



September 10, 2020

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE., Washington, DC 20549

**Re: Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange (File No. SR-BOX-2020-14)**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the above-referenced proposed rule change, as amended by Amendment No. 1 (“Proposal”), filed by BOX Exchange LLC (“BOX” or “Exchange”) with the Securities and Exchange Commission (“Commission”) under Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> In the Proposal, BOX is seeking to adopt rules governing the listing and trading of a new type of equity security on a facility of the Exchange known as the Boston Security Token Exchange LLC (“BSTX”).

BOX filed Amendment No. 1 to replace and supersede the proposed rule change that BOX filed with the Commission as SR-BOX-2020-14 to establish the BSTX.<sup>3</sup> In turn, that earlier proposed rule change replaced another proposed rule change that BOX previously filed with the Commission as SR-BOX-2019-19, which the Exchange amended twice and then

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See Exchange Act Release No. 89536 (August 12, 2020), 85 FR 51250 (August 19, 2020).

<sup>3</sup> See Exchange Act Release No. 88946 (May 26, 2020), 85 FR 33454 (June 1, 2020). On July 16, 2020, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. See Securities Exchange Act Release No. 89328 (July 16, 2020), 85 FR 44338 (July 22, 2020). On July 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.

withdrew on May 12, 2020.<sup>4</sup> In the Proposal, the Exchange notes that the current proposed rule change, SR-BOX-2020-14, as modified by Amendment No. 1, is “substantively identical” to the previously-filed proposed rule change, SR-BOX-2019-19, as modified by Amendment No. 2. SIFMA as well as others submitted comments on SR-BOX-2019-19 and SR-BOX-2020-14.<sup>5</sup> The Commission has taken the position in the Proposal that it will consider prior comments submitted on SR-BOX-2019-19 and SR-BOX-2020-14 in connection with its review of the Proposal.

## I. Proposal Overview

BOX’s Proposal would establish BSTX as a facility of the Exchange that operates a fully automated, price/time priority execution system for the trading of digital “Securities,” which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or “blockchain”) technology.<sup>6</sup> These ancillary records of ownership would reflect certain end-of-day security token balances as reported by BSTX Participants (i.e., BSTX members) to BSTX. According to the Exchange, official records of security ownership would be maintained by BSTX Participants at The Depository Trust Company (“DTC”), and attribution of a security token on the Ethereum blockchain would not convey ownership of shareholder equity in the issuer. The Exchange believes that it is appropriate to use the term “Securities” to distinguish them from other securities for which there is no related legal and regulatory structure that is designed to use blockchain technology as an ancillary recordkeeping mechanism and as a way of indicating the additional proposed obligations of BSTX Participants who are required to obtain a wallet address and report end-of-day Security balances to BSTX. The Exchange further represents that the Securities would qualify as NMS stocks pursuant to Regulation NMS.

In Amendment No. 1, the Exchange revised SR-BOX-2020-14 to: (i) change the name used to refer to BSTX-listed securities from “security tokens” to “Securities”; (ii) eliminate the proposed requirement for trades on the Exchange to settle one business day after the trade date (“T+1”), which is not the settlement cycle for NMS stocks; (iii) add proposed rule text that the Exchange describes as containing measures to ensure the accuracy of end-of-day security token balance reports; (iv) add proposed rule text specifying that the time by which Exchange members must report end-of-day security token balances to the Exchange will be set forth by the Exchange

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<sup>4</sup> See Exchange Act Release No. 88300 (February 28, 2020), 85 FR 13242 (March 6, 2020) (File No. SR-BOX-2019-19) (Notice of Filing of Amendment No. 2 to File No. SR-BOX-2019-19). See Exchange Act Release No. 89018 (June 4, 2020), 85 FR 35458 (June 10, 2020) (File No. SR-BOX-2019-19) (Notice of Withdrawal of SR-BOX-2019-19).

<sup>5</sup> See Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated June 23, 2020 (<https://www.sec.gov/comments/sr-box-2020-14/srbox202014-7340739-218667.pdf>); Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated April 22, 2020 (<https://www.sec.gov/comments/sr-box-2019-19/srbox201919-7105488-215831.pdf>).

<sup>6</sup> “Securities” were previously referred to as “security tokens” in prior iterations of the proposed rule change.

via regulatory circular; (v) provide additional description of several aspects of the proposal, including end-of-day security token balance reporting and implications of the trading of BSTX-listed security tokens on other national securities exchanges on the end-of-day reporting process; and (vi) make technical and conforming changes.

## II. Discussion

SIFMA continues to believe that the Proposal contains novel aspects related to the current clearance, settlement and related recordkeeping processes for equity securities that are potentially inconsistent with the Exchange Act. Specifically, Section 6(b)(5) of the Exchange Act requires the rules of an exchange, “to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.” Similarly, Section 17A(a) of the Exchange Act requires the Commission to facilitate a national system for the clearance and settlement of securities transactions consistent with certain Congressional findings including the finding that “the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.” By creating unique recordkeeping requirements that only apply to the Securities, SIFMA believes that the Proposal’s ancillary recordkeeping obligations are potentially inconsistent with these Exchange Act requirements.

SIFMA notes at the outset that it appreciates the Exchange changing the proposed settlement timeframe of the Securities in the Proposal from T+1 to the current regular-way settlement cycle of T+2 for equity securities. As SIFMA noted in prior comments, the Exchange’s previously proposed non-standard settlement cycle of T+1 for the Securities would have been incompatible with firms’ equity settlement systems and would have created costs and risks for firms related to the handling of trades in Securities.<sup>7</sup> The Exchange’s move to T+2 settlement is designed to address certain of these concerns.

Nevertheless, SIFMA continues to have some concerns about the Proposal’s ancillary recordkeeping requirements. The Exchange is proposing unique ancillary recordkeeping requirements for the Securities that would be implemented through obligations in BSTX’s proposed rules. Pursuant to proposed Rule 17020(a), a BSTX Participant must, either directly or through its carrying firm, establish a wallet address to which its end-of-day Security balances will be recorded by sending information to BSTX. A BSTX Participant that is a carrying broker-dealer for other BSTX Participants would be assigned the wallet address with the status of a Custodian, which would allow that BSTX Participant to request wallet addresses on behalf of other BSTX Participants (for which it serves as the carrying broker-dealer) as either a Custodial

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<sup>7</sup> See Letter from Ellen Greene and Thomas Price, Managing Directors, SIFMA, to Venessa Countryman, Secretary, Commission, dated April 22, 2020 (<https://www.sec.gov/comments/sr-box-2019-19/srbox201919-7105488-215831.pdf>); Letter from Ellen Greene and Thomas Price, Managing Directors, SIFMA, to Venessa Countryman, Secretary, Commission, dated June 23, 2020 (<https://www.sec.gov/comments/sr-box-2020-14/srbox202014-7340739-218667.pdf>).

Account or Broker-Dealer wallet address. A BSTX Participant that is not a carrying broker-dealer could request a Broker-Dealer wallet address, a Custodial Account wallet address in coordination with its carrying firm, and an Investor wallet address on behalf of a customer that would like its ownership of Securities represented by a tokenized asset that would be reflected at its own address on the Ethereum blockchain as an ancillary recordkeeping mechanism.

In addition to establishing wallet addresses, BSTX Participants (or their carrying firms) will be required at the end of each trading day to send Security position balance information to BSTX. Based on the information that BSTX receives, BSTX will deliver that information to one or more Wallet Managers who will be responsible for updates to the Security position balances on the Ethereum blockchain by allocating balances among the wallet addresses of BSTX Participants and the omnibus wallet address.

The Exchange notes in the Proposal that this ancillary recordkeeping process will occur separate and apart from the clearance, settlement and related recordkeeping processes for the Securities. According to the Exchange, the Securities will clear and settle in the same manner as equity securities through the facilities of the National Securities Clearing Corporation (“NSCC”) and DTC. Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed and traded on BSTX would be securities that have been made eligible for services by DTC, and that DTC would serve as the securities depository for such Securities. The Exchange also expects that confirmed trades in Securities on BSTX would be transmitted to NSCC for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. As noted, official records of security ownership would be maintained by BSTX Participants at DTC.

SIFMA previously expressed concerns regarding the ancillary recordkeeping aspect of the Proposal.<sup>8</sup> We commented that the Proposal does not explore in sufficient detail the costs or other impacts on firms associated with adopting systems to accommodate the infrastructure needed to manage the security tokens’ distributed ledger technology, including establishing wallets and associated recordkeeping. In addition, we commented that in response to concerns about how other exchanges might trade the Securities pursuant to unlisted trading privileges (“UTP”) and whether they might be required to adopt BOX’s proprietary technology if they choose to do so, BOX asserted that such other exchanges are not obligated to adopt BOX’s technology and are free to adopt other forms of distributed ledger technology to track equity ownership on an ancillary basis. We further commented that having exchanges adopt different forms of distributed ledger technology to track ownership of equity securities could cause additional costs to the industry.

BOX’s response to these comments generally has been to assert that firms are free to choose not to become BSTX Participants and thus not subject themselves to the additional ancillary recordkeeping obligations. In response, SIFMA notes that in some instances there are certain firms that by virtue of the business they conduct may need to become BSTX Participants

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<sup>8</sup> Id.

even if they would choose otherwise. For instance, certain firms that act as order consolidators for other firms may need to become BSTX Participants if customers of such other firms trade BSTX's Securities. The SEC's Order Protection Rule under Regulation NMS mandates that trading centers such as OTC market makers and firms that internalize order flow adopt policies and procedures reasonably designed to prevent trade-throughs and consequently could mandate that firms become BSTX Participants to satisfy this obligation with regard to Securities.<sup>9</sup> While BOX may assert in response that the firms chose to be in this business, the firms in this business are still taking on additional burdens in being subject to ancillary recordkeeping obligations that are in addition to the Commission's long-established recordkeeping obligations for equity securities, nor do the firms need to track ownership of the Securities or be potentially subject to regulatory exposure from BSTX if they experience an error in reporting end-of-day positions in Securities to BSTX.

In response to these type of concerns, BOX further asserts that the ancillary recordkeeping obligations are no different than other reporting obligations that have been imposed on member firms such as the large option position reporting ("LOPR") requirements adopted by the options exchanges and FINRA that obligate firms to report large options positions at the end of the day to the exchanges and FINRA. In response, SIFMA notes that the LOPR obligation is a regulatory requirement designed to help regulators monitor for market manipulation by requiring the reporting of large options positions by firms. The proposed BSTX ancillary recordkeeping obligations, however, are not related to any regulatory objectives.

Finally, BOX has asserted that the Securities are able to trade on other exchanges pursuant to UTP and that nothing in the Proposal would serve as an impediment to other exchanges trading the Securities pursuant to UTP. In response, it appears to SIFMA that the Securities' ancillary recordkeeping obligations would serve as a potential impediment for other exchanges to trade the Securities pursuant to UTP. Other exchanges could, by virtue of the ancillary recordkeeping requirements, be hesitant to trade the Securities pursuant to UTP because they would not want to put their members in the position of having to grapple with whether they might have obligations related to the Securities' ancillary recordkeeping requirements. For instance, it is not clear from the Proposal whether a firm that is a member of other exchanges and is forced to become a BSTX Participant due to its clearing business would be subject to BSTX's ancillary recordkeeping obligations in connection with effecting or clearing trades in Securities that are trading on one of those other exchanges pursuant to UTP. The mere fact that other exchanges and their member firms would need to grapple with issues could serve as an impediment for the other exchanges to trade the Securities pursuant to UTP.

In making these comments, SIFMA again strongly notes that it is not against the adoption of new processes and technology to make the clearance and settlement infrastructure for the equity markets more efficient and robust. Indeed, SIFMA has long supported the use of technology to make the security settlement system stronger. SIFMA continues to have concerns, however, when new processes and technology with wider implications for the equity market

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<sup>9</sup> See 17 CFR 242.611.

infrastructure are considered in the framework of a proposed rule change by a single exchange without actively working with and soliciting input from the industry.


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For the reasons set forth above, SIFMA believes the Commission should not approve the Proposal absent these issues being addressed. We greatly appreciate the Commission's consideration of these comments and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact Ellen Greene (212-313-1287 or [egreene@sifma.org](mailto:egreene@sifma.org)) or Thomas Price (212-313-1260 or [tprice@sifma.org](mailto:tprice@sifma.org)).

Sincerely,



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