



SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
+1 202 736 8000  
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8093  
DPETRON@SIDLEY.COM

May 31, 2022

**By Email**

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
secretarys-office@sec.gov

Re: In the Matter of the Application for Review of BOX Holdings Group LLC, BOX Options Market LLC, and Luc Bertrand  
Administrative Proceeding No. 3-20860 (Filed May 16, 2022)

Dear Ms. Countryman:

We are counsel to BOX Exchange LLC (“BOX Exchange”), a national securities exchange registered with the Securities and Exchange Commission (“SEC” or the “Commission”) under Section 6 of the Securities Exchange Act of 1934 (the “Exchange Act”), and a self-regulatory organization (“SRO”) subject to Section 19 of the Exchange Act. We write in response to the “application” purportedly made pursuant to Rule 19d-3 of the Exchange Act by BOX Holdings Group LLC (“BOX Holdings”), BOX Options Market LLC (“BOX Market”), and Luc Bertrand (collectively, the “Applicants”), for review of certain actions taken by BOX Exchange, dated May 16, 2022 (the “Filing”).

As explained in the Filing, BOX Exchange found that Mr. Bertrand, who serves as interim chair of the Boards of BOX Holdings and BOX Market, acted in a manner that is not in the best interests of BOX Exchange, in bad faith, and in deliberate breach of his duties to BOX Exchange. Accordingly, BOX Exchange exercised its authority under the Exchange’s Bylaws and the relevant LLC agreements, *see* Attach. 9, Apr. 18, 2022 Ltr., to (i) suspend Mr. Bertrand from serving as a director, officer, chairman, consultant, or in any formal or informal capacity, with respect to BOX Exchange, BOX Holdings, and BOX Market, (ii) prohibit the Boards of BOX Holdings and BOX Market from acting via written consent, (iii) prohibit the Boards of BOX Holdings and BOX Market from delegating any authority to an executive committee of the respective Boards, and (iv) require that any action requiring deliberation and/or vote of either Board be taken at a meeting of the full Board. BOX Exchange later lifted Mr. Bertrand’s suspension and fine. *See* Attach. 10, Apr. 21, 2022 Ltr. RE: Notice of Lifting of Sanctions.

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

**OS Received 05/31/2022**

Section 19(d)(2) of the Exchange Act grants the Commission jurisdiction “to review” “[a]ny action with respect to which [an SRO] is required by [Section 19(d)(1)] to file notice.” 15 U.S.C. § 78s(d)(2). Section 19(d)(1) of the Exchange Act requires an SRO to “file notice” when an SRO “imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization . . . imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member.” *Id.* § 78s(d)(1). Thus, where an SRO’s action is not directed at a member, participant, or person associated with a member, the Commission lacks any basis to review that action under Section 19(d). *See Alpine Sec. Corp. & Scottsdale Capital Advisors Corp.*, Exchange Act Release No. 89685, 2020 WL 5076741, at \*2 (Aug. 26, 2020); *Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at \*3 (Sept. 30, 2016).

As the Applicants correctly concede in their Filing, BOX Exchange did not take any action against a member, participant, or person associated with a member. Therefore, the actions complained of are not reviewable under Section 19(d) or Rule 19d-3. It is undisputed that the Applicants are not “member[s]” of BOX Exchange. *See* 15 U.S.C. § 78c(3)(A) (defining “member”). BOX Holdings is not a member. It is a privately held limited liability company that wholly owns BOX Market. BOX Market is not a member. It is a “facility” of BOX Exchange. *See* 15 U.S.C. § 78c(a)(2) (defining “facility”).<sup>1</sup> So too, the Applicants concede that they are not “participant[s],” and that Bertrand is not a “person associated with a member.” *See* App. for Rev. at 2 (“Neither BOX Holdings nor BOX Market is a ‘participant’ of BOX Exchange, and Mr. Bertrand is not associated with any ‘participant’ of BOX Exchange.”). Section 19(d) therefore does not authorize the Commission to exercise jurisdiction over this application for review.

The Commission also lacks jurisdiction under Section 19(d) for the additional and independent reason that the actions characterized by the Applicants as disciplinary sanctions are no longer “live.” That provision, the Commission has held, “require[s] a ‘live’ sanction—that is, a sanction that exists at the time of the review for us to potentially affirm, modify, or set aside.” *Alpine Sec. Corp.*, 2020 WL 5076741, at \*2 (quoting *Dakota Sec. Int’l, Inc.*, Exchange Act Release No. 85238, 2019 WL 995510, at \*3 (Mar. 19, 2019)). The Applicants admit that the only “sanctions” imposed were lifted by BOX Exchange almost a *full month* before this Filing. App. for Rev. at 1–2; *see* Attach. 10, Apr. 21, 2022 Ltr. RE: Notice of Lifting of Sanctions.<sup>2</sup> As

---

<sup>1</sup> *See In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange*, Release No. 34-66871, File No. 10-206, at 3–4 (Apr. 27, 2012) (Findings, Opinion, and Order of the Commission) (“BOX Exchange will be responsible for the operation and oversight of BOX [Market] as its facility following commencement of operations of BOX Exchange as a national securities exchange. . . . BOX Holdings will be the sole owner of BOX Market.” (footnote omitted)).

<sup>2</sup> As the Filing explains, BOX Exchange lifted Bertrand’s suspension and fine. App. for Rev. at 1 nn.1–2. Thus, the only remaining “purported sanctions” are the “purported findings” related to Mr. Bertrand, *id.* n.1, the “orders . . .

# SIDLEY

May 31, 2022

Page 3

the Ninth Circuit observed, “if an SRO . . . imposed a disciplinary sanction but then fully retracted the sanction by, for example, setting aside a suspension and returning any fine levied, it would make little sense for the Commission to proceed with review.” *Sharemaster v. SEC*, 847 F.3d 1059, 1068 (9th Cir. 2017). Thus, the Commission also lacks jurisdiction under Section 19(d) because there is no “live” disciplinary sanction here. *See Alpine Sec. Corp.*, 2020 WL 5076741, at \*2 (holding that the Commission lacked jurisdiction under Section 19(d) where “FINRA imposed no fine and lifted the suspensions imposed”).<sup>3</sup>

For all these reasons, the actions complained of here do not fall within the categories of actions that the Commission is authorized to review under Section 19(d) of the Exchange Act and Rule 19d-3 thereunder. Accordingly, no notice of any such action has been made by BOX Exchange under Rule 19d-1 of the Exchange Act. And because BOX Exchange has not taken any such action, there is no proceeding or record for purposes of Rule 420(e) of the SEC’s Rules of Practice.

---

limiting the actions of the Boards of BOX Holdings and BOX Market,” *id.*, and the “purported ‘orders’ directed to the Board of BOX Market,” *id.* n.2.

<sup>3</sup> The Applicants claim that the source of authority for BOX Exchange’s actions here is Rule 12000. App. for Rev. at 2. But that is not a basis for jurisdiction under Section 19(d). And in any event, that claim is belied by the attachments filed with the application for review. As BOX Exchange explained in its April 18 Letter, it did not take this action under that rule—it took action under the authority granted by the Exchange’s Bylaws and the relevant LLC agreements, which “is not limited by the 12000 series rules applicable to market participants.” Attach. 9, Apr. 18, 2022 Ltr. “Section 19(d) authorizes Commission review when an SRO, through its disciplinary process, determines to impose a final disciplinary sanction on a member, or on a person associated with a member.” *Allen Douglas Sec., Inc.*, Exchange Release No. 50513, 2004 WL 2297414, \*3 (Oct. 12, 2004). That did not happen here.

# SIDLEY

May 31, 2022

Page 4

The actions complained of by the Applicants in their Filing are not reviewable under Section 19(d) and Rule 19d-3. Thus, the Filing is invalid and should be rejected.

Sincerely,

/s/ David S. Petron

David S. Petron

cc (via email):

William McLucas (WilmerHale LLP) (William.McLucas@wilmerhale.com)  
Matthew T. Martens (WilmerHale LLP) (Matthew.Martens@wilmerhale.com)  
Adam S. Hakki (Shearman & Sterling LLP) (ahakki@shearman.com)  
Mark Lanpher (Shearman & Sterling LLP) (Mark.Lanpher@shearman.com)  
Anthony McCormick (BOX Exchange) (tony@boxexchange.com)  
Kwaku A. Akowuah (Sidley Austin LLP) (kakowuah@sidley.com)  
Andrew P. Blake (Sidley Austin LLP) (ablake@sidley.com)  
Cody L. Reaves (Sidley Austin LLP) (cody.reaves@sidley.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2022, I caused a true and correct copy of the foregoing to be electronically filed using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system. I further certify that I caused a true and correct copy of the foregoing to be served by electronic mail on the following:

The Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
secretarys-office@sec.gov

William McLucas  
Matthew T. Martens  
WilmerHale LLP  
1875 Pennsylvania Ave. NW  
Washington, DC 20006  
William.McLucas@wilmerhale.com  
Matthew.Martens@wilmerhale.com

Adam S. Hakki  
Shearman & Sterling LLP  
599 Lexington Ave.  
New York, NY 10022  
ahakki@shearman.com

Mark Lanpher  
Shearman & Sterling LLP  
401 9th Street, NW  
Washington, DC 20004  
Mark.Lanpher@shearman.com

/s/David S. Petron  
David S. Petron  
Sidley Austin LLP  
1501 K Street NW  
Washington, DC 20005  
Tel.: (202) 736-8000  
Fax: (202) 736-8711  
dpetron@sidley.com