EXHIBIT 5A

BOSTON SECURITY TOKEN EXCHANGE LLC

SECOND AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

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BOSTON SECURITY TOKEN EXCHANGE LLC

SECOND AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

This Second Amended and Restated Limited Liability Company Agreement of Boston Security Token Exchange LLC (together with the schedules attached hereto, this "Agreement") is made as of December 24, 2019, by and among each of the members set forth on the Membership Record (the "Members"), Boston Security Token Exchange 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 StokynX LLC) to TokynX LLC and, on January 29, 2019, another Certificate of Amendment was filed by the Company with the office of the Secretary of State of the State of Delaware to further change the name of the Company to Boston Security Token Exchange LLC;

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 Amended and Restated Limited Liability Company Agreement of the Company entered into as of January 29, 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 Products" means security tokens authorized for Trading on 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 Unit or 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 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 security tokens. For clarity, "Competing Business" does not include the design and issuance of security tokens or broker-dealer or transfer agent services to issuers of security tokens and does not include the trading on an electronic market of security tokens 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)(v)(A).

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

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

"Excess Units" has the meaning set forth in Section 7.4(h) 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 Rule" 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" has the meaning set forth in Section 4.1(a) hereof.

"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, dated as of the date hereof, 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 Units of each class 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 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 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 hereof.

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

"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.

"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 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 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 Class A Units and Class B Units. For the avoidance of doubt, the ownership or possession of 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" has the meaning set forth in Section 9.2 hereof.

"Vice-Chairman" has the meaning set forth in Section 4.7 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 Boston Security Token Exchange 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 in this Agreement, all Units are identical to each other and accord the holders thereof 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 Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units. Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units 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.

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

(a) Each such Unit Certificate shall be denominated in terms of the number and class of 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 Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional 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 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 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 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 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 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 UNITS REPRESENTED BY THIS

CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE UNITS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF THE OPERATING AGREEMENT OF BOSTON SECURITY TOKEN EXCHANGE 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 UNITS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

EACH 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 BOSTON SECURITY TOKEN EXCHANGE LLC'S JURISDICTION IN BOSTON SECURITY TOKEN EXCHANGE LLC'S CAPACITY AS THE ISSUER OF THE 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 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 BOSTON SECURITY TOKEN EXCHANGE LLC SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

Article 3

Purpose; Roles

3.1. **Purpose**. The purpose of the Company is to develop the 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 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 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 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 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 System.

(c) BOX Digital will provide executive leadership and exclusive rights to the regulatory services of the Exchange with respect to BSTX Products.

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). The Board shall be comprised of (i) two (2) Directors appointed by BOX Digital, (ii) two (2) Directors appointed by tZERO, (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 (iv) the Regulatory Director. 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, 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 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 such Director has violated any provision of this 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 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 also 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, 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, the Regulatory Director shall (A) have the right to attend all meetings of the Board and committees thereof; (B) receive equivalent notice of meetings as other Directors; and (C) receive a copy of the 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) shall not be entitled to vote on matters relating to the CEO's powers, compensation or performance and (iii) 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 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 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. 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.

4.6. **Duties of the Chairman**. The Chairman of the Board (the "Chairman") 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.

4.8. **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.

4.9. **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.

4.10. **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.

4.11. **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.

4.12. **Regulatory Obligations**.

(a) **Non-Interference.** Each of the Member 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.

(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, 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.

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 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; 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. 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) any Person that is a wholly owned Affiliate of such Member. 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 may be given or withheld in the sole discretion of the Board, (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 may be given or withheld in the sole discretion of the Board, (iii) if such Person is a transferee, a determination by the Board 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 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 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 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 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 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 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 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 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 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 Units, then such Non-Transferring Members shall purchase (or cause its Affiliate to purchase) such Units on a pro-rata basis based upon the relative percentages of such Non-Transferring Members' respective Percentage Interest.

(d) If one or more Non-Transferring Members elect to purchase such 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 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 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, 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 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 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 in such Member's Percentage Interest, alone or together with any Related Person of such Member, meeting or crossing the threshold level of 5% or the successive 5% 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, 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, give the Company written notice of such ownership, which notice shall state: (i) such Person's full legal name; (ii) the number of 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 Units, by contract or otherwise.

(f) Beginning after SEC approval of this Agreement, in addition to the notice requirement in Section 7.4(e), the parties agree that the following Transfers are subject to the rule filing process pursuant to Section 19 of the Exchange Act: any Transfer that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate 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:

(i) Except as provided in Section 7.4(g)(iii) 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 Percentage Interest in the Company equal to or greater than 20%.

(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.

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

(iv) Beginning after SEC approval of this Agreement, any amendment to this Agreement executed pursuant to this Section 7.4(g) 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) has become effective pursuant to Section 19 of the Exchange Act or the Controlling Person no longer holds a Controlling Interest in the Member.

(v) For purposes of this Section 7.4(g): (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.

(h) Beginning after SEC approval of this Agreement, 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 20% of the Units, alone or together with any Related Person of such Member (Units owned in excess of 20% being referred to as "Excess Units"), the Member and its appointed Member Directors 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 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 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 Units held by the other Members are voted (including any abstentions from voting).

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 (such consent to be in the Board's sole discretion); unless and until such consent is given, any Percentage Interest in the Company held by such legal representatives of a Member shall not be included in calculating the 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 Board shall ensure that such further adjustments to the Membership Record are made as may be necessary to reflect such event.

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 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 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 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 Percentage Interests (excluding any 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 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 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, shall be the tax matters Member of the Company 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, 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 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, (b) keep the other Members informed with respect to all matters involving the tax matters Member of the Company, 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 shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Company with respect to any action brought against it 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 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 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 at least one Member Director appointed by each Member, 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, 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 or the exhibits and schedules hereto. 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, 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 5A

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

COMPANY:

BOSTON SECURITY TOKEN EXCHANGE LLC

By:_____
Lisa J. Fall
CEO

EXCHANGE:

BOX EXCHANGE LLC

By:_____
Lisa J. Fall
President