

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100545 / July 17, 2024

Admin. Proc. File No. 3-20860

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

For Review of Action Taken by

BOX Exchange LLC

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE – REVIEW OF ACTION

Applicants challenged certain actions taken by BOX Exchange LLC, which imposed sanctions against them for alleged violations of BOX Exchange’s rules. *Held*, application for review is dismissed.

APPEARANCES:

William McLucas, Matthew T. Martens, and Robert Kingsley Smith, of Wilmer Cutler Pickering Hale & Dorr LLP, for BOX Holdings Group LLC and BOX Options Market LLC

Adam Hakki and Mark Lanpher, of Shearman & Sterling LLP, for Luc Bertrand

David S. Petron, Kwaku A. Akowuah, Andrew P. Blake, and Cody L. Reaves, of Sidley Austin LLP, for BOX Exchange LLC

Application for review filed: May 16, 2022
Last brief received: August 1, 2022

On May 16, 2022, BOX Holdings Group LLC (“BOX Holdings”), BOX Options Market LLC (“BOX Market”), and Luc Bertrand (collectively, “Applicants”) filed an application for review challenging certain actions by BOX Exchange LLC (“BOX Exchange”) imposing sanctions against Applicants for their alleged violations of BOX Exchange’s rules. For the reasons below, we dismiss Applicants’ application for review because we find that it is not reviewable under Section 19(d) of the Securities Exchange Act of 1934.

I. Background

BOX Exchange is a national securities exchange registered with the Commission pursuant to Exchange Act Section 6 and, therefore, is a self-regulatory organization (“SRO”) subject to Exchange Act Section 19.¹ BOX Exchange oversees BOX Market, a facility of the Exchange that is privately owned by BOX Holdings.² During the relevant time, Bertrand served as the interim chair or chair of the board of directors of both BOX Holdings and BOX Market.

Between December 2021 and April 2022, BOX Exchange allegedly requested certain documents and information from Applicants. According to BOX Exchange, Applicants did not fully cooperate with those requests. BOX Exchange then determined that Bertrand acted, and continued to act, in a manner that was “not in the interests of the Exchange” and “in bad faith,” and that he deliberately breached and continued to breach “his duty to the Exchange.” As a result, on March 3, 2022, BOX Exchange ordered Bertrand to pay a \$25,000 fine, and, on April 15, 2022, it suspended him “from involvement with the Exchange, any facility of the Exchange and any Member of any of the [BOX] entities.” BOX Exchange also prohibited the boards of directors of both BOX Market and BOX Holdings from acting by written consent and from delegating any authority to their respective executive committees. On April 21, 2022, BOX Exchange lifted the fine and suspension imposed against Bertrand.

On May 16, 2022, Applicants filed an application for review of BOX Exchange’s actions pursuant to Exchange Act Rule 19d-3 and Commission Rule of Practice 420.³ On May 31, 2022, BOX Exchange filed a letter asserting that the application was not reviewable under Exchange Act Section 19(d) because “the actions complained of here do not fall within the categories of

¹ See *BOX Options Exch. LLC*, Exchange Act Release No. 66871, 2012 WL 1453871, at *1 (Apr. 27, 2012), 77 Fed. Reg. 26,323, 26,324 (May 3, 2012); *BOX Options Exch. LLC*, Exchange Act Release No. 83941, 2018 WL 4051261, at *2 (Aug. 24, 2018), 83 Fed. Reg. 44,320, 44,321 (Aug. 30, 2018) (notice of name change from “BOX Options Exchange LLC” to “BOX Exchange LLC”).

² *BOX Options Exch.*, 2012 WL 1453871, at *1; see also BOX Exchange Rule 100(a)(7) (stating that BOX Market is “an options trading facility of the Exchange under 3(a)(2) of the Exchange Act”).

³ 17 C.F.R. §§ 240.19d-3; 201.420. Rule of Practice 420 in turn refers to Exchange Act Section 19(d). *Id.* § 201.420(a)-(b).

actions that the Commission is authorized to review.” We subsequently ordered the parties to brief whether we should dismiss this application for lack of review authority.⁴

BOX Exchange contends that the Commission lacks authority to review the application because no Applicant is a member, participant, or person associated with a member of the Exchange, as required for a disciplinary sanction to be reviewable under Section 19(d), and because no live sanction exists for the Commission to review. Applicants oppose BOX Exchange’s motion, arguing that the Commission has authority to review the application because BOX Exchange purported to act pursuant to regulatory authority that is subject to Commission oversight, and that all of the sanctions at issue “either remain live or are capable of repetition and implicate important policy questions.”

II. Analysis

Exchange Action Section 19(d) authorizes us to review actions taken by an SRO such as BOX Exchange only in specific circumstances.⁵ One such circumstance, which is the one Applicants assert is relevant here, is where an SRO imposes a final disciplinary sanction on a member, participant, or person associated with a member.⁶ But Section 19(d) authorizes the Commission to review only an SRO’s “final disciplinary sanction on any member thereof or participant therein” or “on any person associated with a member.”⁷ And Applicants are not members, participants, or persons associated with a member of BOX Exchange. Indeed, Applicants repeatedly concede in their initial application for review, letter submissions, and opposition brief that neither BOX Holdings, BOX Market, nor Bertrand are members, participants, or associated with a member of BOX Exchange. Applicants briefly assert that BOX Market is a “member” for purposes of Section 19(d) because it “provides the means for effecting transactions on BOX Exchange” and “must cooperate with . . . BOX Exchange,” citing Exchange

⁴ *BOX Holdings Grp. LLC*, Exchange Act Release No. 95136, 2022 WL 2217951 (June 21, 2022).

⁵ 15 U.S.C. § 78s(d)(1), (2); *see also* Rule of Practice 420(a), 17 C.F.R. § 201.420(a) (providing that an aggrieved person may file an application for review of an SRO’s final disciplinary action); *Rules of Practice*, Exchange Act Release No. 35833 (June 9, 1995), 60 Fed. Reg. 32,738, 32,775 (June 23, 1995) (“Rule 420 (a) and (b) are based in part on Exchange Act Section 19(d)(2), 15 U.S.C § 78s(d)(2).”); *Lawrence Gage*, Exchange Act Release No. 54600, 2006 WL 2987058, at *3 (Oct. 13, 2006) (“The grounds for Commission jurisdiction enumerated in Rule 420(a) are the same as those described in Section 19(d)(1) of the Exchange Act.”).

⁶ 15 U.S.C. § 78s(d). The Exchange Act provides three other bases for our review of an SRO action: if the action prohibits or limits any person in respect to access to services offered by that SRO; if it denies membership or participation to the applicant; or if it bars a person from becoming associated with a member. *See id.* Applicants do not argue that any of these alternate bases apply here, so we do not address them. *See, e.g., Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at *3 & n.13 (July 7, 2020) (not reaching “alternate bases for Commission review” where applicant did not contend that those bases applied).

⁷ 15 U.S.C. § 78s(d)(1).

Act Section 6(f).⁸ But that argument is inapposite, as BOX Market is not itself “effecting transactions” on BOX Exchange “without the services of another person acting as a broker,” nor has the Commission issued a “rule or order” pursuant to Section 6(f) specifying that BOX Market, as a non-member, must comply with certain rules of the exchange.⁹ Because Section 19(d) provides for Commission review of disciplinary actions against only members, participants, or persons associated with a member, we do not have authority to review Applicants’ application.¹⁰

Applicants argue that the Commission should nevertheless consider Applicants’ application because it “raise[s] critical questions regarding SROs’ ability to discipline non-members and the extent to which they can effectively circumvent Section 19(b)’s [procedural] requirements” for proposed rule changes. Exchange Act Section 19(d), however, does not authorize us to review an SRO action because an applicant claims “compelling reasons.”¹¹ As an SRO, BOX Exchange, of course, must abide by the Exchange Act, the rules and regulations promulgated thereunder, and its own rules.¹²

The parties also dispute whether BOX Exchange’s actions were pursuant to *regulatory authority* under Exchange Act Section 19(d) or pursuant to *contractual authority* from the parties’ bylaws, operating agreements, or other relevant contracts. But these are disputes about the merits of BOX Exchange’s authority to take the actions that it did and are not relevant to determining the threshold question of whether we have review authority over Applicants’ application for review. As we have held previously, disputes over the merits of an SRO’s actions

⁸ 15 U.S.C. § 78f(f).

⁹ See *id.* (providing that the Commission may require, “by rule or order,” a person “effecting transactions on [a national securities] exchange without the services of another person acting as a broker” “to comply with such rules of such exchange as the Commission may specify”); see also Exchange Act Section 3(a)(3)(A), 15 U.S.C. § 78c(a)(3)(A) (defining, for purposes of Exchange Act Section 19(d) and (e), a “member” of a national securities exchange to include “to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules” under Exchange Act Section 6(f)).

¹⁰ Cf. *Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 WL 2338414, at *3–5 (June 3, 2019) (dismissing application for review filed by customer of FINRA member firm where the applicant did not challenge any action specified in Exchange Act Section 19(d)).

¹¹ *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *4 (Oct. 22, 2019) (explaining that “the alleged importance or necessity of our review does not confer jurisdiction where we have determined Congress has not authorized it”) (citing *Allen Douglas Sec., Inc.*, Exchange Act Release No. 50513, 2004 WL 2297414, at *2 n.14 (Oct. 12, 2004)).

¹² Exchange Act Section 19(g), 15 U.S.C. § 78s(g). This requirement extends to the procedural requirements of Exchange Act Section 19(b). See, e.g., *New York Stock Exchange LLC*, Exchange Act Release No. 72065, 2014 WL 1712113 (May 1, 2014) (settled cease and desist order) (finding that registered national securities exchanges failed to follow their own rules and Section 19(b) and (g)).

do not themselves provide us with authority to review those actions under Section 19(d).¹³ Applicants may attempt to pursue their claims against BOX Exchange through another means or forum, such as a court or arbitration proceeding, although we do not opine on the propriety of any such action.

Accordingly, we find no basis to exercise our review authority under Exchange Act Section 19(d), and we dismiss the application for review.¹⁴ An appropriate order will issue.¹⁵

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

¹³ *Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 WL 5076741, at *3 & n.19 (Aug. 26, 2020) (collecting cases).

¹⁴ *Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 WL 1902072, at *1 (Apr. 30, 2008) (“If we find that we do not have jurisdiction, we must dismiss the proceeding.”); *Russell A. Simpson*, Exchange Act Release No. 40690, 1998 WL 801399, at *4 & n.13 (Nov. 19, 1998) (determining that the Commission lacked review authority and declining to consider merits of allegations of rule violations). Because we lack statutory authority to review the underlying action, we do not address BOX Exchange’s claims that the application for review is untimely or that there are no live sanctions. *See* 15 U.S.C. § 78s(d)(1)-(2); 17 C.F.R. § 201.420(b). And we deny Applicants’ request for oral argument because we do not find that our “decisional process would be significantly aided by oral argument.” Rule of Practice 451(a), 17 C.F.R. § 201.451(a).

¹⁵ We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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For Review of Action Taken by
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ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY NATIONAL
SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by BOX Holdings Group LLC, BOX
Options Market LLC, and Luc Bertrand be, and it hereby is, dismissed.

By the Commission.

Vanessa A. Countryman
Secretary