securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to firms, and industry insiders, including FINRA member firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. Because of these controls, FINRA believes that the Rule plays an important part in maintaining investor confidence in the capital raising and IPO process.

The Rule was originally adopted in 2003, replacing NASD IM–2110–1 (the Free-Riding and Withholding Interpretation) in its entirety.[6] The Rule was subject to extensive input from the industry and other interested persons during a four-year rulemaking process, and FINRA believes that there is broad support for it. The Rule provides necessary predictability and certainty in support of capital formation. Based on FINRA's experience, the Rule is achieving its purpose and is significantly easier than NASD IM–2110–1 for FINRA member firms and the investing public to understand and follow. Among other things, FINRA has seen a significant reduction in the number of interpretive and exemptive issues that have arisen with respect to the IPO allocation process since the Rule became effective. There is no Incorporated NYSE Rule equivalent to the Rule.[7]

For the reasons discussed above, FINRA proposed to transfer NASD Rule 2790 to the Consolidated FINRA Rulebook in substantially the same form. As part of this transfer, FINRA proposed minor changes to the Rule to reflect the registration of the NASDAQ Stock Market LLC (''NASDAQ'') as a national securities exchange. The Rule currently refers to the NASDAQ Global Market because at the time the Rule was adopted, references to the listing standards of a national securities exchange did not include NASDAQ's Global Market. Since NASDAQ completed its registration as a national securities exchange, the references to the NASDAQ Global Market in the Rule are no longer necessary. In addition, FINRA proposed certain minor, technical changes to the Rule.

FINRA represented that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval of the proposed rule change.

III. Summary of Comments

The Commission received one comment letter on the proposal.[8] The commenter urged that FINRA amend the proposal to except FINRA members that are not underwriters from the Rule. FINRA has considered the comment and determined that it is not germane to the proposal in that the comment relates to the substantive requirements of the Rule which FINRA did not propose to change other than in minor, technical ways.

IV. Discussion and 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 that are applicable to a national securities association.[9] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules 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. The Commission notes that it has previously approved the Rule,[11] and the proposal merely moves the Rule nearly verbatim from the NASD rulebook to the Consolidated FINRA Rulebook. The Commission believes that the move proposed in this filing is primarily ministerial and only aids FINRA members in complying with existing obligations.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–FINRA–2008–025) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20084 Filed 8–28–08; 8:45 am]

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[6] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (Order Approving File No. SR–NASD–99–60); *see also* NASD *Notice to Members* 03–79 (December 2003) (SEC Approves New Rule 2790 (Restrictions on the Purchase and Sale of IPOs of Equity Securities); Replaces Free-Riding and Withholding Interpretation).

[7] Incorporated NYSE Rules only apply to FINRA members who are also members of the NYSE. All FINRA members are subject to existing NASD rules. *See* Note 5, *supra.* Thus, the movement of a rule that existed only the NASD rulebook but was not an Incorporated NYSE Rule into the Consolidated FINRA Rulebook does not create any new obligations for FINRA members.

[8] *See* Note 4, *supra.*

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

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See* Note 6, *supra.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58413; File No. SR–NYSE Arca–2008–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Discontinue Its Policy of Requiring Legal Opinions in Connection With Listings of Securities

August 22, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 8, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons.

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

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to discontinue its practice of requiring the delivery of an opinion of counsel in connection with any application to list securities on the Exchange. In lieu thereof, the Exchange will require companies to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the Exchange is discontinuing its policy of requiring an opinion of counsel to the effect that the company is in compliance with all of the Exchange's corporate governance requirements at the time of listing and, in lieu thereof, will require that companies provide a revised form of initial written affirmation evidencing

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

[2] 17 CFR 240.19b–4.

their compliance with the applicable corporate governance requirements.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, 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 III 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 discontinue its practice of requiring the delivery of an opinion of counsel in connection with any application to list securities on the Exchange. In lieu thereof, the Exchange will require companies to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the Exchange is discontinuing its policy of requiring an opinion of counsel to the effect that the company is in compliance with all of the Exchange's corporate governance requirements at the time of listing and, in lieu thereof, will require that companies provide a revised form of initial written affirmation evidencing their compliance with the applicable corporate governance requirements.

The Exchange has had a longstanding policy of requiring the delivery of an opinion of counsel addressed to the Exchange in connection with each application to list securities, including applications to list additional shares of a previously listed class.[4] The Exchange believes that its opinion requirement is duplicative of several safeguards that now exist to protect investors in listed securities. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit. Additionally, the underwriters of securities sold in a public offering receive legal opinions as to the validity of the issuance of the securities they purchase, as well as performing their own due diligence on the company and the securities. Furthermore, a legal opinion as to the legality of the issuance of the securities being registered is delivered to the SEC in connection with the filing of any registration statement. Accordingly, the Exchange proposes to end its policy of requiring legal opinions in connection with listing applications, including applications to list additional shares of a previously listed class. Through its standard condition letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation.[5]

The Exchange notes that the Commission approved a rule filing by the American Stock Exchange (the ''Amex'') in 2000 to eliminate opinion requirements from the Amex Company Guide under the same conditions NYSE Arca is proposing in this filing.[6] Additionally, to the Exchange's knowledge, Nasdaq does not require legal opinions in connection with new listings. As such, the Exchange believes that it is appropriate to conform its listing procedure in this regard to those of its direct competitors. In doing so, the Exchange will avoid the possibility of any competitive harm arising out of the imposition of this additional burden on issuers.

No other major exchange requires as a condition to listing an opinion with respect to the issuer's compliance with the exchange's corporate governance requirements. The Exchange believes that it has two different sources of assurance that, at the time of initial listing, a company is in compliance with the Exchange's corporate governance requirements. First, the company provides a listing application executed by an authorized officer of the company in which it affirms that, at the time of filing the application, it has ''read and understood the Exchange's Listings Rule, and fully believes itself to be in compliance with, and, if approved for listing, intends to continue to be in compliance with, the Exchange's listing and corporate governance rules and requirements, as amended.'' Second, the Company provides a written affirmation at the time of listing that it is in compliance with the Exchange's board and audit committee independence requirements. The Exchange intends to amend the written affirmation so that it includes affirmations of compliance with the Exchange's nominating and compensation committee independence requirements and thereby comprehensively covers the Exchange's corporate governance requirements. The revised affirmation is included in Exhibit 3 to the filing.[7] The Exchange believes that the affirmation in the listing application and the written affirmation provide sufficient evidence of a company's compliance with the corporate governance requirements at the time of listing and that requiring a corporate governance opinion is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6[8] of the Act in general and furthers the objectives of section 6(b)(5),[9] in particular, in that it is designed to promote just and

[3] *See* Exhibit 3 to this filing, which includes the revised initial and annual written affirmation (Rule 5.3—Corporate Governance and Disclosure Policies) marked to show changes from the initial written affirmation previously used by the Exchange. The Commission notes that pursuant to the General Instructions for Form 19b–4, if any form, report, or questionnaire is referred to in a proposed rule change, then the form, report, or questionnaire must be attached and shall be considered as part of the proposed rule change. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004).

[4] *The required opinion relates to:* The legality and valid existence of the issuer; the issuer's qualification to do business in jurisdictions other than its jurisdiction of incorporation; the validity of authorization and issuance of the securities; whether the securities are fully paid and non-assessable; the validity of the securities; any government orders or proceedings that are a prerequisite to the issuance of the securities; whether registration of the securities is required; whether such registration has occurred; and that the company is in compliance with the Exchange's corporate governance listing requirements.

[5] The Exchange will also put companies on notice of this requirement by including a reference to it in the list of required documentation in connection with listing applications presented on its Web site and the checklist of required documentation sent out to listing applicants. See the revised list of required documentation included in Exhibit 3 hereto. The Exchange has significantly revised and shortened the section of its Web site dealing with the listing application process, primarily by deleting text that relates to procedures that are no longer in use and have not been for some time. In revising the Web site, the Exchange has not changed its listing policies or procedures in any way that is not disclosed elsewhere in this filing.

[6] *See* Securities Exchange Act Release No. 42539 (March 17, 2000), 65 FR 15672 (March 23, 2000) (SR–Amex–99–39).

[7] *See* note 3, *supra.*

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendment specifically seeks to remove impediments to and perfect the mechanisms of a free and open market by conforming the Exchange's listing procedures to those of Nasdaq and the Amex, thereby eliminating any competitive disadvantage the Exchange may suffer as a result of imposing a legal opinion requirement with respect to securities listings. In addition, the Exchange's procedures will continue to protect the interests of investors by imposing requirements that will ensure that listed companies are duly and validly organized and in good standing in their jurisdiction of incorporation.

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

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

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

The proposed rule change has taken effect upon filing pursuant to section 19(b)(3)(A) of the Act.[10]

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–84 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2008–84. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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–NYSEArca–2008–84 and should be submitted on or before September 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 C.F.R. 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58420; File No. SR–Phlx–2008–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Fee Schedule Concerning Complex Orders

August 25, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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 Substance of the Proposed Rule Change

The Phlx, pursuant to section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to amend its option fee schedule by establishing that certain fees would not be assessed on contracts that are executed electronically as part of a Complex Order[5] on the Exchange's electronic trading platform for options, Phlx XL,[6] and that contract volume thresholds applicable to certain

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4.

[5] The Exchange recently filed, and the Commission approved, a proposed rule change with the Commission to automate the process for handling and executing complex orders. *See* Securities Exchange Act Release No. 58361 (August 14, 2008) (SR–Phlx–2008–50) (''Approval Order''). A Complex Order is composed of two or more option components and is priced as a single order (a ''Complex Order Strategy'') on a net debit or net credit basis.

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).