intention of enabling the CBSX system to provide for either function. Reference to these features is therefore unnecessary and accordingly, the Exchange proposes to eliminate Rule 53.24(b) (Automatic Quote Regeneration) and Rule 53.24(c) (Quote Risk Monitor Function) from its rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') [3] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Since neither the automatic quote regeneration nor the quote risk monitor functions have ever been made available or used, and as the Exchange has no intention of providing for such, the Exchange would like to remove reference to them from its rules, which would maintain clarity in the rules and reduce possible confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–103 and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27318 Filed 11–7–12; 8:45 am]

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[3] 15 U.S.C. 78s(b)(1).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68142; File No. SR–FINRA–2012–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the By-Laws of FINRA Dispute Resolution, Inc. To Clarify That Services Provided by Mediators Should Not Cause Them To Be Classified as Industry Members Under the By-Laws

November 2, 2012.

I. Introduction

On August 23, 2012 the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of FINRA Dispute Resolution, Inc. (''By-Laws'') to clarify that services provided by mediators, when acting in such capacity and not representing parties in mediation, should not cause the individuals to be classified as Industry Members under the By-Laws. Specifically, the proposed rule change would amend the definitions of Industry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Members [3] and Public Members [4] in the By-Laws to except any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations from being considered professional services provided to brokers or dealers. The amended definitions would allow mediators who are otherwise qualified to be eligible to become Public Members of the National Arbitration and Mediation Committee (''NAMC''), a committee appointed by the Board of Directors of FINRA Dispute Resolution, Inc. (''DR Board''). The proposed rule change was published for comment in the **Federal Register** on September 11, 2012.[5] The Commission received one comment letter, from an anonymous commenter on the proposed rule change.[6] The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change would amend the By-Laws to clarify that services provided by mediators when acting in such capacity and not representing parties in mediation should not cause the individuals to be classified as Industry Members under the By-Laws. Consequently, mediators who were otherwise qualified would be eligible to become Public Members of the NAMC would not be excluded because of the mediation activity excepted by the proposed rule. Currently, those mediators cannot become members of the NAMC because of the definitions of Industry Member and Public Member in the By-Laws.

In a FINRA mediation, all parties agree on the selection of a mediator, agree on the compensation of the mediator, and agree on how to allocate the mediator's compensation among the parties; the mediator receives part of the compensation in each case from an industry party. However, for mediations to which investors are parties, mediators represent neither the investors nor the FINRA-registered individuals or entities. Similarly, for mediations involving industry parties only, mediators represent neither the FINRA-registered individuals nor entities.

Pursuant to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (''Delegation Plan''), the NAMC has the power and authority pursuant to FINRA's Rules to advise the FINRA DR Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and FINRA members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of FINRA's Rules.[7] The Delegation Plan provides that the FINRA DR Board must appoint the NAMC, whose membership must consist of a majority of Public Members.[8]

Currently, under the By-Laws, a mediator could be classified as an Industry Member rather than a Public Member for purposes of Committee participation because of the services provided by a mediator to an industry party. In FINRA's mediation forum, mediators are retained only by agreement of all parties to a dispute rather than by any one party and the parties compensate mediators jointly pursuant to that agreement. While mediators derive some of their revenue from brokers or dealers, FINRA has indicated that it does not believe the compensation earned in the capacity as a mediator compromises the mediator's neutrality.

The proposed rule change would amend the definitions of Industry Members and Public Members in the By-Laws to except any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations from being considered professional services provided to brokers or dealers.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,[9] in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and other federal securities laws. FINRA also believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,[10] which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposal would assure fair administration of its Dispute Resolution affairs by providing another source of qualified and experienced candidates from which to select public members for the NAMC.

III. Discussion of Comment Letters

The Commission received one comment letter on the proposed rule change in response to the Notice.[11] The Comment Letter states that ''the purpose of mediating or having a mediator is to forego the formalness. An industry member would have an upper-hand and expert knowledge. [T]hen the situation could be deemed a legal case.'' The Commission believes that the commenter is suggesting that members with industry experience would introduce formality into what is supposed to be an informal process.[12] Notwithstanding its interpretation or the merit of the statement underlying its interpretation, the Commission believes that the proposed rule change simply prevents mediation activity from automatically qualifying the mediator as an Industry Member. It does not shield the mediator from being classified as an Industry Member for other activities that would otherwise cause the mediator to be considered an Industry Member.[13]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and the comment received. Based on its review, the Commission finds that the proposed rule change is consistent with

[3] *See* Dispute Resolution By-Laws, Article I(s) (Definitions—Industry Member).

[4] *See* Dispute Resolution By-Laws, Article I(x) (Definitions—Public Member).

[5] *See* Exchange Act Release No. 67784 (Sept. 5, 2012), 77 FR 55885 (Sept. 11, 2012). (''Notice''). The comment period closed on October 2, 2012.

[6] *See* Letter from anonymous commenter, dated October 2, 2012 (''Comment Letter'').

[7] *See* Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries—NASD Dispute Resolution, § III(C)(1)(b).

[8] *Id. See also* Rules 12102(a) and 12102(a)(1) of the Code of Arbitration Procedure for Customer Disputes and Rules 13102(a) and 13102(a)(1) of the Code of Arbitration Procedure for Industry Disputes.

[9] 15 U.S.C. 78*o*–3(b)(2).

[10] 15 U.S.C. 78*o*–3(b)(4).

[11] *Supra* note 6.

[12] Because the commenter submitted the Comment Letter anonymously, neither the Commission not FINRA is able to seek clarification of the subject matter of the letter.

[13] In a telephone call with Mignon McLemore of FINRA on October 12, 2012, she stated that FINRA believes the Comment Letter is unclear and could not be clarified due to the anonymity of its author. Accordingly, FINRA believes that it could not respond to the letter.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act, in that it facilitates the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and other federal securities laws. The Commission also finds that the proposed rule change is consistent with Section 15A(b)(4) of the Act, which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer.

More specifically, the Commission finds that by enlarging the pool from which to draw Public Members for the NAMC, the proposed rule change facilitates the organization of FINRA and FINRA Dispute Resolution in a manner consistent with Section 15A(b)(2) of the Act; the Commission also finds that enlarging the pool from which to draw Public Members for the NAMC facilitates compliance with and thus is consistent with the provision of Section 15A(b)(4) of the Act to provide that one or more of FINRA's directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker-dealer.

The Commission appreciates the commenter's letter about members with industry experience acting as mediators. However, the Commission believes that the proposed rule change simply prevents mediation activity from automatically qualifying the mediator as an Industry Member. It does not shield the mediator from being classified as an Industry Member for other activities that would otherwise cause the mediator to be considered an Industry Member.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[14]

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–FINRA–2012–040) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27317 Filed 11–7–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68141; File No. SR–BOX–2012–016]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposal Regarding Quote Mitigation

November 2, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BOX Options Exchange LLC (the ''Exchange'') proposes to amend Rule 7250 (Quote Mitigation) and refine the current quote mitigation strategy for its options trading facility, BOX Market LLC (''BOX'') by replacing the current quote mitigation rule with a ''holdback timer'' mechanism. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to refine the BOX quote mitigation strategy. Specifically, the Exchange proposes to amend Rule 7250 (Quote Mitigation) and replace the current rule with a mechanism that systemically limits the dissemination of quotations and other changes to the BOX best bid and offer according to prescribed time criteria (a ''holdback timer''). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the holdback timer permits BOX to wait until multiple Participants have adjusted their quotes and then disseminates a new quotation. This mechanism will help to prevent the ''flickering'' of quotations.

The Exchange believes the proposed modification to its holdback timer mechanism within the overall BOX quote mitigation strategy will allow the Exchange to more effectively monitor quotation traffic and mitigate as needed. BOX's current Quote Mitigation mechanism was adopted as a response to the implementation of Penny Pilot Program[4] amid concerns that market

[14] *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 55073 (January 19, 2007) 72 FR 2047 (January 17, 2007)(Order Approving BSE Quote Mitigation Plan)(SR–BSE–2006–48), and 55155 (January 23, 2007) 72 FR 4714 (February 1, 2007)(Order Approving Penny Pilot Program on BSE)(SR–BSE–2006–49).