate the BSTX Market or BSTX Participants or to fulfill its obligations under the Exchange Act as an SRO.

"Regulatory Director" means the individual appointed as such by the Exchange pursuant to Section 4.1. The Regulatory Director must be a member of the senior management of the regulation staff of the Exchange.

"Related Agreements" means the LSA, the Facility Agreement and any other written agreement between the Company and any Member, in each case necessary or desirable for the conduct of the business of the Company.

"Related Person" shall mean with respect to any Person: (A) any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BSTX Participant who is at the same time a broker-dealer, any Person that is associated with the BSTX Participant (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BSTX Participant, any broker or dealer that is also a BSTX Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act) or a director of a

company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.

"SEC" means the United States Securities and Exchange Commission.

"SEC Rules" means the Exchange Act and such statutes, rules, regulations, interpretations, releases, orders, determinations, reports, or statements as are administered, enforced, adopted or promulgated by the SEC.

"Secretary" has the meaning set forth in Section ~~4.9~~4.8 hereof.

"Shortfall Amount" has the meaning set forth in Section 8.1(a) hereof.

"SRO" means a self-regulatory organization pursuant to Section 3 of the Exchange Act.

"Statutory Disqualification" means a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act.

"Tax Amount" of a Member for a fiscal year or other period shall mean the product of (a) the Member's Tax Rate for such fiscal year or other period, and (b) the Member's Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by the Board.

"Tax Amount Base" of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; *provided* that such taxable income shall be computed (i) without regard to the application of §704(c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

"Tax Distributions" has the meaning set forth in Section 8.1(a) hereof.

"Tax Matters Representative" has the meaning set forth in Section 11.6 hereof.

"Tax Rate" of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member's Tax Amount Base.

"Trading" means the availability of the BSTX System to authorized users for entering, modifying, and canceling orders of BSTX Products.

"Transfer" has the meaning set forth in Section 7.1(a) hereof.

"Transferee" has the meaning set forth in Sections 7.2 and 7.3 hereof.

"Transfer Notice" has the meaning set forth in Sections 7.2(a) and 7.3(a) hereof.

"Transferring Member" has the meaning set forth in Sections 7.2 and 7.3 hereof.

"Treasury Regulations" means the regulations promulgated under the Code, as amended and in effect from time to time.

"tZERO" means tZERO Group, Inc., a Delaware corporation.

"Unit Certificate" has the meaning set forth in Section 2.8 hereof.

"Units" shall mean Economic Units and/or Voting Units.

"Unpermitted Deficit" has the meaning set forth in Section 9.2 hereof.

"Voting Ownership Limit" has the meaning set forth in Section 7.4(g) hereof.

"Voting Ownership Limit Waiver" has the meaning set forth in Section 7.4(g) hereof.

"Voting Percentage Interest" with respect to a Member means the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage. Voting Units held by a Member that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio.

"~~Units" shall mean Class A Units and Class B Units~~Voting Unit" has the meaning set forth in Section 2.5(b) hereof. For the avoidance of doubt, the ownership or possession of Voting Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights shall be vested only in duly admitted Members of the Company), or to exercise any right of a Member of the Company under this Agreement, the LLC Act or other applicable law.

"~~Unpermitted Deficit~~Voting Units Adjustment" has the meaning set forth in Section ~~9.2~~7.4(g)(i) hereof.

"~~Vice Chairman~~Voting Waiver Determination" has the meaning set forth in Section ~~4.7~~7.4(g) hereof.

1.2. **Other Definitions.**

The words "include," "includes," and "including" where used in this Agreement are deemed to be followed by the words "without limitation."

Any reference to "Dollars" or "$" in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the LLC Act will have the meaning set forth in the LLC Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, sections and schedules shall be deemed to mean the preamble and sections of, and schedules to, this Agreement.

Article 2

Organization

2.1. **Formation and Continuation of the Company**.

(a) The Members hereby agree that the rights, duties and liabilities of the Members shall be as provided in the LLC Act, except as otherwise provided herein. The name of the Company shall be BSTX LLC. The principal place of business of the Company shall be located at 101 Arch Street, Suite 1940, Boston, MA 02110. The Board may, at any time, change the principal place of business of the Company and shall give notice thereof to the Members.

(b) The CEO or the CEO's designee, as an "authorized person" within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The CEO or the CEO's designee shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

2.2. **Registered Agent and Office**. The registered agent for service of process on the Company in the State of Delaware required to be maintained by §18-104 of the LLC Act shall be Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808-1674 and the registered office of the Company in the State of Delaware shall be c/o Corporation Service Company at the same address. The Board may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Member.

2.3. **Term**. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the LLC Act, pursuant to a provision of this Agreement or by agreement of the Members.

2.4. **Interest of Members; Property of the Company**. Units shall be personal property for all purposes. All real and other property owned by the Company shall be deemed property owned by the Company as an entity, and the Members, individually, shall not own any such property. A holder of Units shall be admitted as a Member of the Company upon its execution of a counterpart signature page to this Agreement.

2.5. **The Units**.

(a) ~~**Description of Units.** Except as otherwise provided~~**Economic Units**. The Company shall issue equal units of limited liability company interest in the Company collectively comprising all interests in the profits and losses of the Company and all rights to receive distributions from the Company as set forth in this Agreement~~, all Units are~~ (each, an "Economic Unit"). Economic Units shall not include any right to vote. Each Economic Unit is identical to each other ~~and accord the holders thereof~~Economic Unit and accords a Member holding such Economic Unit the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Economic Units, or make or pay any distribution on any ~~Units~~Economic Unit, or accord any other payment, benefit or preference with respect to any ~~Units~~Economic Unit, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Economic Units. Economic Units have no par value. No fractional Economic Units shall be issued. To the extent that any ~~Units must be cancelled or any Units shall be issued, the amount of such Units~~fractional Economic Unit would otherwise be outstanding, the number of Economic Units held by any Member shall be rounded to the nearest whole number, ~~to the extent feasible,~~ as determined by the Board.

~~(b) **Class B Conversion.** Upon the consummation of any sale or transfer of a majority of the Class A Units or a majority of the assets of the Company, directly or indirectly, to any party or group of related parties, including through a series of transactions, all then outstanding Class B Units shall automatically convert into an equal number of Class A Units without the need of any action by any person. For the avoidance of doubt, a Class B Member's Capital Account does not change as a result of the conversion of the Class B Units.~~

(b) **Voting Units**. The Company shall issue equal units of limited liability company interest in the Company collectively comprising all voting interests of Members with respect to Company matters (each, a "Voting Unit"). The number of outstanding Voting Units shall, at all times, be the same as the number of outstanding Economic Units and the number of outstanding Voting Units shall be automatically adjusted as necessary upon any change in the number of outstanding Economic Units in accordance with the provisions of Section 7.4(g)(i). Voting Units shall not include any right to, or interest in, any profits and losses of the Company, distributions from the Company, assets of the Company or other economic value in the Company. Each Voting Unit is identical to each other Voting Unit and accords a Member holding such Voting Unit the same obligations, rights and privileges as are accorded to each other Member holding a Voting Unit. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Voting Units, or make or pay any distribution on any Voting Unit, or accord any other payment, benefit or preference with respect to any Voting Unit, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Voting Units. Voting Units have no par value. To the extent that any fractional Voting Unit would otherwise be outstanding, the number of Voting Units held by any Member shall be rounded to the nearest whole number, as determined by the Board.

(c) **Rights of Unit Holders**. Each Member shall be a holder of Voting Units and Economic Units. For the avoidance of doubt, the ownership, holding or possession of Voting Units shall not, in and of itself, entitle the owner, holder or possessor thereof to vote or consent

to any action with respect to the Company (which rights shall be vested in only duly admitted Members of the Company), or to exercise any right of a Member of the Company under this Agreement, the LLC Act or other applicable law.

2.6. **Intent**. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7. **Article 8 Opt-In.** Each Unit shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the "Delaware UCC") and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved the American Bar Association on February 14, 1995 (each, an "Other State UCC"). For all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company's jurisdiction in the Company's capacity as the issuer of Units.

2.8 **Unit Certificates**. When, as and if determined by the Company, Economic Units may, but need not, be represented by one or more certificates (a "Unit Certificate"), issued to the registered owner of such Economic Units by the Company. If the Company determines that Economic Units not be represented by Unit Certificates, ownership of Economic Units shall be recorded in the Membership Record. If the Company determines that Economic Units be represented by Unit Certificates, the remaining provisions of this Section 2.8 shall apply with respect to Economic Units. Voting Units are not represented by certificates and ownership of Voting Units shall be recorded in the Membership Record.

(a) Each such Unit Certificate shall be denominated in terms of the number ~~and class~~ of Economic Units of the Company evidenced by such Unit Certificate and shall be signed by at least one Officer of the Company on behalf of the Company. The Company shall have issued to each Person one or more Unit Certificates in the name of such Person to represent the Economic Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Economic Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the ~~class and~~ number of Economic Units evidenced by such Unit Certificate and shall be signed by at least one Officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Economic Units represented by such Unit Certificate, as reflected on the Membership Record:

(i) makes proof by affidavit, in form and substance satisfactory to the Board in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by the Board in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to the Board in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by the Board.

(d) Upon the Transfer or conversion in accordance with the provisions of this Agreement by any Person of any or all of its Economic Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate, if any, to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any Officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the ~~class and~~ number of Economic Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that ~~class and~~ number of Economic Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

"THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE ECONOMIC UNITS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE ECONOMIC UNITS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT OF BSTX LLC, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE "AGREEMENT"). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE ECONOMIC UNITS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

EACH ECONOMIC UNIT REPRESENTED HEREBY SHALL CONSTITUTE A "SECURITY" WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE

(INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE "DELAWARE UCC") AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994 REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN "OTHER STATE UCC"). FOR ALL PURPOSES OF ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE LAW SHALL CONSTITUTE THE LOCAL LAW OF BSTX LLC'S JURISDICTION IN BSTX LLC'S CAPACITY AS THE ISSUER OF THE ECONOMIC UNITS REPRESENTED HEREBY."

(ii) In addition, unless counsel to the Company has advised the Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

"THE ECONOMIC UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "EXCHANGE ACT"), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE EXCHANGE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO BSTX LLC SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

Article 3

Purpose; Roles

3.1. **Purpose**. The purpose of the Company is to develop the BSTX System, to own and operate the BSTX Market for Trading BSTX Products, and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient, or appropriate in connection therewith as the Members may determine. The Company shall not engage in any other business or activity except as approved in accordance with this Article 3 and Section 4.4(b)(ii).

3.2. **Roles of Certain Parties**. Each of the parties hereto will provide the products and services set forth below to the Company:

(a) (i) The Exchange will act as the SEC-approved SRO for the BSTX Market. The Exchange will provide the regulatory framework for the BSTX Market. The Exchange will have regulatory responsibility for the activities of the BSTX Market. In addition, the Exchange will provide regulatory services to the Company pursuant to the Facility Agreement. Nothing in this 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.

(ii) The Exchange shall receive notice of planned or proposed changes to the Company (but not to include 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 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 System) which will require an affirmative approval by the Exchange prior to implementation, not inconsistent with this Agreement. For the avoidance of doubt, planned or proposed changes subject to the foregoing sentence shall include, without limitation: (A) planned or proposed changes to the BSTX 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 pursuant to this Section 3.2(a)(ii) shall be established by the mutual agreement of the Company and the Exchange.

(iii) 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 System) set forth in Section 3.2(a)(ii) 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 pursuant to this Section 3.2(a)(iii) shall be paid by the Company.

(iv) 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 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 Exchange Act. The costs of modifications undertaken pursuant to this Section 3.2(a)(iv) shall be paid by the Company.

(b) tZERO will provide the license and services 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 System.

(c) BOX Digital ~~will provide~~has provided executive leadership and will provide exclusive rights to the regulatory services of the Exchange with respect to BSTX Products; provided, however, that the foregoing shall limit neither the regulatory authority of the Exchange with respect to BSTX nor the oversight of BSTX by the Exchange.

Article 4

Governance

4.1. **Board of Directors.**

(a) Except as otherwise specifically provided in this Agreement or required under the Exchange Act, the Board of Directors of the Company (the "Board" and each member thereof, a "Director") will manage the development, operations, business and affairs of the Company without the need for any approval of the Members or any other Person. No person shall be a Director unless such Person has been duly appointed as provided in this Section 4.1(a). No Person shall serve as a Director if such Person is subject to a Statutory Disqualification. The Board shall be comprised of five (5) Directors as follows: (i) ~~two~~one (~~2~~1) ~~Directors~~Director appointed by BOX Digital, ~~(ii) two (2) Directors~~so long as BOX Digital holds an Economic Percentage Interest equal to or greater than 35%, (ii) one (1) Director appointed by tZERO, so long as tZERO holds an Economic Percentage Interest equal to or greater than 35% (each of the Directors appointed pursuant to clause (i) and this clause (ii), a "Member Director"), (iii) one (1) Director ~~(the "Independent Director") appointed by the unanimous vote of all of the then serving Directors appointed pursuant to clause (i) or (ii) above (each a "Member Director") and (~~who is the CEO, (iv) the Regulatory Director, and (v) one (1) Independent Director appointed by the affirmative vote of a majority of the other Directors. As long as the Company is a facility of the Exchange pursuant to Section 3(a)(2) of the Exchange Act, the Exchange shall have the right to appoint a Regulatory Director to serve as a Director by executing and delivering a written notice of such designation to the ~~Member~~Company, identifying the person so appointed.

(b) A Member Director may from time to time be removed by the Member entitled to appoint such Member Director, with or without cause, upon delivery of an executed written notice of removal by such Member to the Secretary of the Company. The Independent Director may from time to time be removed by ~~a majority vote of the then serving Member~~the affirmative vote of a majority of the other Directors, with or without cause. Any ~~Member Director or Independent~~ Director may be removed by the Board in the event ~~the Board determines, in good faith, that~~(i) such Director is subject to a Statutory Disqualification, (ii) such Director has violated any provision of this Agreement or any federal or state securities law, or (iii) 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 such 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.

(c) In the event that 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 shall fill such 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 such vacancies are filled.

(d) The Regulatory Director may from time to time be removed (i) by the Exchange with or without cause upon delivery of an executed written notice of removal by the Exchange to the Secretary of the Company, (ii) by the Board in the event the Board determines, in good faith, that such Regulatory Director has violated any provision of this Agreement or any federal or state securities law or (iii) by the Board in the event the Board determines, in good faith, that such Regulatory Director does not meet the requirements set forth in the definition of "Regulatory Director" herein. In the event the Regulatory Director ceases to serve for any reason, the Exchange shall appoint a new Regulatory Director in accordance with the requirements set forth herein.

4.2. **Authority and Conduct; Duties of Board; Committees.**

(a) **Authority and Conduct**. The Board shall have the specific authority delegated to it pursuant to this Agreement.

(b) **Duties of Board**. Without limiting the general duties and authority of the Board as set forth in this Article 4, except as otherwise provided in this Agreement, the Board shall have all of the powers of the board of directors of a corporation organized under the General Corporation Law of the State of Delaware, as from time to time in effect (the "DGCL"), including the power and responsibility to manage the business of the Company, evaluate the performance of the Officers and establish and monitor capital and operating budgets.

(c) **Committees**. The Board shall create and maintain an Audit Committee and a Compensation Committee. The Board may alsomay designate one or more other committees, by resolution or resolutions passed by a majority of the whole Board; such committee or committees shall consist of one or more Directors appointed by the Board, except as otherwise provided herein and subject to Section 4.2(e) below, to the extent provided in the resolution or resolutions designating them,the committee, a committee shall have and may exercise specific powers of the Board in the management of the business and other affairs of the Company to the extent permitted by this Agreement. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. At least one Member Director appointed by each of the Members shall be permitted to serve on each committee of the Board. The Regulatory Director is not permitted to serve as a Director on any committees of the Board, except for any authorized regulatory committee(s). Notwithstanding the foregoing, (i) a Member Director shall not have more than 20% of the total voting power on any committee and (ii) the Regulatory Director shall (A) have the right to attend all meetings of the Board and any committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of theall meeting materials provided to other Directors, including agendas, action items and minutes for all meetings.

(i) **Audit Committee**. The Board shall appoint an Audit Committee (the "Audit Committee"). The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Company's financial reporting process and the financial information that is provided to the Members and others;

~~(B) provide oversight over the systems of internal controls established by management and the Board and the Company's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Company's independent auditors (or nominate the independent auditors to be proposed for ratification by the Board); and (D) direct and oversee all the activities of the Company's internal audit function, including but not limited to management's responsiveness to internal audit recommendations.~~

~~(ii) **Compensation Committee**. The Board shall appoint a Compensation Committee (the "Compensation Committee"). The Compensation Committee shall consider and recommend to the Board compensation policies, programs, and practices for Directors and Officers and employees of the Company.~~

(d) **Powers Denied to Committees**. Committees of the Board shall not, in any event, have any power or authority to transact any Major Action or an action specifically covered by Section 4.4.

(e) **Substitute Committee Member; Minutes**. In the absence or on the disqualification of a Director who is a member of a committee, the Board may designate another Director to act at a committee meeting in the place of such absent or disqualified Director. Each committee shall keep regular minutes of its proceedings and report the same to the Board as may be required by the Board.

4.3. **Meetings**. The Board will meet as often as the Board deems necessary, but not less frequently than four (4) times per year. 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 such meeting may be given not less that forty-eight (48) hours before such 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 this Agreement, each of the Directors will be entitled to one vote on any action to be taken by the Board, except that (i) the ~~Regulatory Director shall not vote on any action to be taken by the Board or any committee, (ii) the CEO (if a Director)~~CEO shall not be entitled to vote on matters relating to the CEO's powers, compensation or performance and (~~iii~~ii) a Director shall not be entitled to vote on any matter pertaining to such Director's removal from office. ~~Any Director shall be entitled to vote the votes allocated to another Director (or group of Directors) after having received such Director's (or Directors') proxy in writing.~~ Unless otherwise provided by this 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 such action. Meetings of the Board may be attended by other representatives of the Members, the Exchange and other persons related to the Company as may be approved from time to time by the Board and as otherwise specified in this Agreement. 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 such 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.

4.4. **Special Voting Requirements.**

(a) Notwithstanding the provisions of Section 4.3 regarding voting requirements and subject to the other provisions of this Agreement, no action with respect to any Major Action (as defined in paragraph (b) below), shall be effective unless approved by the Board, including the affirmative vote of ~~all then serving Member~~at least four Directors, in each case acting at a meeting. In addition, unless approved by the Board as provided above, the Members on behalf of the Company shall not take or permit the Company to take any Major Action. No other Member votes are required for a Major Action.

(b) For purposes of this Agreement, "Major Action" means any of the following:

(i) 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 described in Article 3;

(iii) conversion of the Company from a Delaware limited liability company into any other type of entity;

(iv) except as expressly contemplated by this 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)(iii)) 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 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 hereof, 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 Units pursuant to Section 7.6 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 any provision of this Section 4.4(b), 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.

4.5. **Officers**. The Board will appoint a ~~Chairman, a Vice Chairman and a~~ CEO of the Company. The CEO may be removed, with or without cause, only by ~~a vote of a majority of the Board including the affirmative vote of at least one Member Director appointed by each Member~~the unanimous vote of all other Directors. A Secretary and any other officers of the Company (together with the Chairman~~, Vice Chairman~~ and CEO, each an "Officer") shall be selected, receive such compensation, exercise such powers and perform such duties as determined by the CEO, with the advice and consent of the Board. An individual may hold more than one office. No person subject to Statutory Disqualification may serve as an Officer of the Company.

4.6. **Duties of the Chairman**. The Independent Director shall serve as the Chairman of the Board (the "Chairman") and shall preside at all meetings of the Board. The Chairman shall have the general powers and duties usually vested in the office of Chairman of the Board of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the development of the Company as the Board shall from time to time direct.

~~4.7. **Duties of the Vice Chairman**. The Vice Chairman of the Board (the "Vice Chairman") shall preside at all meetings of the Board and fulfill all the responsibilities of the Chairman in the absence of the Chairman and shall have such other duties and responsibilities related to the development of the Company as the Board shall from time to time direct.~~

4.7. ~~4.8.~~ **Duties of the CEO**. Subject to the supervision and direction of the Board, the Chief Executive Officer (the "CEO") shall have general supervision, direction and control of the business and the other executive Officers of the Company. The CEO shall have the general powers and duties of management usually vested in the office of CEO of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the Company as

the Board shall from time to time direct. The CEO shall be responsible for advising the Board on the status of the Company on a regular basis or more frequently as requested by the Board.

4.8. ~~4.9.~~ **Duties of the Secretary**. The Secretary (the "Secretary") shall act as secretary of all meetings of the Board and all meetings of the Members. In the absence of the Secretary, the presiding Officer of the meeting shall appoint any other person to act as secretary of the meeting. The Secretary shall have all other authority provided in this Agreement and as otherwise determined by the Board.

4.9. ~~4.10.~~ **No Management by Members**. Except as otherwise expressly provided herein or as requested by the Board, the Members shall not take part in the day-to-day management or operation of the business and affairs of the Company. Except and only to the extent expressly provided for in this Agreement and the Related Agreements and as delegated by the Board to committees of the Board or to duly appointed Officers or agents of the Company, neither a Member nor any other Person other than the Board shall be an agent of the 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.

4.10. ~~4.11.~~ **Reliance by Third Parties**. Any Person dealing with the Company or the Board may rely upon a certificate signed by the Chairman, or such other Officer of the Company designated by the Board, as to:

(a) the identity of the members of the Board or any committee thereof or any Officer or agent of the Company;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any agreement, instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or any other matter whatsoever involving the Company or the ~~Member~~Members.

4.11. ~~4.12.~~ **Regulatory Obligations**.

(a) **Non-Interference.** Each of the Members and the Directors, Officers, employees and agents of the Company 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 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 Exchange Act. No present or past Member, Director, Officer, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or any other person or entity shall

have any rights against the Company or any Member, Director, Officer, employee or agent of the Company under this Section ~~4.12~~4.11.

(b) **Compliance with Securities Laws; Cooperation with the SEC.** 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, agree to comply and 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 self-regulatory functions and responsibilities of the Exchange, and the Company shall take reasonable steps necessary to cause its Directors, Officers, employees and agents to so cooperate. No present or past Member, Director, Officer, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or any other person or entity shall have any rights against the Company or any Member, Director, Officer, employee or agent of the Company under this Section ~~4.12~~4.11.

Article 5

Powers, Duties, and Restrictions

5.1. **Powers of the Company**. In furtherance of the purposes set forth in Article 3, and subject to the provisions of Article 4, the Company, acting through the Board, will possess the power to do anything not prohibited by the LLC Act, by other applicable law, or by this Agreement, including but not limited to the following powers: (a) to undertake any of the activities described in Article 3; (b) to make, perform, and enter into any contract, commitment, activity, or agreement relating thereto; (c) to open, maintain, and close bank and money market accounts, to endorse, for deposit to any such account or otherwise, checks payable or belonging to the Company from any other Person, and to draw checks or other orders for the payment of money on any such account; (d) to hold, distribute, and exercise all rights (including voting rights), powers, and privileges and other incidents of ownership with respect to assets of the Company; (e) to borrow funds, issue evidences of indebtedness, and refinance any such indebtedness in furtherance of any or all of the purposes of the Company, to guarantee the obligations of others, and to secure any such indebtedness or guarantee by mortgage, security interest, pledge, or other lien on any property or other assets of the Company; (f) to employ or retain such agents, employees, managers, accountants, attorneys, consultants and other Persons necessary or appropriate to carry out the business and affairs of the Company, and to pay such fees, expenses, salaries, wages and other compensation to such Persons as the Board shall determine; (g) to bring, defend, and compromise actions, in its own name, at law or in equity; and (h) to take all actions and do all things necessary or advisable or incident to the carrying out of the purposes of the Company, so far as such powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the Company's business, purpose, or activities.

5.2. **Powers of Members**. Except as otherwise specifically provided by this Agreement or required by the LLC Act or by the SEC pursuant to the Exchange Act, no Member shall have the power to act for or on behalf of, or to bind, the Company, and unless otherwise determined by

the Board, all Members shall constitute one class or group of members of the Company for all purposes of the LLC Act.

5.3. **Voting Trusts**. Members are prohibited from entering into voting trust agreements with respect to their Units.

5.4. **Member's Compensation**. Except as otherwise specifically provided in this Agreement, the Members shall not be entitled to any compensation for their services hereunder.

5.5. **Cessation of Status as a Member**. A Member will cease to be a member of the Company upon the Bankruptcy or the involuntary dissolution of such Member.

5.6. **Claims Against or By Members**. Any and all matters relating to the actions of the Company with respect to claims: (i) by the Company against a Member or a former Member or any Affiliate of a Member or a former Member (collectively the "Member Entities"); or (ii) by a Member Entity against the Company shall be controlled by the Board, excluding the Member Directors appointed by the Member or Members affiliated with such Member Entity. No Member Director shall be entitled to vote on (A) whether to initiate a claim by the Company against the Member that appointed such Member Director or an Affiliate of such Member, (B) any matter concerning a claim initiated by the Company against the Member that appointed such Member Director or a Member Entity affiliated with such Member, or (C) any matter concerning a claim initiated against the Company by the Member that appointed such Member Director or a Member Entity affiliated with such Member. Any action to be taken by the Board with respect to any such claim shall be considered effective only if approved by all Directors not so disqualified by this Section 5.6.

5.7. **Purchased Services**. Except as set forth in the Related Agreements, all products and services to be obtained by the Company will be evaluated by the Company's management with a view to best practices and all such products and services will be obtained from Members, their Affiliates or third-parties based upon arms-length negotiations, including obtaining quotes for such products or services from third-parties, as appropriate. Notwithstanding the forgoing, Members and their Affiliates will be given preference over third-parties if such Members or Affiliates are willing and able to provide services and terms at least as favorable, in the aggregate, to the Company as those offered by the third parties, 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.

5.8. **Suspension of Voting Privileges and Termination of Membership**. After appropriate notice and opportunity for hearing, the Board, by unanimous vote, excluding the vote of any Director appointed by such Member subject to sanction, may suspend or terminate a Member's voting privileges or membership in the Company, under the LLC Act or this Agreement: (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 Exchange Act~~Statutory Disqualification; or (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.

Article 6

Capital

6.1. **Capital Contributions**. All capital contributions contributed to the Company by holders of Units shall be reflected on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the LLC Act.

6.2. **Additional Capital Contributions**. The Board shall, in its sole discretion, determine the capital needs of the Company. If at any time the Board shall determine 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~~four Directors. Notwithstanding any of the foregoing, the Board shall not have the power to require the Members to make any Additional Capital Contributions.

6.3. **Borrowings and Loans**. If a Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member's Capital Contribution unless specifically agreed to by the Board of Directors and the Member. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by the Board in accordance with Article 4.

6.4. **General**. Except as otherwise provided in this Agreement, a Member and its Affiliates may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a member of the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by the Board from time to time or, if such transaction is contemplated by this Agreement or any other Related Agreement, on the terms provided for in this Agreement or such Related Agreement.

6.5. **Liability of Members and Directors**. Except as otherwise required by the LLC Act, no Member or Director or Officer of the Company, solely by reason of being a Member or Director or Officer of the Company, shall be liable, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other Member or Director or Officer of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the LLC Act shall not be grounds for imposing liability on any Member or Director or Officer of the Company for liabilities of the Company.

Article 7

Transferability of Units

7.1. Restrictions on Transfer

(a) No Person shall 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 (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement unless prior to such Transfer the transferee is approved by a vote of the Board. To be eligible for such Board approval, the proposed transferee must (x) be of high professional and financial standing, (y) be able to carry out its duties as a Member hereunder, if admitted as such, and (z) 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 such Board approval. Notwithstanding the foregoing, the following shall not be included in the definition of "Transfer" (i) transfers among Members, (ii) transfers to any Person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of, and equity or beneficial interests in, such Member, or (iii) transfers to any Person that is a wholly owned Affiliate of such Member. Voting Units may not be disposed of, sold, alienated, assigned, exchanged, participated, subparticipated, encumbered, or otherwise transferred in any manner separately from their related Economic Units. A holder of Units shall provide prior written notice to the Exchange of any proposed Transfer.

(b) In addition to the foregoing requirements, and notwithstanding anything to the contrary contained in this Agreement, a Person shall be admitted to the Company as an additional or substitute Member of the Company, if such Person is not already a Member, only upon (i) such Person's execution of a counterpart of this Agreement to evidence its written acceptance of the terms and provisions of this Agreement, and acceptance ~~thereof by resolution of the Board, which acceptance~~by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of ~~the Board~~each such voting Member, (ii) if such Person is a transferee, its agreement in writing to its assumption of the obligations hereunder of its assignor, and acceptance thereof by ~~resolution of the Board, which acceptance~~the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of ~~the Board,~~each such voting Member, and (iii) if such Person is a transferee, a determination by the ~~Board~~Company that the Transfer was permitted by this Agreement~~, and (iv) approval of the Board~~. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of this Agreement and assumed in writing the obligations hereunder of its predecessor in interest, such transferee shall be deemed, by the acquisition of such Units, to have agreed to be subject to and bound by all the obligations of this Agreement with the same effect and to the same extent as any predecessor in interest of such transferee.~~ Notwithstanding the foregoing, any Person to which the Company issues new Class B Units shall be automatically admitted as a Member upon such Person's execution of a counterpart of this Agreement.~~

(c) All costs incurred by the Company in connection with the admission to the Company of a substituted Member pursuant to this Article 7 shall be borne by the transferor Member (and, if not timely paid, by the substituted Member), including, without limitation, costs of any necessary amendment hereof, filing fees, if any, and reasonable attorneys' fees.

7.2. **Right of First Refusal for the Company**. In the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, effect a Transfer with respect to all or any portion of the Economic Units owned, directly or indirectly, by such Member as permitted under this Agreement, and obtains a bona fide offer therefor ~~either~~ from a third party (each, in such case, a "Transferee"), the Transferring Member shall first offer such Economic Units to the Company in the following manner:

(a) The Transferring Member shall deliver a written notice (the "Transfer Notice") to the Company specifying in reasonable detail the proposed price, terms and conditions of such proposed Transfer and the identity of the proposed Transferee.

(b) Upon receipt of such Transfer Notice, the Company shall be entitled, subject to Section 7.4 hereof, and by notice to the Transferring Member within 30 days after receipt of the Transfer Notice, to elect to purchase all but not less than all (unless otherwise mutually agreed by the Company and the Transferring Member) of the Economic Units offered for sale by the Transferring Member and its Affiliates at the price and on the terms and conditions specified in the Transfer Notice.

(c) If the Company elects to purchase such Economic Units, the Transferring Member shall, subject to the provisions of this Article 7, complete such sale to the Company within 30 days after receipt of the Transfer Notice at a price and on terms and conditions specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals.

(d) If the Company elects not to purchase such Economic Units, the Transferring Member may, subject to the provisions of this Article 7, complete the sale described in the Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals. In the event the Transferring Member does not complete such sale to the Transferee within such 60-day period, any subsequent proposed sale of any Economic Units shall be once again subject to the provisions of this Section 7.2.

7.3. **Right of First Refusal for Members**. Subject to Section 7.2 (i.e., if the Company does not elect to exercise its right of first refusal set forth in Section 7.2), in the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, Transfer all or any portion of the Economic Units owned, directly or indirectly, by such Member as permitted under this Agreement, and obtains a bona fide offer therefor ~~either~~ from a third party (each, in such case, a "Transferee"), the Transferring Member

shall first offer such Economic Units to the other Members (the "Non-Transferring Members") in the following manner:

(a) The Transferring Member shall deliver a written notice (the "Transfer Notice") to the Non-Transferring Members and the Company specifying in reasonable detail the proposed price, terms and conditions of such proposed Transfer and the identity of the proposed Transferee. For the avoidance of doubt, a Transfer Notice pursuant to this Section 7.3 may be delivered simultaneously with, or at any time after, delivery of the Transfer Notice required pursuant to Section 7.2 for the same transaction.

(b) Upon receipt of such Transfer Notice, the Non-Transferring Members shall be entitled, subject to Section 7.4 hereof, and the other provisions of this Article 7 (except for Section 7.2), and by notice to the Transferring Member and the Company within 30 days after receipt of the Transfer Notice, to elect to purchase (or cause its Affiliate to purchase) ~~all but not less than all (unless otherwise mutually agreed by the Non Transferring Member and the Transferring Member) of the~~any number of the Economic Units offered for sale by the Transferring Member and its Affiliates at the price and on the terms and conditions specified in the Transfer Notice.

(c) If more than one Non-Transferring Member elects to purchase (or to cause its Affiliate to purchase) such Economic Units, then such Non-Transferring Members shall purchase (or cause its Affiliate to purchase) such Economic Units on a pro-rata basis based upon the relative percentages of such Non-Transferring Members' respective Economic Percentage Interest.

(d) If one or more Non-Transferring Members elect to purchase such Economic Units, the Transferring Member shall, subject to the provisions of this Article 7, complete such sale to such Non-Transferring Members within 30 days after receipt of the Transfer Notice at a price and on terms and conditions specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals.

(e) If no Non-Transferring Member elects to purchase such Economic Units, the Transferring Member may, subject to the provisions of this Article 7, complete the sale described in the Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals. In the event the Transferring Member does not complete such sale to the Transferee within such 60 day period, any subsequent proposed sale of any Economic Units shall be once again subject to the provisions of Section 7.2 and this Section 7.3.

7.4. **Additional Restrictions**. Anything contained in the foregoing provisions of this Article 7 expressed or implied to the contrary notwithstanding:

(a) In no event shall a Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement take

place if such Transfer: (i) in the opinion of tax counsel to the Company, could cause a termination of the Company within the meaning of Section 708 of the Code or, (ii) in the opinion of the Board, based on advice of tax counsel, 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, (iii) is prohibited by any state, federal or provincial securities laws, or (iv) is prohibited by this Agreement.

(b) In no event shall all or any part of a Member's Units be Transferred to a minor or incompetent person.

(c) The Board may, in addition to any other requirement that the Board may impose, require as a condition of any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units that the transferor furnish to the Company an opinion of counsel satisfactory (both as to such opinion and as to such counsel) to counsel to the Company that such Transfer, whether direct or indirect, voluntary or involuntary, by operation or law or otherwise, complies with applicable federal and state securities laws.

(d) Notwithstanding anything to the contrary contained in this Agreement, any Transfer or other ownership transaction, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, in contravention of any of the provisions of this Article 7 shall be void and ineffectual and shall not bind or be recognized by the Company. The Board shall have the right to require any Person reasonably believed to be subject to and in violation of this Article 7 to provide the Company with complete information as to all Voting Units and Economic Units owned, directly or indirectly, of record or beneficially, by such Person and its Related Persons and as to any other factual matter relating to the applicability or effect of this Article 7 as may reasonably be requested of such Person.

(e) ~~Beginning after SEC approval of this Agreement, any Member~~Any Member involved in any acquisition or other ownership transaction shall provide the Company with written notice fourteen (14) days prior, and the Company shall provide the SEC and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that ~~results~~would result in such Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any Related Person of such Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting Percentage Interest levels of 10% and 15%. Any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of Units outstanding), of record or beneficially, a Voting Percentage Interest or Economic Percentage Interest of five percent (5%) or more ~~of the then outstanding Units~~ shall, immediately upon acquiring knowledge of its ownership ~~of five percent (5%) or more of the then outstanding Units~~thereof, give the Company written notice of such ownership, which notice shall state: (i) such Person's full legal name; (ii) the number of Voting Units and Economic Units owned, directly or indirectly, of record or beneficially, by such Person together with such Person's Related Persons; and (iii) whether such Person has the power, directly or indirectly, to direct the management or policies of the Company, whether through ownership of Voting Units, by contract or otherwise.

~~(f)~~ In ~~Beginning after SEC approval of this Agreement, in~~ addition to the foregoing notice requirement in this Section 7.4(e), the parties agree that the following ~~Transfers~~transfers or other

ownership transactions are subject to the rule filing process pursuant to Section 19 of the Exchange Act: any Transfertransfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Voting Percentage Interest or Economic Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (i.e., 25%, 30%, etc.).

(g) Beginning after SEC approval of this Agreement:

(f) No Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Economic Percentage Interest greater than 40% (such Person's "Economic Ownership Limit") shall be effective without both the approval of the Exchange and an effective the rule filing pursuant to Section 19 of the Exchange Act (an "Economic Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have an Economic Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of an Economic Ownership Limit Waiver. The Exchange may only approve an Economic Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, an "Economic Waiver Determination") that (A) such Economic Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, (B) such Economic Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, (C) such Economic Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and (D) if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making an Economic Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Economic Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire an Economic Percentage Interest in excess of the Economic Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire an Economic Percentage Interest in excess of the applicable Economic Ownership Limit. Any Member may voluntarily set a lower Economic Ownership Limit for itself upon providing written notice thereof to the Secretary.

(g) No Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest greater than 20% (such Person's "Voting Ownership Limit") or having the power to vote, direct the vote or give any consent or proxy in excess of the Voting Ownership Limit, or entering into any agreement, plan or other arrangement with any other Person under circumstances that would result in the Voting Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit, and no Transfer or other event that would result in exceeding such Voting Ownership Limit shall be effective without both

the approval of the Exchange and an effective rule filing pursuant to Section 19 of the Exchange Act (a "Voting Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have a Voting Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of a Voting Ownership Limit Waiver. The Exchange may only approve a Voting Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, a "Voting Waiver Determination") that (A) such Voting Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, (B) such Voting Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, (C) such Voting Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and (D) if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making a Voting Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Voting Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire a Voting Percentage Interest in excess of the Voting Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire a Voting Percentage Interest in excess of the applicable Voting Ownership Limit. Any Member may voluntarily set a lower Voting Ownership Limit for itself upon providing written notice thereof to the Secretary. No Person shall enter into any agreement, plan or other arrangement with any other Person where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit.

(i) Except as required by the Voting Units Adjustment (defined below), each Member shall hold the number of Voting Units equal to the number of Economic Units held by such Member. Notwithstanding the foregoing, the following adjustment shall be made to the allocation of Voting Units among the Members (the "Voting Units Adjustment"):

At all times, to the extent any Member holds an Economic Percentage Interest in excess of such Member's applicable Voting Ownership Limit,

(A) the number of Voting Units held by such Member shall be automatically reduced and

(B) the excess Voting Units shall be automatically redistributed among the remaining Members pro rata according to each such Members' respective Economic Percentage Interest.

In calculating the Voting Units Adjustment, any applicable Voting Ownership Limit with respect to each Member shall be observed and no Member may hold Voting Units in excess of such Member's applicable Voting Ownership Limit.

(ii) Upon any change in the ownership of Economic Units for any reason, the Voting Units held by the Members shall be recalculated simultaneously so that each Member holds the number of Voting Units equal to the number of Economic Units held by such Member, subject to any automatic reallocation of Voting Units as required by the Voting Units Adjustment described in Section 7.4(g)(i) above. Upon any change in the allocation of Voting Units, the Secretary shall update the Membership Record to reflect such changes; provided, however, that any failure to update the Membership Record shall not affect the proper allocation of Voting Units in accordance with this Section 7.4(g)(ii).

(h) ~~(i)~~ Except as provided in Section 7.4(~~g~~h)(~~iii~~ii) below, a Controlling Person shall be required to execute, and the relevant Member shall take such action as is necessary to ensure that each of its Controlling Persons executes, an amendment to this Agreement upon establishing a Controlling Interest in any Member that, alone or together with any Related Persons of such Member, holds ~~a~~an Economic Percentage Interest or Voting Percentage Interest in the Company equal to or greater than 20%.

(i) ~~(ii)~~ In such amendment, the Controlling Person shall agree (A) to become a party to this Agreement and (B) to abide by all the provisions of this Agreement.

(ii) ~~(iii)~~ Notwithstanding the foregoing, a Person shall not be required to execute an amendment to this agreement pursuant to this Section 7.4(~~g~~h) if such Person does not, directly or indirectly, hold any interest in a Member.

(iii) ~~(iv) Beginning after SEC approval of this Agreement, any~~Any amendment to this Agreement executed pursuant to this Section 7.4(~~g~~h) is subject to the rule filing process pursuant to Section 19 of the Exchange Act. The rights and privileges, including all voting rights, of the Member in whom a Controlling Interest is held under this Agreement and the LLC Act shall be suspended until such time as the amendment executed pursuant to this Section 7.4(~~g~~h) has become effective pursuant to Section 19 of the Exchange Act or the Controlling Person no longer holds a Controlling Interest in the Member.

(iv) ~~(v)~~ For purposes of this Section 7.4(~~g~~h): (A) a "Controlling Interest" shall be 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; and (B) a "Controlling Person" shall be defined as a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in a Member.

(i) ~~(h) Beginning after SEC approval of this Agreement, in~~In the event that a Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such ~~Member owns more than~~Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%~~ of the Units~~, alone or together with any Related Person of such Member (Voting Units so owned in excess of 20% being referred to as "Excess

Voting Units"), the Member and its ~~appointed Member Directors~~designated Director, if applicable, shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member ~~or its appointed Member Directors, if any,~~ be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Voting Units held by such Member; provided, however, that whether or not such Member ~~or its appointed Member Directors, if any,~~ otherwise participates in a meeting in person or by proxy, such Member's Excess Voting Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). An effective rule filing pursuant to Section 19 of the Exchange Act shall be required prior to any Member, or any Related Person of such Member, becoming a BSTX Participant if such Member, alone or together with any Related Persons of such Member, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more than 20% of the Directors ~~entitled to vote~~ and, unless a rule filing authorizing the foregoing is first effective, such Member, or any Related Person of such Member, shall not be registered as a BSTX Participant.

7.5. **Continuation of LLC**. The liquidation, dissolution, Bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member. Such personal representatives and successors in interest, if any, of any Member shall succeed as assignee to such Member's Units in the Company upon the Bankruptcy or dissolution of such Member but shall be admitted as a substitute Member, subject to Sections 7.1(a) and (b), only with the written consent of ~~the Board~~Members holding a majority of the Voting Percentage Interest (such consent to be in ~~the Board's~~each Member's sole discretion); unless and until such consent is given, any Voting Percentage Interest in the Company held by such legal representatives of a Member shall not be included in calculating the Voting Percentage Interests of the Members required to take any action under this Agreement.

7.6. **Membership Record**. Upon the issuance of any new Units in the Company or the valid ~~Transfer~~transfer of all or any portion of a Member's Units, the ~~Board~~Company shall ensure that such further adjustments to the Membership Record are made as may be necessary to reflect such event and to give effect to the provisions of Section 7.4.

7.7. **No Retroactive Effect**. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the books of the Company (as though the Company's Fiscal Year has ended) or make *pro-rata* allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

Article 8

Distributions and Allocations

8.1. **Current Distributions**. Except as otherwise provided in Section 10.2, 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:

(a) **First**, within ten (10) days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (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). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such Member under Section 8.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the Members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this Section 8.1(a) for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 8.1(b) or Section 10.2. Subsequent distributions made to the Member pursuant to Section 8.1(b) and Section 10.2 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 shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such Member pursuant to Section 8.1(b) and Section 10.2 if this Agreement contained no provision for Tax Distributions.

(b) **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 such Member's respective Economic Percentage Interest.

8.2. **Limitation**. The Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its ownership interest in the Company if, and to the extent, such distribution would violate the LLC Act or other applicable law.

8.3. **Withholdings Treated as Distributions**. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 8.1(a), 8.1(b) or 10.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount is treated, pursuant to the previous sentence, as a distribution under Section 8.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 8.1(a).

Article 9

Allocations of Profits and Losses

9.1. **Profits, Losses and Credits**. Except as provided in Sections 9.2 through 9.8 below, all profits, losses (each determined in accordance with Section 9.6) 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 such Member's respective Economic Percentage Interest. The allocations provided in this Article 9 are intended to comply with the Treasury Regulations under Section 704(b) of the Code and shall be interpreted and applied in a manner consistent therewith.

9.2. **Limitation.** Notwithstanding anything otherwise provided in Section 9.1, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*), or (*6*) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members in a manner that complies with Treasury Regulations under Section 704(b). In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit.

9.3. **Qualified Income Offset**. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations §1.704-1(b)(2)(ii)(d), and shall be interpreted consistently therewith.

9.4. **Nonrecourse Debt and Chargebacks**. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 9.2, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of the Company, such Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Company Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable

share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Company Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations §1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

9.5. **Member Nonrecourse Deductions**. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations §1.704-2(i)(4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations §1.704-2(i)(4), and shall be interpreted and applied in a manner consistent herewith.

9.6. **Calculation of Profits and Losses**. For all purposes of this Agreement, the Company's profits and losses shall be determined by taking into account all of the Company's items of income and gain (including items not subject to federal income tax) and all items of loss, expense, and deduction, in each case determined under federal income tax principles.

9.7. **Section 704(c) and Capital Account Revaluation Allocations**. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its ~~Percentage Interest~~Units and shall not affect its Capital Account. In addition to the foregoing, if the Company assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (*e.g.,* because of a revaluation of the Members' Capital Accounts under Treasury Regulations §1.704-1(b)(2)(iv)(*f*)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 9.7.

9.8. **Offset of Regulatory Allocations**. The allocations required by Sections 9.2 through 9.5 and Section 9.7 are intended to comply with certain requirements of the Treasury Regulations. The Board may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this Section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

9.9. **Terminating and Special Allocations**. Notwithstanding the foregoing allocation provisions, 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 such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 10.3, and immediately before the making of any liquidating distributions to the Members under Section 10.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 10.2.

Article 10

Dissolution and Winding Up

10.1. **Dissolution**.

(a) The Company shall be dissolved and its affairs shall be wound up upon:

(i) the election to dissolve the Company made by the Board pursuant to Section 4.4(b)(v); or

(ii) the entry of a decree of judicial dissolution under §18-802 of the LLC Act; or

(iii) the affirmative vote of Members holding a majority of all of the then outstanding Voting Percentage Interests (excluding any Voting Percentage Interests held 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 LSA; or

(iv) 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

(v) 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.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of the Company, in which case a liquidating trustee may be appointed for the Company by vote of a majority of the Directors (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would

be imprudent to dispose of any non-cash assets of the Company, subject to Section 10.2, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; *provided,* that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any action brought against it in connection therewith by applying, *mutatis mutandis,* the provisions of Article 13.

10.2. **Application and Distribution of Assets**.

(a) **Winding Up**. 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 such Members and former Members; and third, to the Members in proportion to their respective Economic Percentage Interests.

(b) **Reserve.** 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 such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

10.3. **Capital Account Adjustments**. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 9 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this Section shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Economic Percentage Interests.

10.4. **Termination of the LLC**. Subject to Section 18.1 of this Agreement, the separate legal existence of the Company shall terminate when all assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 10, and a Certificate of Cancellation shall have been filed in the manner required by Section 18-203 of the LLC Act.

Article 11

Books, Records and Accounting

11.1. **Books and Records**. The Board shall cause to be entered in appropriate books, kept at the Company's principal place of business, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other Company records (excluding any regulatory and disciplinary information) during normal business hours; *provided that* the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. The Board shall 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 books of account shall be kept using the method of accounting determined by the Board. The Company's independent auditor shall be an independent public accounting firm selected by the Board. The Company and its Members acknowledge that, to the extent related to the operation or administration of the Exchange or the BSTX Market, (i) all books and records of the Company and its Members shall be maintained at a location within the United States, (ii) the books, records, premises, directors, officers, employees and agents of the Company and its Members shall 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 Exchange Act, and (iii) the books and records of the Company and its Members shall be subject at all times to inspection and copying by the SEC and the Exchange.

11.2. **Deposits of Funds**. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as the Board may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as the Board shall determine.

11.3. **Fiscal Year**. The fiscal year of the Company shall be the calendar year.

11.4. **Financial Statements; Reports to Members**. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within ninety (90) days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

11.5. **Tax Elections**. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 9 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

11.6. **Tax Matters ~~Member~~**~~. BOX Digital and, to the extent an individual is required to be named, its chief executive officer,~~**Representative**. The CEO of the Company shall be the tax matters ~~Member~~representative of the Company (the "Tax Matters Representative") for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service ~~as it, in its absolute discretion,~~and any corresponding provision of state or local income tax law as such officer deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, the ~~tax matters Member~~Company shall (a) promptly deliver to the ~~other~~ Members copies of any notices, letters or other documents received by the ~~tax matters Member of the Company~~Tax Matters Representative in such capacity, (b) keep the ~~other~~ Members informed with respect to all matters involving the ~~tax matters Member of the Company~~Tax Matters Representative, and (c) consult with the ~~other~~ Members and obtain the approval of the ~~other~~ Members prior to taking any actions as the ~~tax matters Member of the Company. The tax matters Member shall not be entitled to be paid by the Company any fee for services rendered in connection with any tax proceeding, but~~Tax Matters Representative. The Tax Matters Representative shall be reimbursed by the Company for all ~~third party~~ costs and expenses incurred by ~~it~~the Tax Matters Representative in connection with ~~any~~ such ~~proceeding~~role and shall be indemnified by the Company with respect to any action brought against ~~it~~the Tax Matters Representative in connection with the settlement of any ~~such~~ proceeding by applying, *mutatis mutandis,* the provisions of Article 13.

Article 12

Arbitration

All disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be (a) settled by arbitration before a panel of three neutral arbitrators (the "Neutral Arbitrators") appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, each having experience with and knowledge of the general field related to the dispute, claim or controversy (with at least one being an attorney), and (b) administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules as in effect at the time a request for arbitration is made. For the purposes of this Article 12, the following persons shall be deemed not to be a Neutral Arbitrator: (i) a director, officer, employee, agent, partner or shareholder of any party to the dispute or of the Company; (ii) a consultant to the Company or of any party to the dispute; (iii) a person with a direct or indirect financial interest in any contract with any party to the dispute; (iv) a director, officer or key employee of a company at a time when such company was party to a contract with any party to the dispute; or (v) a relative of any person referred to in clauses (i), (ii), (iii) or (iv) above. Arbitration may be commenced at any time by any party to the dispute by giving written notice to the other party or parties to the dispute that such dispute has been referred to arbitration under this Article 12. Any determination or award rendered by the Neutral Arbitrators shall be conclusive and binding upon the parties to such dispute and judgment on the award rendered by the Neutral Arbitrators may be entered and enforced in any court having jurisdiction thereof; *provided, however*, that any such determination or award shall be accompanied by a reasoned award of the Neutral Arbitrators giving the reasons for the determination or award. The parties hereby consent to the non-exclusive jurisdiction of the courts

of the Commonwealth of Massachusetts or to any federal court located within the Commonwealth of Massachusetts for any action (x) to compel arbitration, (y) to enforce the award of the Neutral Arbitrators or (z) prior to the appointment and confirmation of the Neutral Arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law. Any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to the parties. In making any determination or award, the Neutral Arbitrators shall be authorized to award interest on any amount awarded. This provision for arbitration shall be specifically enforceable by the parties to the disputes and the determination or award of the Neutral Arbitrators in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Each of the parties to the dispute shall pay its own expenses of arbitration and the expenses of the Neutral Arbitrators shall be equally shared; *provided, however*, that if in the opinion of the Neutral Arbitrators any claim was frivolous or in bad faith, the Neutral Arbitrators may assess, as part of the determination or award, all or any part of the arbitration expenses of the other party or parties (including reasonable attorneys' fees) and of the Neutral Arbitrators against any party so acting in bad faith or raising such frivolous claim.

The place of arbitration shall be Boston, Massachusetts and the language of the arbitral proceedings shall be English.

Article 13

Exculpation and Indemnification

13.1. **Exculpation and Indemnification**.

(a) No Member nor any Officer, Director, employee, agent or committee member of the Company nor any employee, representative, agent, director or Affiliate of any Member (including the heirs, executors, and administrators of any such Person) (each an "Indemnified Person") shall be liable to the Company or any other Person who is bound by this Agreement (including any Member and the Exchange) for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Person in accordance with this Agreement, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred if and to the extent (1) such loss, damage or claim is the result of the Indemnified Person's fraud, bad faith or willful misconduct, (2) with respect to any criminal proceeding, the Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct giving rise to such loss, damage or claim was unlawful or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company, in each case as determined by a final, unappealable judgment by a court of competent jurisdiction.

(b) The Company may indemnify any Person against any claim to the extent determined by the Board to be in the best interests of the Company. The Company shall indemnify, and hold harmless, to the fullest extent permitted by law as it presently exists or may thereafter be amended, any Indemnified Person who, by reason of the fact that such Person is or was a Director, Officer, employee or agent of the Company, or a member of any committee of the Company, or is

or was a Director, Officer, employee or agent of the Company who is or was serving at the request of the Company as a director, officer, employee or agent of another Person, including without limitation service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to (i) any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, or (ii) any threatened, pending, or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor, in each case against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with the defense or settlement of, or otherwise in connection with, any such action, suit, or proceeding (collectively, "Indemnified Claims"). Notwithstanding the foregoing, no Indemnified Person shall be indemnified by the Company, and no claim shall be an Indemnified Claim, if and to the extent (1) such claim is the result of the Indemnified Person's fraud, bad faith or willful misconduct, (2) with respect to any criminal proceeding, the Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct giving rise to such claim was unlawful or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company, in each case as determined by a final, unappealable judgment by a court of competent jurisdiction.

(c) The Company shall advance expenses (including attorneys' fees and disbursements) to Indemnified Persons for Indemnified Claims; provided, however, that the payment of such expenses incurred by such Indemnified Person, in advance of the final disposition of the matter, shall be conditioned upon receipt of a written undertaking by the Person to repay all amounts advanced if it should be ultimately determined that the Person is not entitled to be indemnified under this Section 13.1 or otherwise.

(d) Notwithstanding the foregoing or any other provision of this Agreement, no advance shall be made by the Company to any Indemnified Person if a determination is reasonably and promptly made by a majority vote of the Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) such Indemnified Person committed fraud, acted in bad faith or engaged in willful misconduct; (2) with respect to any criminal proceeding, such Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct was unlawful; or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company.

(e) The indemnification provided by this Section 13.1 in a specific case shall not be deemed exclusive of any other rights to which an Indemnified Person may be entitled, both as to action in his or her official capacity and as to action in another capacity while in such capacity, and shall continue as to an Indemnified Person who has ceased to be a Director, Officer, or committee member, employee, or agent and shall inure to the benefit of such Indemnified Person's heirs, executors, and administrators.

(f) Any repeal or modification of the foregoing provisions of this Section 13.1 shall not adversely affect any right or protection hereunder of any Person respecting any act or omission occurring prior to the time of such repeal or modification.

(g) If a claim for indemnification or advancement of expenses under this Section 13.1 is not paid in full within 60 days after a written claim therefor by an Indemnified Person has been received by the Company, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Company shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses.

(h) The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was a Director, Officer, or committee member, employee or agent of the Company, or who is or was serving as a director, officer, employee, or agent of another Person against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as such, whether or not the Company is required to indemnify such Person against such liability hereunder.

(i) A Indemnified Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

(j) To the extent that, at law or in equity, a Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Indemnified Person, a Indemnified Person acting under this Agreement shall not be liable to the Company or to any other Indemnified Person who is bound by this Agreement for his or her good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Indemnified Person.

(k) The foregoing provisions of this Section 13.1 shall survive any termination of this Agreement.

Article 14

Maintenance of Separate Business

The Company shall at all times: (a) to the extent that any of the Company's offices are located in the offices of an Affiliate, pay fair market rent for its office space located therein; (b) maintain the Company's books, financial statements, accounting records and other limited liability company documents and records separate from those of any Affiliate or any other Person; (c) not commingle the Company's assets with those of any Affiliate or any other Person; (d) maintain the Company's books of account, bank accounts and payroll separate from those of any Affiliate; (e) act solely in its name and through its own authorized agents, and in all respects hold itself out as a legal entity separate and distinct from any other Person; (f) make investments directly or by brokers engaged and paid by the Company or its agents (provided that if any agent is an Affiliate of the Company it shall be compensated at a fair market rate for its services); (g) manage the Company's

liabilities separately from those of any Affiliate and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except that an Affiliate may pay the organizational expenses of the Company; and (h) pay from the Company's assets all obligations and indebtedness of any kind incurred by the Company. The Company shall abide by all LLC Act formalities, including the maintenance of current records of the Company affairs, and the Company shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Company. The Company shall (a) pay all its liabilities, (b) not assume the liabilities of any Affiliate unless approved by unanimous consent of the Board and (c) not guarantee the liabilities of any Affiliate unless approved by unanimous consent of the Board. The Board shall make decisions with respect to the business and daily operations of the Company independent of and not dictated by any Affiliate.

Article 15

Confidentiality and Related Matters

15.1. **Disclosure and Publicity**. Subject to exceptions set forth in Section 15.2(b) below, no Member shall make any public disclosures concerning this Agreement without the prior approval of the Company.

15.2. **Confidentiality Obligations of Members and Exchange.**

(a) Each Member and the Exchange agrees that it will use Confidential Information of the Company only in connection with its respective Member or Exchange activities contemplated by this Agreement and the Related Agreements and pursuant to the Exchange Act and the rules and regulations thereunder, and it will not disclose any Confidential Information of the Company to any Person except as expressly permitted by this Agreement and the Related Agreements or pursuant to the Exchange Act and the rules and regulations thereunder.

(b) Each of the Members and the Exchange may disclose Confidential Information of the Company only:

(i) to its respective directors, officers and employees who have a reasonable need to know the contents thereof and who are subject to similar such confidentiality obligations;

(ii) on a confidential basis to its Advisors who have a reasonable need to know the contents thereof and who are subject to similar confidentiality obligations, so long as such disclosure is made pursuant to the procedures referred to in Section 15.4(b);

(iii) to the extent required by applicable statute, rule or regulation promulgated under the Exchange Act, the U.S. federal securities laws and rules thereunder; or securities laws, rules or regulations applicable in one or more province of Canada; or in response to a request from the SEC (pursuant to the Exchange Act and the

rules thereunder), or from any securities regulatory authority in Canada (pursuant to applicable securities laws, rules or regulations) or the Exchange;

(iv) to the extent required by applicable statute, rule or regulation (other than the U.S. federal securities laws and the rules thereunder); or any court of competent jurisdiction; provided that it has made reasonable efforts to conduct its relevant business activities in a manner such that the disclosure requirements of such statute, rule or regulation or court of competent jurisdiction do not apply, and provided further that the Company is given notice and an adequate opportunity to contest such disclosure or to use any means available to minimize such disclosure; and

(v) to the extent that such Confidential Information has become generally available publicly through no fault of the Member, the Exchange or either of such Person's directors, officers, employees or Advisors.

15.3. **Member Information Confidentiality Obligation**. Each Member and the Exchange shall hold, and shall cause its respective Affiliates and their directors, officers, employees, agents, consultants and Advisors to hold, 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, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, reports, instruments, computer data and other data and information (collectively, "Member Information") concerning the other Members or the Exchange, as applicable (or, if required under a contract with a third party, such third party), furnished to it by the Member, the Exchange or a Member's or the Exchange's respective representatives pursuant to this Agreement, except to the extent that such Member Information can be shown to have been: (a) previously known by such Member or Exchange, as applicable, on a non-confidential basis; (b) available to such Member or Exchange, as applicable, on a non-confidential basis from a source other than the disclosing Member; (c) in the public domain through no fault of such Member or Exchange; or (d) later lawfully acquired from other sources by the Member or Exchange to which it was furnished, and none of the Members or the Exchange shall release or disclose such Member Information to any other person, except its auditors, attorneys, financial advisors, bankers, other consultants and Advisors and, to the extent permitted above, to regulatory authorities. In the event that a Member or the Exchange becomes compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, such compelled party shall provide the party that provided such Member Information (the "Disclosing Party") with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive the terms of any applicable confidentiality arrangements. In the event that such protective order, other remedy or waiver is not obtained, only that portion of the Member Information which is legally required to be disclosed shall be so disclosed.

15.4. **Ongoing Confidentiality Program.**

(a) In order to ensure that the parties hereto comply with their obligations in this Article 15, representatives designated by the Member, the Exchange and the Company shall meet

from time to time as required to discuss issues relating to confidentiality and disclosure and other matters addressed by this Article 15.

(b) With respect to any disclosure by any of the parties hereto to any of their Advisors pursuant to this Article 15, the representatives referred to in paragraph (a) above will institute procedures designed to maintain the confidentiality of Confidential Information of the Company while facilitating the business activities contemplated by this Agreement and the Related Agreements.

15.5. **Regulatory Right to Access.** Nothing in this Agreement shall be interpreted as to limit or impede the rights of ~~any Governmental Authority, including~~ the SEC, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine such 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~~, advisors~~ or agents of the Company and any Directors, Officers, employees~~, advisors~~ or agents of the Members to disclose such Confidential Information to ~~any Governmental Authority, including~~ the SEC~~,~~ or the Exchange.

15.6. **Disclosure of Confidential Information**. Notwithstanding anything to the contrary in this Agreement, all Confidential Information of the Company or the Exchange, pertaining to regulatory matters of the Company or the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company or any of its subsidiaries shall: (i) not be made available to any persons (other than as provided in the next sentence) other than to those Directors, Officers, employees~~, advisors~~ and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the Directors, Officers, employees~~, advisors~~ and agents of the Company; and (iii) not be used by any Person for any non-regulatory purpose. Nothing in this Agreement shall be interpreted as to limit or impede the rights of ~~any Governmental Authority, including~~ the SEC, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine such 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~~, advisors~~ and agents of the Company to disclose such Confidential Information to ~~any Governmental Authority, including~~ the SEC~~,~~ or the Exchange.

Article 16

Non-Competition; Referrals

16.1. **Non-Competition**. Each Member agrees that, for so long as it holds a combined Voting Percentage Interest in the Company of five percent (5%) or more, it shall not hold or invest in more than five percent (5%) of, or participate in the creation and/or operation of, a Competing Business or in any Person engaged in the creation and/or operation of a Competing Business; provided, however, that the parties hereto hereby agree that this Section 16.1 is not intended for the benefit of the Exchange and the Exchange shall not have any rights arising under this Section 16.1.

16.2. **Referrals**. Each of the Members shall, and shall cause each of their Affiliates to, refer all inquiries about the business conducted by the Company or any of its subsidiaries to the Company or to such subsidiary of the Company as applicable.

Article 17

Intellectual Property

Each of the Members shall retain all rights, title, and interests to all of its intellectual property except as may be contemplated by Related Agreements.

Article 18

General

18.1. **Entire Agreement; Integration, Amendments**. This Agreement contains the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. This Agreement may only be changed, amended or supplemented by an agreement in writing that is approved by ~~a vote of~~ the Board, including the affirmative vote of at least ~~one Member Director appointed by each Member,~~four Directors, without the consent of any Member or other Person. In addition, notwithstanding anything to the contrary in this Agreement, any terms specific to any ~~Class or~~ Member, such as, among other things, the right to appoint ~~Directors~~a Member Director, or to the Exchange may not be altered or adversely affect such ~~Class,~~ Member or the Exchange without the prior written consent of ~~holders of a majority of the outstanding Units of such Class, or~~ such Member or the Exchange (as applicable). Each of the Members further acknowledges and agrees that, in entering into this Agreement, such Member has not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement. 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. Notwithstanding any other provision in this Agreement, the Exchange shall review each such amendment, modification, waiver or supplement and, if such amendment is required, under Section 19 of the Exchange 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. In the event the Exchange ceases to be the SRO authority of the Company, the Exchange shall no longer be a party to this Agreement and thereafter the provisions of this Agreement shall not apply to the Exchange except for the provisions referenced in Section 18.12 which shall survive.

18.2. **Binding Agreement**. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3. **Notices**. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business

day after being sent, postage prepaid, by nationally recognized overnight courier (*e.g.,* Federal Express), or five (5) days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to the Members or the Exchange shall be addressed to such entity's address set forth on the Membership Record or at such other address as such entity may have designated by notice given in accordance with the terms of this subsection; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4. **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5. **Governing Law, Etc**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules.

18.6. **Member Books, Records and Jurisdiction.**

(a) Each Member acknowledges that, to the extent they are related to the Company activities, the books, records, premises, officers, directors, agents, and employees of such Member shall 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 Exchange Act.

(b) The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC and the Exchange, for the 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 or Section 11.1 or this Section 18.6, (except that such jurisdictions shall also include Delaware state courts for any such matter relating to the organization or internal affairs of the Company) and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the SEC, 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 such courts or agency. The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such 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.

(c) With respect to Article 15 and Sections ~~4.12~~4.11, 11.1 and 18.6, the Company, the Exchange and each Member shall take such action as is necessary to ensure that the Company's Directors, Officers and employees, the Exchange's directors, officers and employees, and such Member's directors, officers and employees, as applicable, consent in writing to the applicability of such provisions to the extent related to the operation or administration of the Exchange or the BSTX Market.

18.7. **Waiver of Certain Damages**. EACH OF THE MEMBERS, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHTS THAT THEY MAY HAVE TO PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OF ANY OF THEM RELATING THERETO.

18.8. **Effect of Regulatory Approval**. The parties hereto hereby acknowledge and agree that the Company intends to seek the approval of the SEC and the Exchange to operate the BSTX Market as a facility of the Exchange. Prior to obtaining such approval, the Company shall not operate as a facility of the Exchange. Upon obtaining such approval, the SEC and the Exchange shall have appropriate regulatory oversight responsibilities with respect to the Company. Accordingly, references in this Agreement to the Exchange, the SEC, or any regulation or oversight of the Company by the SEC or the Exchange, or any participation in the affairs of the Company by the SEC or the Exchange, shall not apply until the date such approval is obtained and effective, at which time all such provisions of this Agreement shall take effect. The execution of this Agreement by the Exchange shall not be required until such approval is obtained, at which time the Exchange shall become a party to this Agreement.

18.9. **Construction**. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.10. **Severability**. The invalidity or unenforceability of any particular provision of this Agreement or any Related Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.11. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.12. **Survival**. The provisions of Articles 12, 13, 15, 17 and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon such termination of this Agreement.

[Remainder of this page intentionally left blank]

EXHIBIT 4A

IN WITNESS WHEREOF, each of the undersigned, intending to be legally bound hereby, has duly executed this Third Amended and Restated Limited Liability Company Agreement of BSTX LLC as of the date first set forth above.

COMPANY:

BSTX LLC

By:______________________________________
Lisa J. Fall
CEO

EXCHANGE:

BOX EXCHANGE LLC

By:______________________________________
Lisa J. Fall
President

EXHIBIT 4B

This Exhibit 4B shows amendments to the proposed rule text as originally set forth in Exhibit 5B of Amendment 1 to SR-BOX-2021-14, published on the Commission's website on September 21, 2021.

New text appears underlined in blue. Deleted text appears in red with a strikethrough.

* * *

EXHIBIT 4B

~~Form of~~
~~Instrument of Accession~~
~~to~~
~~BSTX LLC~~
~~Third Amended and Restated Limited Liability Company Agreement~~
~~as amended~~
~~[date of effectiveness]~~

~~Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.~~

~~The Holder hereby becomes a party to, and agrees to abide by all the provisions of, the BSTX LLC Agreement, and assumes all of the obligations of a Member. This Instrument of Accession shall take effect and shall become a part of the BSTX LLC Agreement as of the date set forth above or such later date as all required regulatory approvals are obtained and effective.~~

~~BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.~~

~~IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.~~

~~[name of Holder]~~

~~By: ________________________________~~
~~Name:~~
~~Title:~~

~~BSTX LLC~~

~~By: ________________________________~~
~~Name:~~
~~Title:~~

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Overstock.com, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Medici Ventures, L.P.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Pelion MV GP, L.L.C.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

BOX Holdings Group LLC

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

MX US 2, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

MX US 1, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Bourse de Montreal Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 4B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

The Holder hereby becomes a party to, and agrees to abide by all the provisions of, the BSTX LLC Agreement, and assumes all of the obligations of a Member. This Instrument of Accession shall take effect and shall become a part of the BSTX LLC Agreement as of the date set forth above.

BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

TMX Group Limited

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5A

BSTX LLC

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

EXHIBIT 5A

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EXHIBIT 5A

BSTX LLC

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

This Third Amended and Restated Limited Liability Company Agreement of BSTX LLC (together with the schedules attached hereto, this "Agreement") is made as of [____________], by and among each of the members set forth on the Membership Record (the "Members"), BSTX LLC (the "Company") and the Exchange.

WHEREAS, on July 17, 2018, a Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company (f/k/a StokynX LLC) to TokynX LLC; on January 29, 2019, a further Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company to Boston Security Token Exchange LLC; and on [____________], a further Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to change the name of the Company to BSTX LLC; and

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, and the Second Amended and Restated Limited Liability Company Agreement of the Company entered into as of December 24, 2019 is hereby amended in accordance with the requirements of Section 18.1 thereof and restated in its entirety, as follows:

Article 1

Definitions

1.1. **Certain Defined Terms**. As used in this Agreement, the following capitalized terms have the following meanings.

"Additional Capital Contribution" means any Capital Contribution effected pursuant to Section 6.2 hereof.

"Advisors" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means

the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person**.** A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

"Agreement" has the meaning set forth in the preamble hereto.

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the LLC Act.

"Board" has the meaning set forth in Section 4.1 hereof. The Board, acting collectively as provided in this Agreement, shall be a "manager" within the meaning of the LLC Act.

"BOX Digital" means BOX Digital Markets LLC, a Delaware limited liability company.

"BSTX Market" means the market operated by the Company pursuant to Section 3.1 hereof.

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

"BSTX Product" means a Security, as defined in the Exchange Rules, trading on the BSTX System.

"BSTX System" means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind as may be necessary or desirable for the operation of the BSTX Market.

"Capital Account" means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member's Capital Account (i) its Capital Contributions; (ii) the share of income and gain of the Company allocated to the Member pursuant to Article 9 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Article 9 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes; (iii) the amount of any liabilities of such Member that are assumed by the Company or

that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, the Board may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)*(f)* upon the occurrence of any event described in subparagraph (5) of such Regulations. The Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations §1.704-1(b)(2)(iv)(*g)* in the event of a revaluation of Company property pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(*f*), or if required by Treasury Regulations §1.704-1(b)(2)(iv)(*d*)(3). Any reference in this Agreement to the Capital Account of a then Member shall include the Capital Account of any prior Member in respect of the same Economic Unit or Economic Units.

"Capital Contribution" means the amount of cash and the fair market value of all property and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company. Any reference in this Agreement to the Capital Contribution of a Member shall include the Capital Contribution of any prior Member in respect of the same Unit or Units.

"CEO" has the meaning set forth in Section 4.7 hereof.

"Chairman" has the meaning set forth in Section 4.6 hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

"Company" has the meaning set forth in the preamble hereto.

"Company Minimum Gain" means partnership minimum gain with respect to the Company, as determined under Treasury Regulations §1.704-2(d).

"Competing Business" means any U.S. based market for the secondary trading of securities with a blockchain component. For clarity, "Competing Business" does not include the design and issuance of securities with a blockchain component or broker-dealer or transfer agent services to issuers of securities with a blockchain component and does not include the trading on an electronic market of cryptocurrencies or securities with a blockchain component not eligible for, or rejected by BSTX for, trading on the BSTX Market.

"Confidential Information" of any Person includes any financial, scientific, technical, trade or business secrets of such Person and any financial, scientific, technical, trade or business materials that such Person treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, (i) confidential information as it pertains to the Exchange or BSTX Market regarding disciplinary matters, trading data, trading practices and audit information, (ii) innovations or inventions belonging to such Person, and (iii) confidential information obtained by or given to such Person about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "Confidential Information," of a Person as it relates to any other Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such other

Person; or (ii) is received by such other Person from a third party who rightfully discloses it to such other Person without restriction on its subsequent disclosure.

"Controlling Interest" has the meaning set forth in Section 7.4(h)(iv)(A).

"Controlling Person" has the meaning set forth in Section 7.4(h)(iv)(B).

"Delaware UCC" has the meaning set forth in Section 2.7 hereof.

"DGCL" has the meaning set forth in Section 4.2(b) hereof.

"Director" has the meaning set forth in Section 4.1(a) hereof. For the avoidance of doubt, the Regulatory Director is considered a Director, as set forth in Section 4.1(a) hereof.

"Disclosing Party" has the meaning set forth in Section 15.3 hereof.

"Distributable Cash" has the meaning set forth in Section 8.1 hereof.

"Economic Ownership Limit" has the meaning set forth in Section 7.4(f) hereof.

"Economic Ownership Limit Waiver" has the meaning set forth in Section 7.4(f) hereof.

"Economic Percentage Interest" with respect to a Member means the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage.

"Economic Unit" has the meaning set forth in Section 2.5(a) hereof.

"Economic Waiver Determination" has the meaning set forth in Section 7.4(f) hereof.

"Excess Voting Units" has the meaning set forth in Section 7.4(i) hereof.

"Exchange" means BOX Exchange LLC as the non-equity, non-member SRO authority of the Company as approved by the SEC.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Rules" means the rules of the Exchange that constitute the "rules of an exchange" within the meaning of Section 3 of the Exchange Act, and that pertain to the BSTX Market.

"Facility Agreement" means the Facility Agreement entered into, or to be entered into, by and between the Company and the Exchange, as it may be amended from time to time.

"Fiscal Year" has the meaning set forth in Section 11.3 hereof.

"Indemnified Claims" has the meaning set forth in Section 13.1(b) hereof.

"Indemnified Person" has the meaning set forth in Section 13.1(a) hereof.

"Independent Director" means an individual who is: (i) not an employee of the Company, (ii) not an officer, director or employee of any Member that has the right to appoint a Member Director, and (iii) not associated with any BSTX Participant or broker or dealer.

"Liquidator" has the meaning set forth in Section 10.1(b) hereof.

"LLC Act" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et. seq.,* as amended and in effect from time to time, and any successor statute.

"LSA" means the IP License and Services Agreement entered into by and between tZERO and the Company, as may be amended from time to time.

"Major Action" has the meaning set forth in Section 4.4(b) hereof.

"Members" has the meaning set forth in the preamble hereto and includes any Person admitted to the Company after the date of this Agreement as an additional or substitute Member of the Company as provided by this Agreement, in such Person's capacity as a Member of the Company. For the avoidance of doubt, a transferee or an assignee (including, without limitation, the personal representatives (as defined in the LLC Act) of a Member) of a limited liability company interest in the Company, other than a duly admitted Member of the Company, shall not be a Member of the Company, and no transferee or assignee, other than a duly admitted Member of the Company, shall have any right whatsoever to vote or consent to any action with respect to the Company, and shall not be entitled to exercise any rights of a Member held by a Member by virtue of such transferee's or assignee's admission to the Company as a Member of the Company, whether any such rights arise under this Agreement, the LLC Act or other applicable law, unless and until such transferee or assignee is admitted as a Member of the Company in accordance with the provisions of this Agreement.

"Member Director" has the meaning set forth in Section 4.1(a) hereof.

"Member Entities" has the meaning set forth in Section 5.6 hereof.

"Member Information" has the meaning set forth in Section 15.3 hereof.

"Member Nonrecourse Deductions" means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations §1.704-2(i)(2).

"Member Nonrecourse Debt Minimum Gain" means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations §1.704-2(i)(2).

"Membership Record" means a record of the Members, maintained by the Secretary of the Company and updated from time to time as necessary and as provided in this Agreement, which shall include the name and address of each Member and the number of Economic Units and Voting Units held by each Member.

"Neutral Arbitrators" has the meaning set forth in Article 12 hereof.

"Non-Market Matters" has the meaning set forth in Section 3.2(a)(ii).

"Nonrecourse Debt" means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations §1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations §1.752-2).

"Nonrecourse Deductions" means, for any taxable year of the Company, the net increase in Company Minimum Gain during the year (as determined under Treasury Regulations §1.704-2(d)), reduced (but not below zero) by the aggregate distributions made during the year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain (as determined under Treasury Regulations §1.704-2(h)), excluding increases in Company Minimum Gain resulting from conversions, refinancings or other changes to a debt instrument, as described in Treasury Regulations §1.704-2(g)(3).

"Non-Transferring Members" has the meaning set forth in Section 7.3 hereof.

"Officer" has the meaning set forth in Section 4.5 hereof.

"Other State UCC" has the meaning set forth in Section 2.7 hereof.

"Person" means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.

"Regulatory Deficiency" means the operation of the Company (in connection with matters that are not Non-Market Matters) or the BSTX Market (including, but not limited to, the BSTX System) in a manner that is not consistent with the Exchange Rules and/or the SEC Rules governing the BSTX Market or BSTX Participants, or that otherwise impedes the Exchange's ability to regulate the BSTX Market or BSTX Participants or to fulfill its obligations under the Exchange Act as an SRO.

"Regulatory Director" means the individual appointed as such by the Exchange pursuant to Section 4.1. The Regulatory Director must be a member of the senior management of the regulation staff of the Exchange.

"Related Agreements" means the LSA, the Facility Agreement and any other written agreement between the Company and any Member, in each case necessary or desirable for the conduct of the business of the Company.

"Related Person" shall mean with respect to any Person: (A) any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability

company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any BSTX Participant who is at the same time a broker-dealer, any Person that is associated with the BSTX Participant (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and a BSTX Participant, any broker or dealer that is also a BSTX Participant with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Exchange or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.

"SEC" means the United States Securities and Exchange Commission.

"SEC Rules" means the Exchange Act and such statutes, rules, regulations, interpretations, releases, orders, determinations, reports, or statements as are administered, enforced, adopted or promulgated by the SEC.

"Secretary" has the meaning set forth in Section 4.8 hereof.

"Shortfall Amount" has the meaning set forth in Section 8.1(a) hereof.

"SRO" means a self-regulatory organization pursuant to Section 3 of the Exchange Act.

"Statutory Disqualification" means a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act.

"Tax Amount" of a Member for a fiscal year or other period shall mean the product of (a) the Member's Tax Rate for such fiscal year or other period, and (b) the Member's Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by the Board.

"Tax Amount Base" of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; *provided* that such taxable income shall be computed (i) without regard to the application of §704(c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

"Tax Distributions" has the meaning set forth in Section 8.1(a) hereof.

"Tax Matters Representative" has the meaning set forth in Section 11.6 hereof.

"Tax Rate" of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member's Tax Amount Base.

"Trading" means the availability of the BSTX System to authorized users for entering, modifying, and canceling orders of BSTX Products.

"Transfer" has the meaning set forth in Section 7.1(a) hereof.

"Transferee" has the meaning set forth in Sections 7.2 and 7.3 hereof.

"Transfer Notice" has the meaning set forth in Sections 7.2(a) and 7.3(a) hereof.

"Transferring Member" has the meaning set forth in Sections 7.2 and 7.3 hereof.

"Treasury Regulations" means the regulations promulgated under the Code, as amended and in effect from time to time.

"tZERO" means tZERO Group, Inc., a Delaware corporation.

"Unit Certificate" has the meaning set forth in Section 2.8 hereof.

"Units" shall mean Economic Units and/or Voting Units.

"Unpermitted Deficit" has the meaning set forth in Section 9.2 hereof.

"Voting Ownership Limit" has the meaning set forth in Section 7.4(g) hereof.

"Voting Ownership Limit Waiver" has the meaning set forth in Section 7.4(g) hereof.

"Voting Percentage Interest" with respect to a Member means the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage. Voting Units held by a Member that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio.

"Voting Unit" has the meaning set forth in Section 2.5(b) hereof. For the avoidance of doubt, the ownership or possession of Voting Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights shall be vested only in duly admitted Members of the Company), or to exercise any right of a Member of the Company under this Agreement, the LLC Act or other applicable law.

"Voting Units Adjustment" has the meaning set forth in Section 7.4(g)(i) hereof.

"Voting Waiver Determination" has the meaning set forth in Section 7.4(g) hereof.

1.2. **Other Definitions.**

The words "include," "includes," and "including" where used in this Agreement are deemed to be followed by the words "without limitation."

Any reference to "Dollars" or "$" in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the LLC Act will have the meaning set forth in the LLC Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, sections and schedules shall be deemed to mean the preamble and sections of, and schedules to, this Agreement.

Article 2

Organization

2.1. **Formation and Continuation of the Company**.

(a) The Members hereby agree that the rights, duties and liabilities of the Members shall be as provided in the LLC Act, except as otherwise provided herein. The name of the Company shall be BSTX LLC. The principal place of business of the Company shall be located at 101 Arch Street, Suite 1940, Boston, MA 02110. The Board may, at any time, change the principal place of business of the Company and shall give notice thereof to the Members.

(b) The CEO or the CEO's designee, as an "authorized person" within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The CEO or the CEO's designee shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

2.2. **Registered Agent and Office**. The registered agent for service of process on the Company in the State of Delaware required to be maintained by §18-104 of the LLC Act shall be Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808-1674 and the registered office of the Company in the State of Delaware shall be c/o Corporation Service Company at the same address. The Board may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Member.

2.3. **Term**. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the LLC Act, pursuant to a provision of this Agreement or by agreement of the Members.

2.4. **Interest of Members; Property of the Company**. Units shall be personal property for all purposes. All real and other property owned by the Company shall be deemed property owned by the Company as an entity, and the Members, individually, shall not own any such property. A holder of Units shall be admitted as a Member of the Company upon its execution of a counterpart signature page to this Agreement.

2.5. **The Units**.

(a) **Economic Units**. The Company shall issue equal units of limited liability company interest in the Company collectively comprising all interests in the profits and losses of the Company and all rights to receive distributions from the Company as set forth in this Agreement (each, an "Economic Unit"). Economic Units shall not include any right to vote. Each Economic Unit is identical to each other Economic Unit and accords a Member holding such Economic Unit the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Economic Units, or make or pay any distribution on any Economic Unit, or accord any other payment, benefit or preference with respect to any Economic Unit, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Economic Units. Economic Units have no par value. No fractional Economic Units shall be issued. To the extent that any fractional Economic Unit would otherwise be outstanding, the number of Economic Units held by any Member shall be rounded to the nearest whole number, as determined by the Board.

(b) **Voting Units**. The Company shall issue equal units of limited liability company interest in the Company collectively comprising all voting interests of Members with respect to Company matters (each, a "Voting Unit"). The number of outstanding Voting Units shall, at all times, be the same as the number of outstanding Economic Units and the number of outstanding Voting Units shall be automatically adjusted as necessary upon any change in the number of outstanding Economic Units in accordance with the provisions of Section 7.4(g)(i). Voting Units shall not include any right to, or interest in, any profits and losses of the Company, distributions from the Company, assets of the Company or other economic value in the Company. Each Voting Unit is identical to each other Voting Unit and accords a Member holding such Voting Unit the same obligations, rights and privileges as are accorded to each other Member holding a Voting Unit. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Voting Units, or make or pay any distribution on any Voting Unit, or accord any other payment, benefit or preference with respect to any Voting Unit, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Voting Units. Voting Units have no par value. To the extent that any fractional Voting Unit would otherwise be outstanding, the number of Voting Units held by any Member shall be rounded to the nearest whole number, as determined by the Board.

(c) **Rights of Unit Holders**. Each Member shall be a holder of Voting Units and Economic Units. For the avoidance of doubt, the ownership, holding or possession of Voting Units shall not, in and of itself, entitle the owner, holder or possessor thereof to vote or consent to any action with respect to the Company (which rights shall be vested in only duly admitted Members of the Company), or to exercise any right of a Member of the Company under this Agreement, the LLC Act or other applicable law.

2.6. **Intent**. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7. **Article 8 Opt-In.** Each Unit shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the "Delaware UCC") and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved the American Bar Association on February 14, 1995 (each, an "Other State UCC"). For all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company's jurisdiction in the Company's capacity as the issuer of Units.

2.8 **Unit Certificates**. When, as and if determined by the Company, Economic Units may, but need not, be represented by one or more certificates (a "Unit Certificate"), issued to the registered owner of such Economic Units by the Company. If the Company determines that Economic Units not be represented by Unit Certificates, ownership of Economic Units shall be recorded in the Membership Record. If the Company determines that Economic Units be represented by Unit Certificates, the remaining provisions of this Section 2.8 shall apply with respect to Economic Units. Voting Units are not represented by certificates and ownership of Voting Units shall be recorded in the Membership Record.

(a) Each such Unit Certificate shall be denominated in terms of the number of Economic Units of the Company evidenced by such Unit Certificate and shall be signed by at least one Officer of the Company on behalf of the Company. The Company shall have issued to each Person one or more Unit Certificates in the name of such Person to represent the Economic Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Economic Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the number of Economic Units evidenced by such Unit Certificate and shall be signed by at least one Officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Economic Units represented by such Unit Certificate, as reflected on the Membership Record:

(i) makes proof by affidavit, in form and substance satisfactory to the Board in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by the Board in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to the Board in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by the Board.

(d) Upon the Transfer or conversion in accordance with the provisions of this Agreement by any Person of any or all of its Economic Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate, if any, to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any Officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the number of Economic Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that number of Economic Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

"THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE ECONOMIC UNITS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE ECONOMIC UNITS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT OF BSTX LLC, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE "AGREEMENT"). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE ECONOMIC UNITS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

EACH ECONOMIC UNIT REPRESENTED HEREBY SHALL CONSTITUTE A "SECURITY" WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE (INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE "DELAWARE UCC") AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994

REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN "OTHER STATE UCC"). FOR ALL PURPOSES OF ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE LAW SHALL CONSTITUTE THE LOCAL LAW OF BSTX LLC'S JURISDICTION IN BSTX LLC'S CAPACITY AS THE ISSUER OF THE ECONOMIC UNITS REPRESENTED HEREBY."

(ii) In addition, unless counsel to the Company has advised the Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

"THE ECONOMIC UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "EXCHANGE ACT"), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE EXCHANGE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO BSTX LLC SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

Article 3

Purpose; Roles

3.1. **Purpose**. The purpose of the Company is to develop the BSTX System, to own and operate the BSTX Market for Trading BSTX Products, and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient, or appropriate in connection therewith as the Members may determine. The Company shall not engage in any other business or activity except as approved in accordance with this Article 3 and Section 4.4(b)(ii).

3.2. **Roles of Certain Parties**. Each of the parties hereto will provide the products and services set forth below to the Company:

(a) (i) The Exchange will act as the SEC-approved SRO for the BSTX Market. The Exchange will provide the regulatory framework for the BSTX Market. The Exchange will have regulatory responsibility for the activities of the BSTX Market. In addition, the Exchange will provide regulatory services to the Company pursuant to the Facility Agreement. Nothing in this 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.

(ii) The Exchange shall receive notice of planned or proposed changes to the Company (but not to include 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 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 System) which will require an affirmative approval by the Exchange prior to implementation, not inconsistent with this Agreement. For the avoidance of doubt, planned or proposed changes subject to the foregoing sentence shall include, without limitation: (A) planned or proposed changes to the BSTX 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 pursuant to this Section 3.2(a)(ii) shall be established by the mutual agreement of the Company and the Exchange.

(iii) 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 System) set forth in Section 3.2(a)(ii) 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 pursuant to this Section 3.2(a)(iii) shall be paid by the Company.

(iv) 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 or the BSTX Market (including, but not limited to, the BSTX 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 Exchange Act. The costs of modifications undertaken pursuant to this Section 3.2(a)(iv) shall be paid by the Company.

(b) tZERO will provide the license and services 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 System.

(c) BOX Digital has provided executive leadership and will provide exclusive rights to the regulatory services of the Exchange with respect to BSTX Products; provided, however, that the foregoing shall limit neither the regulatory authority of the Exchange with respect to BSTX nor the oversight of BSTX by the Exchange.

Article 4

Governance

4.1. **Board of Directors.**

(a) Except as otherwise specifically provided in this Agreement or required under the Exchange Act, the Board of Directors of the Company (the "Board" and each member thereof, a "Director") will manage the development, operations, business and affairs of the Company without the need for any approval of the Members or any other Person. No person shall be a Director unless such Person has been duly appointed as provided in this Section 4.1(a). No Person shall serve as a Director if such Person is subject to a Statutory Disqualification. The Board shall be comprised of five (5) Directors as follows: (i) one (1) Director appointed by BOX Digital, so long as BOX Digital holds an Economic Percentage Interest equal to or greater than 35%, (ii) one (1) Director appointed by tZERO, so long as tZERO holds an Economic Percentage Interest equal to or greater than 35% (each of the Directors appointed pursuant to clause (i) and this clause (ii), a "Member Director"), (iii) one (1) Director who is the CEO, (iv) the Regulatory Director, and (v) one (1) Independent Director appointed by the affirmative vote of a majority of the other Directors. As long as the Company is a facility of the Exchange pursuant to Section 3(a)(2) of the Exchange Act, the Exchange shall have the right to appoint a Regulatory Director to serve as a Director by executing and delivering a written notice of such designation to the Company, identifying the person so appointed.

(b) A Member Director may from time to time be removed by the Member entitled to appoint such Member Director, with or without cause, upon delivery of an executed written notice of removal by such Member to the Secretary of the Company. The Independent Director may from time to time be removed by the affirmative vote of a majority of the other Directors, with or without cause. Any Director may be removed by the Board in the event (i) such Director is subject to a Statutory Disqualification, (ii) such Director has violated any provision of this Agreement or any federal or state securities law, or (iii) 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 such Director's removal. The Company shall promptly notify the Exchange in writing of the commencement or cessation of service of a Director.

(c) In the event that 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, the Member whose designee created the vacancy shall fill such 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 such vacancies are filled.

(d) The Regulatory Director may from time to time be removed (i) by the Exchange with or without cause upon delivery of an executed written notice of removal by the Exchange to the Secretary of the Company, (ii) by the Board in the event the Board determines, in good faith, that such Regulatory Director has violated any provision of this Agreement or any federal or state securities law or (iii) by the Board in the event the Board determines, in good faith, that such Regulatory Director does not meet the requirements set forth in the definition of "Regulatory Director" herein. In the event the Regulatory Director ceases to serve for any

reason, the Exchange shall appoint a new Regulatory Director in accordance with the requirements set forth herein.

4.2. **Authority and Conduct; Duties of Board; Committees.**

(a) **Authority and Conduct**. The Board shall have the specific authority delegated to it pursuant to this Agreement.

(b) **Duties of Board**. Without limiting the general duties and authority of the Board as set forth in this Article 4, except as otherwise provided in this Agreement, the Board shall have all of the powers of the board of directors of a corporation organized under the General Corporation Law of the State of Delaware, as from time to time in effect (the "DGCL"), including the power and responsibility to manage the business of the Company, evaluate the performance of the Officers and establish and monitor capital and operating budgets.

(c) **Committees**. The Board may designate one or more committees, by resolution or resolutions passed by a majority of the whole Board; such committee or committees shall consist of one or more Directors appointed by the Board, except as otherwise provided herein and subject to Section 4.2(e) below, to the extent provided in the resolution or resolutions designating the committee, a committee shall have and may exercise specific powers of the Board in the management of the business and other affairs of the Company to the extent permitted by this Agreement. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Notwithstanding the foregoing, (i) a Member Director shall not have more than 20% of the total voting power on any committee and (ii) the Regulatory Director shall (A) have the right to attend all meetings of the Board and any committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of all meeting materials provided to other Directors, including agendas, action items and minutes for all meetings.

(d) **Powers Denied to Committees**. Committees of the Board shall not, in any event, have any power or authority to transact any Major Action or an action specifically covered by Section 4.4.

(e) **Substitute Committee Member; Minutes**. In the absence or on the disqualification of a Director who is a member of a committee, the Board may designate another Director to act at a committee meeting in the place of such absent or disqualified Director. Each committee shall keep regular minutes of its proceedings and report the same to the Board as may be required by the Board.

4.3. **Meetings**. The Board will meet as often as the Board deems necessary, but not less frequently than four (4) times per year. 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 such meeting may be given not less that forty-eight (48) hours before such 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 this Agreement**,** each of the Directors will be entitled to one vote on any action to be taken by the Board, except that (i) the CEO shall not be entitled to vote on matters relating to the CEO's powers, compensation or performance and (ii) a Director shall not be entitled to vote on any matter pertaining to such Director's removal from office. Unless otherwise provided by this 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 such action. Meetings of the Board may be attended by other representatives of the Members, the Exchange and other persons related to the Company as may be approved from time to time by the Board and as otherwise specified in this Agreement. 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 such 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.

4.4. **Special Voting Requirements.**

(a) Notwithstanding the provisions of Section 4.3 regarding voting requirements and subject to the other provisions of this Agreement, no action with respect to any Major Action (as defined in paragraph (b) below), shall be effective unless approved by the Board, including the affirmative vote of at least four Directors, in each case acting at a meeting. In addition, unless approved by the Board as provided above, the Members on behalf of the Company shall not take or permit the Company to take any Major Action. No other Member votes are required for a Major Action.

(b) For purposes of this Agreement, "Major Action" means any of the following:

(i) 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 described in Article 3;

(iii) conversion of the Company from a Delaware limited liability company into any other type of entity;

(iv) except as expressly contemplated by this 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)(iii)) 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 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 hereof, 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 Units pursuant to Section 7.6 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 any provision of this Section 4.4(b), 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.

4.5. **Officers**. The Board will appoint a CEO of the Company. The CEO may be removed, with or without cause, only by the unanimous vote of all other Directors. A Secretary and any other officers of the Company (together with the Chairman and CEO, each an "Officer") shall be selected, receive such compensation, exercise such powers and perform such duties as determined by the CEO, with the advice and consent of the Board. An individual may hold more than one office. No person subject to Statutory Disqualification may serve as an Officer of the Company.

4.6. **Duties of the Chairman**. The Independent Director shall serve as the Chairman of the Board (the "Chairman") and shall preside at all meetings of the Board. The Chairman shall have the general powers and duties usually vested in the office of Chairman of the Board of

a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the development of the Company as the Board shall from time to time direct.

4.7. **Duties of the CEO**. Subject to the supervision and direction of the Board, the Chief Executive Officer (the "CEO") shall have general supervision, direction and control of the business and the other executive Officers of the Company. The CEO shall have the general powers and duties of management usually vested in the office of CEO of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the Company as the Board shall from time to time direct. The CEO shall be responsible for advising the Board on the status of the Company on a regular basis or more frequently as requested by the Board.

4.8. **Duties of the Secretary**. The Secretary (the "Secretary") shall act as secretary of all meetings of the Board and all meetings of the Members. In the absence of the Secretary, the presiding Officer of the meeting shall appoint any other person to act as secretary of the meeting. The Secretary shall have all other authority provided in this Agreement and as otherwise determined by the Board.

4.9. **No Management by Members**. Except as otherwise expressly provided herein or as requested by the Board, the Members shall not take part in the day-to-day management or operation of the business and affairs of the Company. Except and only to the extent expressly provided for in this Agreement and the Related Agreements and as delegated by the Board to committees of the Board or to duly appointed Officers or agents of the Company, neither a Member nor any other Person other than the Board shall be an agent of the 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.

4.10. **Reliance by Third Parties**. Any Person dealing with the Company or the Board may rely upon a certificate signed by the Chairman, or such other Officer of the Company designated by the Board, as to:

(a) the identity of the members of the Board or any committee thereof or any Officer or agent of the Company;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any agreement, instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or any other matter whatsoever involving the Company or the Members.

4.11. **Regulatory Obligations**.

(a) **Non-Interference.** Each of the Members and the Directors, Officers, employees and agents of the Company 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 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 Exchange Act. No present or past Member, Director, Officer, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or any other person or entity shall have any rights against the Company or any Member, Director, Officer, employee or agent of the Company under this Section 4.11.

(b) **Compliance with Securities Laws; Cooperation with the SEC.** 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, agree to comply and 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 self-regulatory functions and responsibilities of the Exchange, and the Company shall take reasonable steps necessary to cause its Directors, Officers, employees and agents to so cooperate. No present or past Member, Director, Officer, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or any other person or entity shall have any rights against the Company or any Member, Director, Officer, employee or agent of the Company under this Section 4.11.

Article 5

Powers, Duties, and Restrictions

5.1. **Powers of the Company**. In furtherance of the purposes set forth in Article 3, and subject to the provisions of Article 4, the Company, acting through the Board, will possess the power to do anything not prohibited by the LLC Act, by other applicable law, or by this Agreement, including but not limited to the following powers: (a) to undertake any of the activities described in Article 3; (b) to make, perform, and enter into any contract, commitment, activity, or agreement relating thereto; (c) to open, maintain, and close bank and money market accounts, to endorse, for deposit to any such account or otherwise, checks payable or belonging to the Company from any other Person, and to draw checks or other orders for the payment of money on any such account; (d) to hold, distribute, and exercise all rights (including voting rights), powers, and privileges and other incidents of ownership with respect to assets of the Company; (e) to borrow funds, issue evidences of indebtedness, and refinance any such indebtedness in furtherance of any or all of the purposes of the Company, to guarantee the obligations of others, and to secure any such indebtedness or guarantee by mortgage, security interest, pledge, or other lien on any property or other assets of the Company; (f) to employ or retain such agents, employees, managers, accountants, attorneys, consultants and other Persons necessary or appropriate to carry out the business and affairs of the Company, and to pay such

fees, expenses, salaries, wages and other compensation to such Persons as the Board shall determine; (g) to bring, defend, and compromise actions, in its own name, at law or in equity; and (h) to take all actions and do all things necessary or advisable or incident to the carrying out of the purposes of the Company, so far as such powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the Company's business, purpose, or activities.

5.2. **Powers of Members**. Except as otherwise specifically provided by this Agreement or required by the LLC Act or by the SEC pursuant to the Exchange Act, no Member shall have the power to act for or on behalf of, or to bind, the Company, and unless otherwise determined by the Board, all Members shall constitute one class or group of members of the Company for all purposes of the LLC Act.

5.3. **Voting Trusts**. Members are prohibited from entering into voting trust agreements with respect to their Units.

5.4. **Member's Compensation**. Except as otherwise specifically provided in this Agreement, the Members shall not be entitled to any compensation for their services hereunder.

5.5. **Cessation of Status as a Member**. A Member will cease to be a member of the Company upon the Bankruptcy or the involuntary dissolution of such Member.

5.6. **Claims Against or By Members**. Any and all matters relating to the actions of the Company with respect to claims: (i) by the Company against a Member or a former Member or any Affiliate of a Member or a former Member (collectively the "Member Entities"); or (ii) by a Member Entity against the Company shall be controlled by the Board, excluding the Member Directors appointed by the Member or Members affiliated with such Member Entity. No Member Director shall be entitled to vote on (A) whether to initiate a claim by the Company against the Member that appointed such Member Director or an Affiliate of such Member, (B) any matter concerning a claim initiated by the Company against the Member that appointed such Member Director or a Member Entity affiliated with such Member, or (C) any matter concerning a claim initiated against the Company by the Member that appointed such Member Director or a Member Entity affiliated with such Member. Any action to be taken by the Board with respect to any such claim shall be considered effective only if approved by all Directors not so disqualified by this Section 5.6.

5.7. **Purchased Services**. Except as set forth in the Related Agreements, all products and services to be obtained by the Company will be evaluated by the Company's management with a view to best practices and all such products and services will be obtained from Members, their Affiliates or third-parties based upon arms-length negotiations, including obtaining quotes for such products or services from third-parties, as appropriate. Notwithstanding the forgoing, Members and their Affiliates will be given preference over third-parties if such Members or Affiliates are willing and able to provide services and terms at least as favorable, in the aggregate, to the Company as those offered by the third parties, 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.

5.8. **Suspension of Voting Privileges and Termination of Membership**. After appropriate notice and opportunity for hearing, the Board, by unanimous vote, excluding the vote of any Director appointed by such Member subject to sanction, may suspend or terminate a Member's voting privileges or membership in the Company, under the LLC Act or this Agreement: (i) in the event such Member is subject to a Statutory Disqualification; or (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.

Article 6

Capital

6.1. **Capital Contributions**. All capital contributions contributed to the Company by holders of Units shall be reflected on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the LLC Act.

6.2. **Additional Capital Contributions**. The Board shall, in its sole discretion, determine the capital needs of the Company. If at any time the Board shall determine that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by the Board, including the affirmative vote of at least four Directors. Notwithstanding any of the foregoing, the Board shall not have the power to require the Members to make any Additional Capital Contributions.

6.3. **Borrowings and Loans**. If a Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member's Capital Contribution unless specifically agreed to by the Board of Directors and the Member. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by the Board in accordance with Article 4.

6.4. **General**. Except as otherwise provided in this Agreement, a Member and its Affiliates may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a member of the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by the Board from time to time or, if such transaction is contemplated by this Agreement or any other Related Agreement, on the terms provided for in this Agreement or such Related Agreement.

6.5. **Liability of Members and Directors**. Except as otherwise required by the LLC Act, no Member or Director or Officer of the Company, solely by reason of being a Member or Director or Officer of the Company, shall be liable, under a judgment, decree or order of a court,

or in any other manner, for a debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other Member or Director or Officer of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the LLC Act shall not be grounds for imposing liability on any Member or Director or Officer of the Company for liabilities of the Company.

Article 7

Transferability of Units

7.1. Restrictions on Transfer

(a) No Person shall 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 (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement unless prior to such Transfer the transferee is approved by a vote of the Board. To be eligible for such Board approval, the proposed transferee must (x) be of high professional and financial standing, (y) be able to carry out its duties as a Member hereunder, if admitted as such, and (z) 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 such Board approval. Notwithstanding the foregoing, the following shall not be included in the definition of "Transfer" (i) transfers among Members, (ii) transfers to any Person directly or indirectly owning, controlling or holding with power to vote all of the outstanding voting securities of, and equity or beneficial interests in, such Member, or (iii) transfers to any Person that is a wholly owned Affiliate of such Member. Voting Units may not be disposed of, sold, alienated, assigned, exchanged, participated, subparticipated, encumbered, or otherwise transferred in any manner separately from their related Economic Units. A holder of Units shall provide prior written notice to the Exchange of any proposed Transfer.

(b) In addition to the foregoing requirements, and notwithstanding anything to the contrary contained in this Agreement, a Person shall be admitted to the Company as an additional or substitute Member of the Company, if such Person is not already a Member, only upon (i) such Person's execution of a counterpart of this Agreement to evidence its written acceptance of the terms and provisions of this Agreement, and acceptance by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member, (ii) if such Person is a transferee, its agreement in writing to its assumption of the obligations hereunder of its assignor, and acceptance thereof by the affirmative vote of Members holding a majority of the Voting Percentage Interest, which vote may be given or withheld in the sole discretion of each such voting Member, and (iii) if such Person is a transferee, a determination by the Company that the Transfer was permitted by this Agreement. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of this Agreement and assumed in writing the obligations hereunder of its predecessor in interest, such transferee shall be deemed, by the acquisition of such Units, to have agreed to be subject to and bound by all the obligations of this

Agreement with the same effect and to the same extent as any predecessor in interest of such transferee.

(c) All costs incurred by the Company in connection with the admission to the Company of a substituted Member pursuant to this Article 7 shall be borne by the transferor Member (and, if not timely paid, by the substituted Member), including, without limitation, costs of any necessary amendment hereof, filing fees, if any, and reasonable attorneys' fees.

7.2. **Right of First Refusal for the Company**. In the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, effect a Transfer with respect to all or any portion of the Economic Units owned, directly or indirectly, by such Member as permitted under this Agreement, and obtains a bona fide offer therefor from a third party (each, in such case, a "Transferee"), the Transferring Member shall first offer such Economic Units to the Company in the following manner:

(a) The Transferring Member shall deliver a written notice (the "Transfer Notice") to the Company specifying in reasonable detail the proposed price, terms and conditions of such proposed Transfer and the identity of the proposed Transferee.

(b) Upon receipt of such Transfer Notice, the Company shall be entitled, subject to Section 7.4 hereof, and by notice to the Transferring Member within 30 days after receipt of the Transfer Notice, to elect to purchase all but not less than all (unless otherwise mutually agreed by the Company and the Transferring Member) of the Economic Units offered for sale by the Transferring Member and its Affiliates at the price and on the terms and conditions specified in the Transfer Notice.

(c) If the Company elects to purchase such Economic Units, the Transferring Member shall, subject to the provisions of this Article 7, complete such sale to the Company within 30 days after receipt of the Transfer Notice at a price and on terms and conditions specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals.

(d) If the Company elects not to purchase such Economic Units, the Transferring Member may, subject to the provisions of this Article 7, complete the sale described in the Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals. In the event the Transferring Member does not complete such sale to the Transferee within such 60-day period, any subsequent proposed sale of any Economic Units shall be once again subject to the provisions of this Section 7.2.

7.3. **Right of First Refusal for Members**. Subject to Section 7.2 (i.e., if the Company does not elect to exercise its right of first refusal set forth in Section 7.2), in the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether

voluntarily, involuntarily, by operation of law or otherwise, Transfer all or any portion of the Economic Units owned, directly or indirectly, by such Member as permitted under this Agreement, and obtains a bona fide offer therefor from a third party (each, in such case, a "Transferee"), the Transferring Member shall first offer such Economic Units to the other Members (the "Non-Transferring Members") in the following manner:

(a) The Transferring Member shall deliver a written notice (the "Transfer Notice") to the Non-Transferring Members and the Company specifying in reasonable detail the proposed price, terms and conditions of such proposed Transfer and the identity of the proposed Transferee. For the avoidance of doubt, a Transfer Notice pursuant to this Section 7.3 may be delivered simultaneously with, or at any time after, delivery of the Transfer Notice required pursuant to Section 7.2 for the same transaction.

(b) Upon receipt of such Transfer Notice, the Non-Transferring Members shall be entitled, subject to Section 7.4 hereof, and the other provisions of this Article 7 (except for Section 7.2), and by notice to the Transferring Member and the Company within 30 days after receipt of the Transfer Notice, to elect to purchase (or cause its Affiliate to purchase) any number of the Economic Units offered for sale by the Transferring Member and its Affiliates at the price and on the terms and conditions specified in the Transfer Notice.

(c) If more than one Non-Transferring Member elects to purchase (or to cause its Affiliate to purchase) such Economic Units, then such Non-Transferring Members shall purchase (or cause its Affiliate to purchase) such Economic Units on a pro-rata basis based upon the relative percentages of such Non-Transferring Members' respective Economic Percentage Interest.

(d) If one or more Non-Transferring Members elect to purchase such Economic Units, the Transferring Member shall, subject to the provisions of this Article 7, complete such sale to such Non-Transferring Members within 30 days after receipt of the Transfer Notice at a price and on terms and conditions specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals.

(e) If no Non-Transferring Member elects to purchase such Economic Units, the Transferring Member may, subject to the provisions of this Article 7, complete the sale described in the Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals. In the event the Transferring Member does not complete such sale to the Transferee within such 60 day period, any subsequent proposed sale of any Economic Units shall be once again subject to the provisions of Section 7.2 and this Section 7.3.

7.4. **Additional Restrictions**. Anything contained in the foregoing provisions of this Article 7 expressed or implied to the contrary notwithstanding:

(a) In no event shall a Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement take place if such Transfer: (i) in the opinion of tax counsel to the Company, could cause a termination of the Company within the meaning of Section 708 of the Code or, (ii) in the opinion of the Board, based on advice of tax counsel, 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, (iii) is prohibited by any state, federal or provincial securities laws, or (iv) is prohibited by this Agreement.

(b) In no event shall all or any part of a Member's Units be Transferred to a minor or incompetent person.

(c) The Board may, in addition to any other requirement that the Board may impose, require as a condition of any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units that the transferor furnish to the Company an opinion of counsel satisfactory (both as to such opinion and as to such counsel) to counsel to the Company that such Transfer, whether direct or indirect, voluntary or involuntary, by operation or law or otherwise, complies with applicable federal and state securities laws.

(d) Notwithstanding anything to the contrary contained in this Agreement, any Transfer or other ownership transaction, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, in contravention of any of the provisions of this Article 7 shall be void and ineffectual and shall not bind or be recognized by the Company. The Board shall have the right to require any Person reasonably believed to be subject to and in violation of this Article 7 to provide the Company with complete information as to all Voting Units and Economic Units owned, directly or indirectly, of record or beneficially, by such Person and its Related Persons and as to any other factual matter relating to the applicability or effect of this Article 7 as may reasonably be requested of such Person.

(e) Any Member involved in any acquisition or other ownership transaction shall provide the Company with written notice fourteen (14) days prior, and the Company shall provide the SEC and the Exchange with written notice ten (10) days prior, to the closing date of any acquisition that would result in such Member's Economic Percentage Interest or Voting Percentage Interest, alone or together with any Related Person of such Member, meeting or crossing the threshold level of 5% or the successive 5% Economic Percentage Interest or Voting Percentage Interest levels of 10% and 15%. Any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of Units outstanding), of record or beneficially, a Voting Percentage Interest or Economic Percentage Interest of five percent (5%) or more shall, immediately upon acquiring knowledge of its ownership thereof, give the Company written notice of such ownership, which notice shall state: (i) such Person's full legal name; (ii) the number of Voting Units and Economic Units owned, directly or indirectly, of record or beneficially, by such Person together with such Person's Related Persons; and (iii) whether such Person has the power, directly or

indirectly, to direct the management or policies of the Company, whether through ownership of Voting Units, by contract or otherwise. In addition to the foregoing notice requirement in this Section 7.4(e), the parties agree that the following transfers or other ownership transactions are subject to the rule filing process pursuant to Section 19 of the Exchange Act: any transfer or other ownership transaction that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Voting Percentage Interest or Economic Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% level (i.e., 25%, 30%, etc.).

(f) No Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Economic Percentage Interest greater than 40% (such Person's "Economic Ownership Limit") shall be effective without both the approval of the Exchange and an effective the rule filing pursuant to Section 19 of the Exchange Act (an "Economic Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have an Economic Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of an Economic Ownership Limit Waiver. The Exchange may only approve an Economic Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, an "Economic Waiver Determination") that (A) such Economic Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, (B) such Economic Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, (C) such Economic Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and (D) if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making an Economic Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Economic Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire an Economic Percentage Interest in excess of the Economic Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire an Economic Percentage Interest in excess of the applicable Economic Ownership Limit. Any Member may voluntarily set a lower Economic Ownership Limit for itself upon providing written notice thereof to the Secretary.

(g) No Transfer or other event that would result in a Person, together with its Related Persons, owning directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest greater than 20% (such Person's "Voting Ownership Limit") or having the power to vote, direct the vote or give any consent or proxy in excess of the Voting Ownership Limit, or entering into any agreement, plan or other arrangement with any other Person under circumstances that would result in the Voting Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or

cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit, and no Transfer or other event that would result in exceeding such Voting Ownership Limit shall be effective without both the approval of the Exchange and an effective rule filing pursuant to Section 19 of the Exchange Act (a "Voting Ownership Limit Waiver"). Notwithstanding the foregoing, no BSTX Participant shall have a Voting Ownership Limit greater than 20% and no BSTX Participant shall be eligible for approval of a Voting Ownership Limit Waiver. The Exchange may only approve a Voting Ownership Limit Waiver if the Exchange determines (such determination by the Exchange, a "Voting Waiver Determination") that (A) such Voting Ownership Limit Waiver will not impair the ability of the Exchange to carry out its functions and responsibilities under the Exchange Act and the rules and regulations promulgated thereunder, (B) such Voting Ownership Limit Waiver is otherwise in the best interests of the Exchange and the Members of BSTX, (C) such Voting Ownership Limit Waiver will not impair the ability of the SEC to enforce the Exchange Act and (D) if applicable, the transferee in such Transfer or other ownership transaction and its Related Persons are not subject to any Statutory Disqualification. In making a Voting Waiver Determination, the Exchange may impose on any parties to such Transfer or other ownership transaction, any Person that would exceed the Voting Ownership Limit, and any of their Related Persons such conditions and restrictions as it may, in its sole discretion, deem appropriate or desirable in furtherance of the objectives of the Exchange Act and the rules and regulations promulgated thereunder. Any Person that proposes to acquire a Voting Percentage Interest in excess of the Voting Ownership Limit shall have delivered to BSTX and the Exchange a notice of its intention to do so in writing, not less than forty-five (45) days (or any shorter period to which the Exchange shall expressly consent) before the date on which such Person intends to acquire a Voting Percentage Interest in excess of the applicable Voting Ownership Limit. Any Member may voluntarily set a lower Voting Ownership Limit for itself upon providing written notice thereof to the Secretary. No Person shall enter into any agreement, plan or other arrangement with any other Person where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Units in excess of such Person's applicable Voting Ownership Limit.

(i) Except as required by the Voting Units Adjustment (defined below), each Member shall hold the number of Voting Units equal to the number of Economic Units held by such Member. Notwithstanding the foregoing, the following adjustment shall be made to the allocation of Voting Units among the Members (the "Voting Units Adjustment"):

At all times, to the extent any Member holds an Economic Percentage Interest in excess of such Member's applicable Voting Ownership Limit,

(A) the number of Voting Units held by such Member shall be automatically reduced and

(B) the excess Voting Units shall be automatically redistributed among the remaining Members pro rata according to each such Members' respective Economic Percentage Interest.

In calculating the Voting Units Adjustment, any applicable Voting Ownership Limit with respect to each Member shall be observed and no Member may hold Voting Units in excess of such Member's applicable Voting Ownership Limit.

(ii) Upon any change in the ownership of Economic Units for any reason, the Voting Units held by the Members shall be recalculated simultaneously so that each Member holds the number of Voting Units equal to the number of Economic Units held by such Member, subject to any automatic reallocation of Voting Units as required by the Voting Units Adjustment described in Section 7.4(g)(i) above. Upon any change in the allocation of Voting Units, the Secretary shall update the Membership Record to reflect such changes; provided, however, that any failure to update the Membership Record shall not affect the proper allocation of Voting Units in accordance with this Section 7.4(g)(ii).

(h) Except as provided in Section 7.4(h)(ii) below, a Controlling Person shall be required to execute, and the relevant Member shall take such action as is necessary to ensure that each of its Controlling Persons executes, an amendment to this Agreement upon establishing a Controlling Interest in any Member that, alone or together with any Related Persons of such Member, holds an Economic Percentage Interest or Voting Percentage Interest in the Company equal to or greater than 20%.

(i) In such amendment, the Controlling Person shall agree (A) to become a party to this Agreement and (B) to abide by all the provisions of this Agreement.

(ii) Notwithstanding the foregoing, a Person shall not be required to execute an amendment to this agreement pursuant to this Section 7.4(h) if such Person does not, directly or indirectly, hold any interest in a Member.

(iii) Any amendment to this Agreement executed pursuant to this Section 7.4(h) is subject to the rule filing process pursuant to Section 19 of the Exchange Act. The rights and privileges, including all voting rights, of the Member in whom a Controlling Interest is held under this Agreement and the LLC Act shall be suspended until such time as the amendment executed pursuant to this Section 7.4(h) has become effective pursuant to Section 19 of the Exchange Act or the Controlling Person no longer holds a Controlling Interest in the Member.

(iv) For purposes of this Section 7.4(h): (A) a "Controlling Interest" shall be 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; and (B) a "Controlling Person" shall be defined as a Person who, alone or together with any Related Persons of such Person, holds a Controlling Interest in a Member.

(i) In the event that a Member, or any Related Person of such Member, is approved by the Exchange as a BSTX Participant pursuant to the Exchange Rules, and such Member's Economic Percentage Interest or Voting Percentage Interest is in excess of 20%, alone or together with any Related Person of such Member (Voting Units so owned in excess of 20% being referred to as "Excess Voting Units"), the Member and its designated Director, if applicable, shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Voting Units held by such Member; provided, however, that whether or not such Member otherwise participates in a meeting in person or by proxy, such Member's Excess Voting Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Voting Units held by the other Members are voted (including any abstentions from voting). An effective rule filing pursuant to Section 19 of the Exchange Act shall be required prior to any Member, or any Related Person of such Member, becoming a BSTX Participant if such Member, alone or together with any Related Persons of such Member, holds greater than 20% Economic Percentage Interest or 20% Voting Percentage Interest or has the right to appoint more than 20% of the Directors and, unless a rule filing authorizing the foregoing is first effective, such Member, or any Related Person of such Member, shall not be registered as a BSTX Participant.

7.5. **Continuation of LLC**. The liquidation, dissolution, Bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member. Such personal representatives and successors in interest, if any, of any Member shall succeed as assignee to such Member's Units in the Company upon the Bankruptcy or dissolution of such Member but shall be admitted as a substitute Member, subject to Sections 7.1(a) and (b), only with the written consent of Members holding a majority of the Voting Percentage Interest (such consent to be in each Member's sole discretion); unless and until such consent is given, any Voting Percentage Interest in the Company held by such legal representatives of a Member shall not be included in calculating the Voting Percentage Interests of the Members required to take any action under this Agreement.

7.6. **Membership Record**. Upon the issuance of any new Units in the Company or the valid transfer of all or any portion of a Member's Units, the Company shall ensure that such further adjustments to the Membership Record are made as may be necessary to reflect such event and to give effect to the provisions of Section 7.4.

7.7. **No Retroactive Effect**. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the books of the Company (as though the Company's Fiscal Year has ended) or make *pro-rata* allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

Article 8

Distributions and Allocations

8.1. **Current Distributions**. Except as otherwise provided in Section 10.2, 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:

(a) **First**, within ten (10) days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (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). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such Member under Section 8.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the Members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this Section 8.1(a) for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 8.1(b) or Section 10.2. Subsequent distributions made to the Member pursuant to Section 8.1(b) and Section 10.2 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 shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such Member pursuant to Section 8.1(b) and Section 10.2 if this Agreement contained no provision for Tax Distributions.

(b) **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 such Member's respective Economic Percentage Interest.

8.2. **Limitation**. The Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its ownership interest in the Company if, and to the extent, such distribution would violate the LLC Act or other applicable law.

8.3. **Withholdings Treated as Distributions**. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 8.1(a), 8.1(b) or 10.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount

is treated, pursuant to the previous sentence, as a distribution under Section 8.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 8.1(a).

Article 9

Allocations of Profits and Losses

9.1. **Profits, Losses and Credits**. Except as provided in Sections 9.2 through 9.8 below, all profits, losses (each determined in accordance with Section 9.6) 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 such Member's respective Economic Percentage Interest. The allocations provided in this Article 9 are intended to comply with the Treasury Regulations under Section 704(b) of the Code and shall be interpreted and applied in a manner consistent therewith.

9.2. **Limitation.** Notwithstanding anything otherwise provided in Section 9.1, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*), or (*6*) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members in a manner that complies with Treasury Regulations under Section 704(b). In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit.

9.3. **Qualified Income Offset**. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations §1.704-1(b)(2)(ii)(d), and shall be interpreted consistently therewith.

9.4. **Nonrecourse Debt and Chargebacks**. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 9.2, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of the Company, such Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such

year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Company Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Company Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations §1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

9.5. **Member Nonrecourse Deductions**. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations §1.704-2(i)(4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations §1.704-2(i)(4), and shall be interpreted and applied in a manner consistent herewith.

9.6. **Calculation of Profits and Losses**. For all purposes of this Agreement, the Company's profits and losses shall be determined by taking into account all of the Company's items of income and gain (including items not subject to federal income tax) and all items of loss, expense, and deduction, in each case determined under federal income tax principles.

9.7. **Section 704(c) and Capital Account Revaluation Allocations**. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Units and shall not affect its Capital Account. In addition to the foregoing, if the Company assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (*e.g.,* because of a revaluation of the Members' Capital Accounts under Treasury Regulations §1.704-1(b)(2)(iv)(*f*)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 9.7.

9.8. **Offset of Regulatory Allocations**. The allocations required by Sections 9.2 through 9.5 and Section 9.7 are intended to comply with certain requirements of the Treasury Regulations. The Board may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this Section in

whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

9.9. **Terminating and Special Allocations**. Notwithstanding the foregoing allocation provisions, 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 such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 10.3, and immediately before the making of any liquidating distributions to the Members under Section 10.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 10.2.

Article 10

Dissolution and Winding Up

10.1. **Dissolution**.

(a) The Company shall be dissolved and its affairs shall be wound up upon:

(i) the election to dissolve the Company made by the Board pursuant to Section 4.4(b)(v); or

(ii) the entry of a decree of judicial dissolution under §18-802 of the LLC Act; or

(iii) the affirmative vote of Members holding a majority of all of the then outstanding Voting Percentage Interests (excluding any Voting Percentage Interests held 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 LSA; or

(iv) 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

(v) 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.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a

member of the Company, in which case a liquidating trustee may be appointed for the Company by vote of a majority of the Directors (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of the Company, subject to Section 10.2, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; *provided,* that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any action brought against it in connection therewith by applying, *mutatis mutandis,* the provisions of Article 13.

10.2. **Application and Distribution of Assets**.

(a) **Winding Up**. 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 such Members and former Members; and third, to the Members in proportion to their respective Economic Percentage Interests.

(b) **Reserve.** 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 such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

10.3. **Capital Account Adjustments**. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 9 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this Section shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Economic Percentage Interests.

10.4. **Termination of the LLC**. Subject to Section 18.1 of this Agreement, the separate legal existence of the Company shall terminate when all assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 10, and a Certificate of Cancellation shall have been filed in the manner required by Section 18-203 of the LLC Act.

Article 11

Books, Records and Accounting

11.1. **Books and Records**. The Board shall cause to be entered in appropriate books, kept at the Company's principal place of business, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other Company records (excluding any regulatory and disciplinary information) during normal business hours; *provided that* the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. The Board shall 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 books of account shall be kept using the method of accounting determined by the Board. The Company's independent auditor shall be an independent public accounting firm selected by the Board. The Company and its Members acknowledge that, to the extent related to the operation or administration of the Exchange or the BSTX Market, (i) all books and records of the Company and its Members shall be maintained at a location within the United States, (ii) the books, records, premises, directors, officers, employees and agents of the Company and its Members shall 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 Exchange Act, and (iii) the books and records of the Company and its Members shall be subject at all times to inspection and copying by the SEC and the Exchange.

11.2. **Deposits of Funds**. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as the Board may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as the Board shall determine.

11.3. **Fiscal Year**. The fiscal year of the Company shall be the calendar year.

11.4. **Financial Statements; Reports to Members**. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within ninety (90) days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

11.5. **Tax Elections**. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 9 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

11.6. **Tax Matters Representative**. The CEO of the Company shall be the tax matters representative of the Company (the "Tax Matters Representative") for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service and any corresponding provision of state or local income tax law as such officer deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, the Company shall (a) promptly deliver to the Members copies of any notices, letters or other documents received by the Tax Matters Representative in such capacity, (b) keep the Members informed with respect to all matters involving the Tax Matters Representative, and (c) consult with the Members and obtain the approval of the Members prior to taking any actions as the Tax Matters Representative. The Tax Matters Representative shall be reimbursed by the Company for all costs and expenses incurred by the Tax Matters Representative in connection with such role and shall be indemnified by the Company with respect to any action brought against the Tax Matters Representative in connection with the settlement of any proceeding by applying, *mutatis mutandis,* the provisions of Article 13.

Article 12

Arbitration

All disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be (a) settled by arbitration before a panel of three neutral arbitrators (the "Neutral Arbitrators") appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, each having experience with and knowledge of the general field related to the dispute, claim or controversy (with at least one being an attorney), and (b) administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules as in effect at the time a request for arbitration is made. For the purposes of this Article 12, the following persons shall be deemed not to be a Neutral Arbitrator: (i) a director, officer, employee, agent, partner or shareholder of any party to the dispute or of the Company; (ii) a consultant to the Company or of any party to the dispute; (iii) a person with a direct or indirect financial interest in any contract with any party to the dispute; (iv) a director, officer or key employee of a company at a time when such company was party to a contract with any party to the dispute; or (v) a relative of any person referred to in clauses (i), (ii), (iii) or (iv) above. Arbitration may be commenced at any time by any party to the dispute by giving written notice to the other party or parties to the dispute that such dispute has been referred to arbitration under this Article 12. Any determination or award rendered by the Neutral Arbitrators shall be conclusive and binding upon the parties to such dispute and judgment on the award rendered by the Neutral Arbitrators may be entered and enforced in any court having jurisdiction thereof; *provided, however*, that any such determination or award shall be accompanied by a reasoned award of the Neutral Arbitrators giving the reasons for the determination or award. The parties hereby consent to the non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts or to any federal court located within the Commonwealth of Massachusetts for any action (x) to compel arbitration, (y) to enforce the award of the Neutral Arbitrators or (z) prior to the appointment and confirmation of the Neutral Arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by

any other means provided by law. Any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to the parties. In making any determination or award, the Neutral Arbitrators shall be authorized to award interest on any amount awarded. This provision for arbitration shall be specifically enforceable by the parties to the disputes and the determination or award of the Neutral Arbitrators in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Each of the parties to the dispute shall pay its own expenses of arbitration and the expenses of the Neutral Arbitrators shall be equally shared; *provided, however*, that if in the opinion of the Neutral Arbitrators any claim was frivolous or in bad faith, the Neutral Arbitrators may assess, as part of the determination or award, all or any part of the arbitration expenses of the other party or parties (including reasonable attorneys' fees) and of the Neutral Arbitrators against any party so acting in bad faith or raising such frivolous claim.

The place of arbitration shall be Boston, Massachusetts and the language of the arbitral proceedings shall be English.

Article 13

Exculpation and Indemnification

13.1. **Exculpation and Indemnification**.

(a) No Member nor any Officer, Director, employee, agent or committee member of the Company nor any employee, representative, agent, director or Affiliate of any Member (including the heirs, executors, and administrators of any such Person) (each an "Indemnified Person") shall be liable to the Company or any other Person who is bound by this Agreement (including any Member and the Exchange) for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Person in accordance with this Agreement, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred if and to the extent (1) such loss, damage or claim is the result of the Indemnified Person's fraud, bad faith or willful misconduct, (2) with respect to any criminal proceeding, the Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct giving rise to such loss, damage or claim was unlawful or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company, in each case as determined by a final, unappealable judgment by a court of competent jurisdiction.

(b) The Company may indemnify any Person against any claim to the extent determined by the Board to be in the best interests of the Company. The Company shall indemnify, and hold harmless, to the fullest extent permitted by law as it presently exists or may thereafter be amended, any Indemnified Person who, by reason of the fact that such Person is or was a Director, Officer, employee or agent of the Company, or a member of any committee of the Company, or is or was a Director, Officer, employee or agent of the Company who is or was serving at the request of the Company as a director, officer, employee or agent of another Person, including without limitation service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to (i) any threatened, pending, or completed action, suit or

proceeding, whether civil, criminal, administrative or investigative, or (ii) any threatened, pending, or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor, in each case against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with the defense or settlement of, or otherwise in connection with, any such action, suit, or proceeding (collectively, "Indemnified Claims"). Notwithstanding the foregoing, no Indemnified Person shall be indemnified by the Company, and no claim shall be an Indemnified Claim, if and to the extent (1) such claim is the result of the Indemnified Person's fraud, bad faith or willful misconduct, (2) with respect to any criminal proceeding, the Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct giving rise to such claim was unlawful or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company, in each case as determined by a final, unappealable judgment by a court of competent jurisdiction.

(c) The Company shall advance expenses (including attorneys' fees and disbursements) to Indemnified Persons for Indemnified Claims; provided, however, that the payment of such expenses incurred by such Indemnified Person, in advance of the final disposition of the matter, shall be conditioned upon receipt of a written undertaking by the Person to repay all amounts advanced if it should be ultimately determined that the Person is not entitled to be indemnified under this Section 13.1 or otherwise.

(d) Notwithstanding the foregoing or any other provision of this Agreement, no advance shall be made by the Company to any Indemnified Person if a determination is reasonably and promptly made by a majority vote of the Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) such Indemnified Person committed fraud, acted in bad faith or engaged in willful misconduct; (2) with respect to any criminal proceeding, such Indemnified Person believed or had reasonable cause to believe that such Indemnified Person's conduct was unlawful; or (3) such Indemnified Person deliberately breached such Indemnified Person's duty to the Company.

(e) The indemnification provided by this Section 13.1 in a specific case shall not be deemed exclusive of any other rights to which an Indemnified Person may be entitled, both as to action in his or her official capacity and as to action in another capacity while in such capacity, and shall continue as to an Indemnified Person who has ceased to be a Director, Officer, or committee member, employee, or agent and shall inure to the benefit of such Indemnified Person's heirs, executors, and administrators.

(f) Any repeal or modification of the foregoing provisions of this Section 13.1 shall not adversely affect any right or protection hereunder of any Person respecting any act or omission occurring prior to the time of such repeal or modification.

(g) If a claim for indemnification or advancement of expenses under this Section 13.1 is not paid in full within 60 days after a written claim therefor by an Indemnified Person has been received by the Company, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of

prosecuting such claim. In any such action, the Company shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses.

(h) The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was a Director, Officer, or committee member, employee or agent of the Company, or who is or was serving as a director, officer, employee, or agent of another Person against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as such, whether or not the Company is required to indemnify such Person against such liability hereunder.

(i) A Indemnified Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

(j) To the extent that, at law or in equity, a Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Indemnified Person, a Indemnified Person acting under this Agreement shall not be liable to the Company or to any other Indemnified Person who is bound by this Agreement for his or her good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Indemnified Person.

(k) The foregoing provisions of this Section 13.1 shall survive any termination of this Agreement.

Article 14

Maintenance of Separate Business

The Company shall at all times: (a) to the extent that any of the Company's offices are located in the offices of an Affiliate, pay fair market rent for its office space located therein; (b) maintain the Company's books, financial statements, accounting records and other limited liability company documents and records separate from those of any Affiliate or any other Person; (c) not commingle the Company's assets with those of any Affiliate or any other Person; (d) maintain the Company's books of account, bank accounts and payroll separate from those of any Affiliate; (e) act solely in its name and through its own authorized agents, and in all respects hold itself out as a legal entity separate and distinct from any other Person; (f) make investments directly or by brokers engaged and paid by the Company or its agents (provided that if any agent is an Affiliate of the Company it shall be compensated at a fair market rate for its services); (g) manage the Company's liabilities separately from those of any Affiliate and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except that an Affiliate may pay the organizational expenses of the Company; and (h) pay from the Company's assets all

obligations and indebtedness of any kind incurred by the Company. The Company shall abide by all LLC Act formalities, including the maintenance of current records of the Company affairs, and the Company shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Company. The Company shall (a) pay all its liabilities, (b) not assume the liabilities of any Affiliate unless approved by unanimous consent of the Board and (c) not guarantee the liabilities of any Affiliate unless approved by unanimous consent of the Board. The Board shall make decisions with respect to the business and daily operations of the Company independent of and not dictated by any Affiliate.

Article 15

Confidentiality and Related Matters

15.1. **Disclosure and Publicity**. Subject to exceptions set forth in Section 15.2(b) below, no Member shall make any public disclosures concerning this Agreement without the prior approval of the Company.

15.2. **Confidentiality Obligations of Members and Exchange.**

(a) Each Member and the Exchange agrees that it will use Confidential Information of the Company only in connection with its respective Member or Exchange activities contemplated by this Agreement and the Related Agreements and pursuant to the Exchange Act and the rules and regulations thereunder, and it will not disclose any Confidential Information of the Company to any Person except as expressly permitted by this Agreement and the Related Agreements or pursuant to the Exchange Act and the rules and regulations thereunder.

(b) Each of the Members and the Exchange may disclose Confidential Information of the Company only:

(i) to its respective directors, officers and employees who have a reasonable need to know the contents thereof and who are subject to similar such confidentiality obligations;

(ii) on a confidential basis to its Advisors who have a reasonable need to know the contents thereof and who are subject to similar confidentiality obligations, so long as such disclosure is made pursuant to the procedures referred to in Section 15.4(b);

(iii) to the extent required by applicable statute, rule or regulation promulgated under the Exchange Act, the U.S. federal securities laws and rules thereunder; or securities laws, rules or regulations applicable in one or more province of Canada; or in response to a request from the SEC (pursuant to the Exchange Act and the rules thereunder), or from any securities regulatory authority in Canada (pursuant to applicable securities laws, rules or regulations) or the Exchange;

(iv) to the extent required by applicable statute, rule or regulation (other than the U.S. federal securities laws and the rules thereunder); or any court of competent jurisdiction; provided that it has made reasonable efforts to conduct its relevant business activities in a manner such that the disclosure requirements of such statute, rule or regulation or court of competent jurisdiction do not apply, and provided further that the Company is given notice and an adequate opportunity to contest such disclosure or to use any means available to minimize such disclosure; and

(v) to the extent that such Confidential Information has become generally available publicly through no fault of the Member, the Exchange or either of such Person's directors, officers, employees or Advisors.

15.3. **Member Information Confidentiality Obligation**. Each Member and the Exchange shall hold, and shall cause its respective Affiliates and their directors, officers, employees, agents, consultants and Advisors to hold, 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, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, reports, instruments, computer data and other data and information (collectively, "Member Information") concerning the other Members or the Exchange, as applicable (or, if required under a contract with a third party, such third party), furnished to it by the Member, the Exchange or a Member's or the Exchange's respective representatives pursuant to this Agreement, except to the extent that such Member Information can be shown to have been: (a) previously known by such Member or Exchange, as applicable, on a non-confidential basis; (b) available to such Member or Exchange, as applicable, on a non-confidential basis from a source other than the disclosing Member; (c) in the public domain through no fault of such Member or Exchange; or (d) later lawfully acquired from other sources by the Member or Exchange to which it was furnished, and none of the Members or the Exchange shall release or disclose such Member Information to any other person, except its auditors, attorneys, financial advisors, bankers, other consultants and Advisors and, to the extent permitted above, to regulatory authorities. In the event that a Member or the Exchange becomes compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, such compelled party shall provide the party that provided such Member Information (the "Disclosing Party") with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive the terms of any applicable confidentiality arrangements. In the event that such protective order, other remedy or waiver is not obtained, only that portion of the Member Information which is legally required to be disclosed shall be so disclosed.

15.4. **Ongoing Confidentiality Program.**

(a) In order to ensure that the parties hereto comply with their obligations in this Article 15, representatives designated by the Member, the Exchange and the Company shall meet from time to time as required to discuss issues relating to confidentiality and disclosure and other matters addressed by this Article 15.

(b) With respect to any disclosure by any of the parties hereto to any of their Advisors pursuant to this Article 15, the representatives referred to in paragraph (a) above will institute procedures designed to maintain the confidentiality of Confidential Information of the Company while facilitating the business activities contemplated by this Agreement and the Related Agreements.

15.5. **Regulatory Right to Access.** Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine such 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 such Confidential Information to the SEC or the Exchange.

15.6. **Disclosure of Confidential Information**. Notwithstanding anything to the contrary in this Agreement, all Confidential Information of the Company or the Exchange, pertaining to regulatory matters of the Company or the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company or any of its subsidiaries shall: (i) not be made available to any persons (other than as provided in the next sentence) other than to those Directors, Officers, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the Directors, Officers, employees and agents of the Company; and (iii) not be used by any Person for any non-regulatory purpose. Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC, pursuant to the federal securities laws and rules and regulations thereunder, and the Exchange to access and examine such 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 such Confidential Information to the SEC or the Exchange.

Article 16

Non-Competition; Referrals

16.1. **Non-Competition**. Each Member agrees that, for so long as it holds a combined Voting Percentage Interest in the Company of five percent (5%) or more, it shall not hold or invest in more than five percent (5%) of, or participate in the creation and/or operation of, a Competing Business or in any Person engaged in the creation and/or operation of a Competing Business; provided, however, that the parties hereto hereby agree that this Section 16.1 is not intended for the benefit of the Exchange and the Exchange shall not have any rights arising under this Section 16.1.

16.2. **Referrals**. Each of the Members shall, and shall cause each of their Affiliates to, refer all inquiries about the business conducted by the Company or any of its subsidiaries to the Company or to such subsidiary of the Company as applicable.

Article 17

Intellectual Property

Each of the Members shall retain all rights, title, and interests to all of its intellectual property except as may be contemplated by Related Agreements.

Article 18

General

18.1. **Entire Agreement; Integration, Amendments**. This Agreement contains the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. This Agreement may only be changed, amended or supplemented by an agreement in writing that is approved by the Board, including the affirmative vote of at least four Directors, without the consent of any Member or other Person. In addition, notwithstanding anything to the contrary in this Agreement, any terms specific to any Member, such as, among other things, the right to appoint a Member Director, or to the Exchange may not be altered or adversely affect such Member or the Exchange without the prior written consent of such Member or the Exchange (as applicable). Each of the Members further acknowledges and agrees that, in entering into this Agreement, such Member has not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement. 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. Notwithstanding any other provision in this Agreement, the Exchange shall review each such amendment, modification, waiver or supplement and, if such amendment is required, under Section 19 of the Exchange 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. In the event the Exchange ceases to be the SRO authority of the Company, the Exchange shall no longer be a party to this Agreement and thereafter the provisions of this Agreement shall not apply to the Exchange except for the provisions referenced in Section 18.12 which shall survive.

18.2. **Binding Agreement**. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3. **Notices**. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (*e.g.,* Federal Express), or five (5) days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to the Members or the Exchange shall be addressed to such entity's address set forth on the Membership Record or at such other address as such entity may have designated by notice given

in accordance with the terms of this subsection; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4. **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5. **Governing Law, Etc**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules.

18.6. **Member Books, Records and Jurisdiction.**

(a) Each Member acknowledges that, to the extent they are related to the Company activities, the books, records, premises, officers, directors, agents, and employees of such Member shall 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 Exchange Act.

(b) The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC and the Exchange, for the 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 or Section 11.1 or this Section 18.6, (except that such jurisdictions shall also include Delaware state courts for any such matter relating to the organization or internal affairs of the Company) and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the SEC, 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 such courts or agency. The Company, the Members and the officers, directors, employees and agents of each, by virtue of their acceptance of such 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.

(c) With respect to Article 15 and Sections 4.11, 11.1 and 18.6, the Company, the Exchange and each Member shall take such action as is necessary to ensure that the Company's Directors, Officers and employees, the Exchange's directors, officers and employees, and such Member's directors, officers and employees, as applicable, consent in writing to the applicability of such provisions to the extent related to the operation or administration of the Exchange or the BSTX Market.

18.7. **Waiver of Certain Damages**. EACH OF THE MEMBERS, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHTS THAT THEY MAY HAVE TO PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES

IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OF ANY OF THEM RELATING THERETO.

18.8. **Effect of Regulatory Approval**. The parties hereto hereby acknowledge and agree that the Company intends to seek the approval of the SEC and the Exchange to operate the BSTX Market as a facility of the Exchange. Prior to obtaining such approval, the Company shall not operate as a facility of the Exchange. Upon obtaining such approval, the SEC and the Exchange shall have appropriate regulatory oversight responsibilities with respect to the Company. Accordingly, references in this Agreement to the Exchange, the SEC, or any regulation or oversight of the Company by the SEC or the Exchange, or any participation in the affairs of the Company by the SEC or the Exchange, shall not apply until the date such approval is obtained and effective, at which time all such provisions of this Agreement shall take effect. The execution of this Agreement by the Exchange shall not be required until such approval is obtained, at which time the Exchange shall become a party to this Agreement.

18.9. **Construction**. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.10. **Severability**. The invalidity or unenforceability of any particular provision of this Agreement or any Related Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.11. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.12. **Survival**. The provisions of Articles 12, 13, 15, 17 and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon such termination of this Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned, intending to be legally bound hereby, has duly executed this Third Amended and Restated Limited Liability Company Agreement of BSTX LLC as of the date first set forth above.

COMPANY:

BSTX LLC

By:______________________________________
Lisa J. Fall
CEO

EXCHANGE:

BOX EXCHANGE LLC

By:______________________________________
Lisa J. Fall
President

EXHIBIT 5B

[all text is new]

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

The Holder hereby becomes a party to, and agrees to abide by all the provisions of, the BSTX LLC Agreement, and assumes all of the obligations of a Member. This Instrument of Accession shall take effect and shall become a part of the BSTX LLC Agreement as of the date set forth above.

BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Overstock.com, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

The Holder hereby becomes a party to, and agrees to abide by all the provisions of, the BSTX LLC Agreement, and assumes all of the obligations of a Member. This Instrument of Accession shall take effect and shall become a part of the BSTX LLC Agreement as of the date set forth above.

BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Medici Ventures, L.P.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

The Holder hereby becomes a party to, and agrees to abide by all the provisions of, the BSTX LLC Agreement, and assumes all of the obligations of a Member. This Instrument of Accession shall take effect and shall become a part of the BSTX LLC Agreement as of the date set forth above.

BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Pelion MV GP, L.L.C.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

Reference is made to the BSTX LLC ("BSTX") Third Amended and Restated Limited Liability Company Agreement, as it may be amended (the "BSTX LLC Agreement"), by and among the parties thereto in accordance with the terms thereof. This Instrument of Accession shall be deemed a counterpart of the BSTX LLC Agreement and the execution hereof by the undersigned (the "Holder"), shall evidence its acceptance of the terms and provisions of the BSTX LLC Agreement. Terms used herein without definition shall have the respective meanings ascribed thereto in the BSTX LLC Agreement.

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

BOX Holdings Group LLC

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

MX US 2, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

MX US 1, Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

Bourse de Montreal Inc.

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title:

EXHIBIT 5B

Instrument of Accession
to
BSTX LLC
Third Amended and Restated Limited Liability Company Agreement
[date of effectiveness]

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BSTX hereby represents that this Instrument of Accession has been accepted and approved by the Board of Directors as provided in the BSTX LLC Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Instrument of Accession as of the date first set forth above.

TMX Group Limited

By: ______________________________
Name:
Title:

BSTX LLC

By: ______________________________
Name:
Title: