

Action (as defined in Section 4.4(b)), shall be effective unless approved by a majority of the BOX Board, including the affirmative vote of all of the Directors designated by BSE. Thus, the BSE would have the authority to control the Major Actions of BOX LLC, especially as they relate to the regulatory responsibilities of the Exchange.

Article 5

Each Member shall comply with the federal securities laws and the rules and regulations thereunder; cooperate with the Commission and the BSE pursuant to their regulatory authority and the provisions of these BOX Rules; and engage in conduct that fosters and does not interfere with BOX's ability to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

Under Section 5.9, after appropriate notice and opportunity for hearing, the BOX Board, by a two-thirds vote, including the affirmative vote of the BSE Directors and excluding the vote of the Directors of such Member subject to sanction, may suspend or terminate a Member's voting privileges or ownership in the event such Member: (i) has violated any provision of the Agreement, or (ii) if the BOX Board determines that such action is necessary or appropriate in the public interest or for the protection of investors. The BSE believes that these provisions would require Members, regardless of the nature of their association with the BSE, to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations thereunder, and cooperate with the Commission and the BSE pursuant to their regulatory authority or face severe consequences such as termination of voting rights or ownership. In addition, the Members would be required to take into consideration and facilitate the BSE's and BOX's ability to comply with the requirements under Section 6(b)(5) of the Act.

Section 8.4(e)-(h)

BOX LLC shall provide the Commission with written notice ten (10) days prior to the closing date of any acquisition that results in a Member of

BOX LLC's percentage ownership interest, alone or together with any Affiliate⁸ of such Member, meeting or crossing the threshold level of 5% or the successive 5% percentage ownership interest levels of 10% and 15%. Under Section 8.4(f), any transfer of ownership interest that results in the acquisition and holding by any Member of BOX LLC, alone or together with any Affiliate of such Member, of an aggregate percentage ownership interest level which meets or crosses the threshold level of 20% or any successive 5% percentage ownership interest level (i.e., 25%, 30%, etc.), is subject to the rule filing process pursuant to Section 19 of the Act. Further, any transfer of ownership interest that results in a reduction of the BSE's aggregate percentage ownership interest below the 20% threshold is also subject to the rule filing process pursuant to Section 19 of the Act.

Under this Section, whenever a Person⁹ seeks to acquire an ownership interest in BOX LLC of 20% or greater, or a current Member seeks to increase its ownership interest to the 20% threshold or greater, such an acquisition must be subject to the rule filing process pursuant to Section 19 of the Act. In addition, when a Member who already holds over a 20% interest increases its ownership interest to the 25% threshold or any successive 5% percentage ownership interest level, such an acquisition must also be subject to the rule filing process pursuant to Section 19 of the Act. For example, if an entity owned a 28% interest in BOX LLC and bought an additional interest of 3%, then the acquisition would be subject to the rule filing process pursuant to Section 19 of the Act because the entity

⁸ "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. See Operating Agreement, § 1.1, "Definitions."

⁹ The term "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. See Operating Agreement, § 1.1, "Definitions."

would hold a 31% interest after the transaction, thereby crossing the 30% ownership threshold. The BSE believes that this rule provides the Commission with the authority to review and subject to public comment any substantial transfer of ownership which the Commission may deem to have the potential to impact the Exchange's self-regulatory responsibilities regarding its proposed BOX facility.

Under Section 8.4(g), a "controlling interest" would be defined as the ownership by any Person, alone or together with any Affiliate of such Person, of a 25% or greater interest in a Member, and an "Acquirer" would be defined as a Person who, alone or together with any Affiliate of such Person, acquires a controlling interest in a Member. An Acquirer would be required to execute an amendment to the Agreement upon establishing a controlling interest in any Member who, alone or together with any Affiliate of such Member, holds a Percentage Interest in BOX equal to or greater than 20%. In such amendment, the Acquirer would agree to become a new party to the Operating Agreement and would agree to abide by all the provisions of the Agreement. Beginning after Commission approval of this filing, any amendment to the Agreement executed pursuant to this Section 8.4(g) would be subject to the rule filing process pursuant to Section 19 of the Act. The rights and privileges of the Member under the Agreement would be suspended until such time as the amendment has become effective pursuant to Section 19 of the Act or the Person no longer holds a controlling interest in the Member. For example, if Company XYZ owned a 20% interest in BOX LLC and Firm ABC acquired 25% of the shares of Company XYZ, then Firm ABC must sign an amendment to the Agreement whereby Firm ABC agrees to become a new party to the Agreement and abide by all the provisions of the Agreement. The amendment would be subject to the rule filing process pursuant to Section 19 of the Act.

The BSE believes that this provision provides the Commission with the authority to review and subject to public comment any substantial transfer of ownership that may effect the indirect control of BOX LLC and which the Commission may deem to have the potential to impact the Exchange's self-regulatory responsibilities regarding its proposed BOX facility.

Under Section 8.4(h) the BSE is specifically imposing a limit on voting rights ("voting collar") on any Member who, alone or together with an Affiliate,