

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95136 / June 21, 2022

Admin. Proc. File No. 3-20860

In the Matter of the Application of
BOX HOLDINGS GROUP LLC, BOX OPTIONS
MARKET LLC, and LUC BERTRAND

For Review of Action Taken by

BOX Exchange LLC

ORDER SCHEDULING BRIEFS

On May 16, 2022, BOX Holdings Group LLC, BOX Options Market LLC, and Luc Bertrand (collectively, “Applicants”) filed an application for review challenging certain actions by BOX Exchange LLC (“Exchange”) imposing sanctions for Applicants’ alleged violations of the Exchange’s rules. On May 31, 2022, the Exchange filed a letter asserting that there is no proceeding or record for purposes of Rule of Practice 420(e)¹ and that “[t]he actions complained of by the Applicants in their Filing are not reviewable under Section 19(d) [of the Securities Exchange Act of 1934] and [Exchange Act] Rule 19d-3.” Applicants responded via a letter on June 8, 2022, stating that “the Commission must have jurisdiction to review such sanctions” imposed by the Exchange pursuant to its delegated regulatory and enforcement authority. On June 10, 2022, the Exchange filed a reply letter reiterating that the Commission lacks jurisdiction under Exchange Act Section 19(d) and “[t]here is thus no need for briefing on jurisdiction.”

We construe the Exchange’s request that Applicants’ filing “be rejected” as asking us to dismiss the application for review.² Given the exchange of letters and upon consideration of the

¹ 17 C.F.R. § 201.420(e).

² See, e.g., *Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 WL 5076741, at *5 (Aug. 26, 2020) (dismissing application for review due to lack of jurisdiction under Exchange Act Section 19(d)); *WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 WL 5245244, at *3–5 (Sept. 9, 2015) (dismissing self-regulatory organization member firm’s application for review for lack of jurisdiction where there existed no basis for review under Section 19(d)).

arguments raised therein, we find it appropriate to order the parties to brief the motion to dismiss separately from and prior to any briefing on the merits of the underlying dispute.

Among other matters relevant to the Commission's jurisdiction, the parties should address whether the Commission has the authority to review Applicants' application for review pursuant to Exchange Act Section 19(d)(2) and Rule 19d-3 thereunder.³ The briefs should discuss each element of the relevant provisions of Exchange Act Section 19(d), including (i) whether the Commission has jurisdiction if Applicants are not a "member" of, "participant" in, or "person associated with a member" of the self-regulatory organization, and (ii) whether the Commission has jurisdiction if the Exchange acted pursuant to contractual authority from its bylaws, operating agreements, or other relevant contracts. Because arguments regarding the merits of a dispute are not sufficient to establish jurisdiction under Exchange Act Section 19(d),⁴ the parties should address only whether *the Commission* has authority to review Applicants' application for review, not whether *the Exchange* had the authority (either regulatory or contractual in nature) to make the findings of violations and impose sanctions against Applicants.

The parties should also address whether the application for review should be dismissed as moot as to some or all of the Applicants. In doing so, the parties should identify each sanction imposed by the Exchange and state whether that sanction is still in effect. And, to the extent Applicants claim that the Exchange's findings of violations remain "live" absent a sanction, the briefs should discuss relevant authority relating to the legal basis for and the appropriateness of the Commission exercising jurisdiction even after the sanction imposed has been lifted.⁵

Accordingly, it is ORDERED that the parties submit briefs, pursuant to Rule 154 of the Commission's Rules of Practice,⁶ addressing the foregoing issues. The Exchange's motion to

³ 15 U.S.C. § 78s(d); 17 C.F.R. § 240.19d-3; *see also* Rule of Practice 420(a), 17 C.F.R. § 201.420(a)(1) (providing that an application for review may be filed "by any person who is aggrieved by a determination of a self-regulatory organization with respect to any . . . final disciplinary sanction").

⁴ *See Alpine Sec. Corp.*, 2020 WL 5076741, at *3 & n.19 (collecting cases).

⁵ *See generally Sharemaster*, Exchange Act Release No. 70290, 2013 WL 4647204, at *6 (Aug. 29, 2013) (finding lack of jurisdiction and dismissing application for review where there was no final disciplinary sanction in effect).

⁶ 17 C.F.R. § 201.154. Attention is called to Rules of Practice 150 - 153, 17 C.F.R. § 201.150 - 153, with respect to form and service. Also, the Commission's Rules of Practice were recently amended to include new e-filing requirements, which took effect on April 12, 2021. *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.

dismiss shall be filed by July 8, 2022. Applicants' response brief shall be filed by July 25, 2022, and the Exchange may file a reply brief by August 1, 2022.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary