All submissions should refer to File Number SR–FICC–2012–02. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR_FICC_2012_02.pdf*.

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–FICC–2012–02 and should be submitted on or before April 6, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–6384 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66575; File No. SR–FINRA–2011–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending FINRA Rules 13201 (Statutory Employment Discrimination Claims) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) Relating to Whistleblower Disputes in Arbitration

March 12, 2012.

I. Introduction

On November 21, 2011, 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 FINRA Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to align the rule with statutes that invalidate predispute arbitration agreements for whistleblower disputes. Specifically, the proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The proposed rule change would also make a conforming amendment to FINRA Rule 2263. The proposed rule change was published for comment in the **Federal Register** on December 12, 2011.[3] The Commission received one comment letter, from the Securities Industry and Financial Markets Association (''SIFMA''), on the proposed rule change,[4] and a response to SIFMA's comments from FINRA.[5] The text of the proposed rule change and FINRA's Response Letter are 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.

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 65896 (Dec. 6, 2011) (''Notice'').

[4] *See* letter from Kevin M. Carroll, Managing Director and Associate General Counsel, SIFMA, dated January 3, 2012 (''SIFMA Letter'').

[5] *See* letter from Margo A. Hassan, Assistant Chief Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated March 5, 2012 (''Response Letter'').

This order approves the proposed rule change.

II. Purpose

The proposed rule change would amend FINRA Rule 13201 (Statutory Employment Discrimination Claims) of the Industry Code, and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4), to align the rules with statutes that invalidate predispute arbitration agreements for whistleblower disputes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[6] amended the Sarbanes-Oxley Act of 2002 (''SOX'')[7] by adding a new paragraph (e) to 18 U.S.C. 1514A (Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes)[8] to provide that:

(1) *Waiver of Rights and Remedies*—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(2) *Predispute Arbitration Agreements*—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

Prior to the Dodd-Frank Act, it was FINRA staff's articulated position that parties were required to arbitrate SOX whistleblower claims under the Industry Code.[9]

In light of the changes set forth in the Dodd-Frank Act that invalidate predispute arbitration agreements in the case of SOX whistleblower disputes, the proposed rule change would amend FINRA Rule 13201 of the Industry Code to make clear that parties are not required to arbitrate SOX whistleblower disputes, superseding any existing guidance to the contrary. While FINRA's main impetus for the proposed rule change was the need to update its staff's stated position on SOX whistleblower claims, FINRA proposed to make the rule text broad enough to cover any statutes that prohibit predispute arbitration agreements for whistleblower disputes.[10]

[6] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (2010).

[7] Sarbanes-Oxley Act of 2002, Public Law 107–204 (2002).

[8] *See* Dodd-Frank Act Section 922(c)(2).

[9] *See Arbitrability of Sarbanes-Oxley Whistleblower Claims* by Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein, *The Neutral Corner* (Volume 1—2008).

[10] The Dodd-Frank Act also invalidated predispute arbitration agreements in other whistleblower statutes, including, for example, 7

Rule 13201 of the Industry Code currently provides that a claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Industry Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The rule would state that such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

FINRA also would amend the title of Rule 13201 to reflect the addition of the new provision relating to whistleblower disputes. FINRA structured the proposed rule change to separate the provision relating to statutory employment discrimination claims from the provision relating to whistleblower disputes.

The proposed rule change also would make a conforming amendment to FINRA Rule 2263, which requires firms to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms), to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. The proposed rule change would amend FINRA Rule 2263 to add a disclosure provision stating that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules, and that such a dispute may be arbitrated at FINRA only if the parties have agreed to arbitrate it after the dispute arose.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed amendments are consistent with the provisions of the Act noted above because they serve to align FINRA rules with those provisions in the Dodd-Frank Act that invalidate predispute arbitration agreements in the context of certain whistleblower disputes.

III. Discussion of Comment Letters

In the SIFMA Letter, the commenter raised three distinct concerns about the proposal. First, the commenter questioned FINRA's use of the word ''dispute'' in its proposed rule change. Specifically, the commenter believed that using the word ''dispute'' would allow a claimant in an arbitration to assert a whistleblower claim under a whistleblower statute in an effort to improperly remove the entire case (*i.e.,* ''dispute'') from arbitration. The commenter suggested that FINRA replace ''dispute'' with ''claim'' because it would allow a claim asserted under a whistleblower statute to be severed and removed from the arbitration case but would not allow parties ''to avoid arbitrating other claims in the case that are properly subject to securities arbitration.''

In the Response Letter, FINRA stated that it purposefully used the word ''dispute'' in the proposed rule to track the language used in the Dodd-Frank Act. However, FINRA also stated that it would administer the proposed rule in a manner that would permit an associated person of a member to bring a whistleblower claim in court while claims that are part of the same case that are properly subject to arbitration could remain in arbitration. FINRA also stated, however, that it would comply with any court order responding to an associated person's request to consolidate such claims. Therefore, FINRA declined to make the requested change.

Second, the commenter suggested that the proposed rule should apply only to claims under applicable Federal whistleblower statutes instead of both Federal and state statutes. Specifically, the commenter believed that because the Federal Arbitration Act (''FAA'') ''generally preempts state statutes that invalidate arbitration agreements,'' it also generally preempts any state statutes that remove whistleblower claims from arbitration. Accordingly, the proposal should only apply to Federal whistleblower statutes.

In its Response Letter, FINRA stated that it did not believe that it would be appropriate to compel a registered person to arbitrate a whistleblower dispute when there is a statute precluding enforcement of a predispute arbitration agreement, regardless of whether the statute is promulgated under federal or state law. FINRA further stated that it would continue to accept whistleblower claims under a state statute if the parties agreed to arbitrate the claim, or if a court ordered the claim to be arbitrated at the forum. Therefore, FINRA declined to make the requested change.

Third, the commenter recommended that FINRA include an effective date in its proposal so that the rule would only be applied prospectively.

In its Response Letter, FINRA stated that since Section 922 of the Dodd-Frank Act invalidates all predispute arbitration agreements relating to whistleblower disputes, FINRA believed it was inappropriate to establish a new effective date. Therefore, FINRA declined to make the requested change.

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, in particular FINRA's representation that it would comply with a court's ruling to consolidate all claims (including whistleblower claims) associated with a particular case. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that that the proposed rule change to align FINRA Rule 13201 with statutes that invalidate predispute arbitration agreements for whistleblower disputes would ensure that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements would not be required to be arbitrated.

While the Commission appreciates the commenter's concern about FINRA's choice of language, the proposed rule purposefully tracks the language used in the Dodd-Frank Act.

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

USCA § 26(n) relating to Commodity Exchange Whistleblower Incentives and Protections.

[11] 15 U.S.C. 78o–3(b)(6).

[12] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3(b)(6).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2011–067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–6386 Filed 3–15–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66576; File No. SR–NYSE–2012–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Establish an NYBX Immediate-or-Cancel Order

March 12, 2012.

I. Introduction

On January 11, 2012, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 1600 to establish a new order type known as an ''NYBX IOC order.'' A NYBX IOC order would execute exclusively against contra-side liquidity in the Exchange's Display Book (''DBK'') and/or in the New York Block Exchange (''NYBX'' or ''Facility''). The proposed rule change was published for comment in the **Federal Register** on January 30, 2012.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NYBX is a facility of the Exchange and provides for electronic matching and execution of non-displayed orders with the aggregate of all displayed and non-displayed orders residing within NYBX and the DBK.[4] Only securities listed on NYSE are eligible to trade on NYBX.[5]

NYSE proposes to establish a new order type, the NYBX IOC order, which is a limit order to buy or sell that is designated as immediate or cancel and would be cancelled if the order is not immediately able to execute, in whole or in part, exclusively against contra-side liquidity in the DBK and/or NYBX at a price that is at or within the national best bid or offer (''NBBO'').[6] Any unexecuted portion of an NYBX IOC order would be immediately cancelled. No portion of an NYBX IOC order would be routed elsewhere, placed on the DBK, or remain in the NYBX Facility. Instead the order would be cancelled back to the User.[7] Unlike other NYBX order types, the NYBX IOC order will not allow a minimum triggering volume quantity (''MTV'') designation.[8]

A NYBX IOC order would be entered in the same manner as other NYBX orders, as provided under NYSE Rule 1600(c)(1), and, except for the optional time in force order parameters of NYSE Rule 1600(c)(3)(B)(i), would be required to contain the order parameters listed in NYSE Rule 1600(c)(3)(A). A NYBX IOC order would be subject to order processing set forth in NYSE Rule 1600(d)(1).[9] In a situation in which the size of the NYBX IOC order is less than the total available contra side liquidity that is potentially executable within the limit price in the NYBX and the DBK, the existing ''tie breaker'' rules set forth in NYSE Rule 1600(d)(1)(C)(i) for routing decision purposes will provide that an execution in the DBK has priority over an execution at the same price in the NYBX.[10]

Since NYBX IOC order would not be routed elsewhere, if another automated trading center is displaying a better price than either the NYBX or the DBK, and an execution in the NYBX Facility or DBK would result in a trade through in violation of Regulation NMS, the NYBX IOC order would be cancelled. Likewise, if another automated trading center is displaying prices that are the same or inferior to prices in the NYBX or the DBK, and routing is not required by Regulation NMS, the NYBX IOC order would execute within the DBK and/or the NYBX without routing to such automated trading center.

NYSE also proposes certain technical changes to NYSE Rule 1600. First, the Exchange proposes to amend NYSE Rule 1600(g) to add references to trading pauses in individual securities, as provided for under NYSE Rule 80C. Second, because the Exchange has eliminated the class of market participants formerly known as Registered Competitive Market Makers, the Exchange proposes to delete NYSE Rule 1600(h)(3), which is no longer applicable.[11] Third, the Exchange proposes to clarify NYSE Rule 1600(b)(2)(D) that NYBX orders are defined within NYSE Rule 1600(c)(2), not only within NYSE Rule 1600(c)(2)(A) as is currently reflected.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, remove

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66218 (January 24, 2012), 77 FR 4604 (''Notice'').

[4] *See* NYSE Rule 1600(a).

[5] *See* NYSE Rule 1600(b)(2)(C).

[6] *See* proposed NYSE Rule 1600(c)(2)(D).

[7] *See id.*

[8] *See id. See also* NYSE Rule 1600(b)(2)(E).

[9] Accordingly, as set forth in the Notice, the NYBX Facility would apply the order execution process that is set forth in Rule 1600(d)(1)(C)(i) to NYBX IOC orders, including that an NYBX IOC order may execute at multiple price points that may be available in the DBK and NYBX Facility that are within the limit price of the NYBX IOC order. Because by its terms, an NYBX IOC order does not route to other markets, have an MTV, or leave a residual in the NYBX, certain aspects of the order execution processing rules are inapplicable, specifically NYSE Rules 1600(d)(1)(C)(ii)–(vi) and 1600(d)(1)(D).

[10] In the Notice, the Exchange provided the following example: If a buy NYBX IOC order for 1,000 shares arrives at the Facility with a limit price of $10.05, the Facility would review the available contra-side liquidity in the DBK (both displayed and undisplayed) and the NYBX. Assuming the contra-side liquidity in the DBK is 300 shares at $10.04 (undisplayed), 200 shares at $10.05 (NBO displayed), and 200 shares at $10.05 (undisplayed), and in the NYBX is 200 shares at $10.05, the NYBX IOC buy order would simultaneously be routed to DBK as 300 shares at $10.04 and 400 shares at $10.05, and 200 shares would execute in the Facility at $10.05, for a total execution of 900 shares. The remaining 100 shares of the buy NYBX IOC order would be cancelled. Assuming the buy NYBX IOC order is instead for 700 shares, pursuant to the tie-breaker rule in NYSE Rule 1600(d)(1)(C)(i), the full volume of the order would route to the DBK, executing 300 shares at $10.04 and 400 shares at $10.05, and the Facility's 200 share contra-side order at $10.05 would not be filled.

[11] *See* Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR–NYSE–2009–08) (Rescinding Rules 110 and 107A, which established the roles of Competitive Traders and Registered Competitive Market Makers).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).