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June 8, 2022

VIA 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

Dear Ms. Countryman,

My firm is counsel to BOX Holdings Group LLC (“BOX Holdings”) and BOX Options Market LLC (“BOX Market”). Together with Shearman & Sterling, LLP, counsel to Luc Bertrand (together with BOX Holdings and BOX Market, “Applicants”), we write in response to the May 31, 2022 “letter in lieu of record” filed by BOX Exchange LLC (“BOX Exchange”) in the above-captioned Administrative Proceeding (“Letter”), and to request that the Commission either: (1) obtain confirmation from BOX Exchange that the purported sanctions and findings challenged in this Application for Review were not imposed pursuant to any regulatory authority or power; or (2) set a briefing schedule to address the merits of Applicant’s Application for Review, including whether the Commission has jurisdiction to hear Applicant’s Application for Review.

Contrary to BOX Exchange’s assertion that the “only ‘sanctions’ imposed were lifted by BOX Exchange,” Letter at 2, the orders issued by BOX Exchange in violation of Section 19(b) of the Exchange Act and in contravention of the BOX Market and BOX Holdings LLC Agreements are not “moot.” Those orders continue to:

- (i) prohibit the Boards of BOX Holdings and BOX Market, or any committees thereof, from acting via written consent, as otherwise permitted by both entities’ LLC Agreements;

- (ii) prohibit the Boards of BOX Holdings and BOX Market from delegating any authority to an executive committee of the respective Boards, as otherwise permitted by both entities' LLC Agreements;
- (iii) require that any action requiring the deliberation and/or vote of either Board be taken at a meeting of the full Board; and
- (iv) require *each* director of BOX Market to provide notice and allow the Regulatory Director to participate in *any* oral communication (and provide notice of any written communication involving any BOX Market director) related to the Exchange or BOX Market even outside of a meeting of the BOX Market Board.

Moreover, the purported “findings” that Mr. Bertrand violated the “rules” of BOX Exchange and acted and is continuing to act 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 (made without a semblance of due process or factual or legal support) have not been withdrawn, meaning BOX Exchange may purport to reinstate or impose additional sanctions against Mr. Bertrand whenever it chooses. These findings and sanctions remain very much “live” and subject to challenge before the Commission unless they are unequivocally withdrawn entirely or BOX Exchange definitively confirms that none of the actions challenged in this appeal were undertaken pursuant to any regulatory authority or power.¹

At issue in this Administrative Proceeding is whether BOX Exchange, a self-regulatory organization (“SRO”) with regulatory and enforcement authority delegated to it by the Commission, *see, e.g.*, 15 U.S.C. § 78f(b), can impose such findings and sanctions (including, among other things, restraints on corporate conduct and monetary penalties on board members) by virtue of its quasi-governmental status on persons who are not members or associated persons of a member of BOX Exchange, and, if so, whether BOX Exchange may do so without affording the Applicants any notice, opportunity to be heard, or any due process whatsoever.²

As BOX Exchange is well-aware, the “Bylaws and the relevant LLC agreements” pursuant to which it now claims to have imposed these sanctions constitute “rules of the exchange” which

¹ Although BOX Exchange’s “letter in lieu of record” attempts to avoid the question of whether it acted pursuant to its regulatory authority, it previously claimed in correspondence that there had been an effort to “defeat surveillance by the Regulatory Director and Exchange,” Attach. 2-3, and that the “Exchange finds [Applicants] to be in violation of its rules,” Attach. 2-3; *see also* Attach. 6-8. Unless BOX Exchange is prepared to completely withdraw its actions and findings *ab initio* or confirm that it was operating outside its regulatory authority, it cannot use ambiguity to evade the Commission’s authority to review such actions on appeal.

² SEC Div. of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments*, at VI - 3 (Jan. 1994) (“The Exchange Act requires SROs to act as quasi-governmental bodies implementing the federal securities laws as well as their own rules.”) available at <https://www.sec.gov/divisions/marketreg/market2000.pdf>

were approved by the Commission, and which, contrary to BOX Exchange's action in this matter, can only be modified pursuant to notice and comment under Section 19(b) of the Exchange Act and Commission approval. *See* Letter at 1; 15 U.S.C. §§ 78c(a)(27), 78s. To the extent BOX Exchange imposed the sanctions on Applicants pursuant to the "Bylaws and the relevant LLC agreements" of BOX Exchange as an exercise of its regulatory and enforcement authority delegated to it by the Commission, the Commission must have jurisdiction to review such sanctions. Indeed, the Commission's rules of practice plainly contemplate such a situation by stating that "an application for review by the Commission may be filed by any person who is aggrieved by a determination of a self-regulatory organization." 17 C.F.R. § 201.420(a).

Applicants are seeking Commission review of whether the authority delegated to BOX Exchange includes the ability to simply circumvent Section 19(b) of the Exchange Act, and whether failure by BOX Exchange to afford Applicants notice and opportunity to be heard is both a violation of Applicants' Fifth Amendment due process rights and a complete abuse of the Commission's delegated authority to an SRO to act consistent with due process and fundamental notions of fairness. Such review is especially important here given Applicants' concerns that BOX Exchange's actions at issue flow from an inquiry by the SRO's regulatory staff that may have been impacted by conflicts of interest, including as they relate to prior professional relationships between persons now associated with BOX Exchange and previously associated with BOX Market, as well as certain ongoing related legal disputes with respect to executive compensation.

If BOX Exchange is not purporting to make findings and impose sanctions pursuant to its regulatory and enforcement authority (including under its Bylaws and LLC agreements) and is instead invoking purely contractual authority derived from its Bylaws and LLC agreements *independent* of its regulatory authority, it should say so expressly. For the avoidance of doubt, such actions are neither permitted nor proper under contract or corporate law and thus are of no legal effect, as would be confirmed by a court of competent jurisdiction if necessary. However, if BOX Exchange is purporting to act pursuant to the regulatory and enforcement authority delegated to it by the Commission, the Commission should set a briefing schedule allowing the parties to address the merits of Applicants' Application for Review, including whether the Commission has jurisdiction to review sanctions and penalties assessed by an SRO pursuant to its Commission-granted authority absent notice, opportunity to be heard, and any basic elements of due process.

Very truly yours,

/s/William R. McLucas

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 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:

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