

Number SR-Phlx-2004-49 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-49. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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-Phlx-2004-49 and should be submitted on or before October 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50333; File No. SR-Phlx-2004-48]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to SIG Indices, LLLP Disclaimer

September 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 28, 2004, 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 and II below, which Items have been prepared by the Phlx. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On August 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> 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 proposed to amend Rule 1104A, *Susquehanna Indices, LLP* Indexes, to provide the name change and expand the coverage of the rule. Below is the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].<sup>6</sup>

\* \* \* \* \*

Rule 1104A. [Susquehanna] *SIG* Indices, LLLP Indexes

[Susquehanna] *SIG* Indices, LLLP makes no warranty, express or implied, as to results to be obtained by any

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Letter from Carla Behnfeldt, Director, Phlx to Mia Zur, Attorney, Division of Market Regulation ("Division"), Commission, dated August 18, 2004 ("Amendment No. 1"). In Amendment No. 1, the Phlx replace the original proposed rule change in its entirety.

<sup>6</sup> The Exchange requested that the staff of the Division correct a minor error in the proposed rule text. Telephone discussion between Carla Behnfeldt, Director, Phlx and Mia Zur, Attorney, Division, Commission (August 25, 2004).

person or any entity from the use of the *SIG Investment Managers Index™*, [or] the *SIG Cable, Media & Entertainment Index™*, the *SIG Casino Gaming Index™*, the *SIG Semiconductor Equipment Index™*, and the *SIG Semiconductor Device Index™*, or any data included therein in connection with the trading of option contracts thereon, or for any other use. [Susquehanna] *SIG* Indices, LLLP makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the *SIG Investment Managers Index™*, [or] the *SIG Cable, Media & Entertainment Index™*, the *SIG Casino Gaming Index™*, the *SIG Semiconductor Equipment Index™*, and the *SIG Semiconductor Device Index™*, or any data included therein.

\* \* \* \* \*

#### 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<sup>7</sup>

The purpose of the proposed rule change is to amend Phlx Rule 1104A which applies to indexes maintained by *SIG* Indices, LLLP (formerly known as "Susquehanna Indices, LLLP").<sup>8</sup> The

<sup>7</sup> The Phlx requested that the staff of the Division make minor non-substantive modifications to language in the purpose section. Telephone discussion between Carla Behnfeldt, Director, Phlx and Mia Zur, Attorney, Division, Commission (August 25, 2004).

<sup>8</sup> The Exchange currently lists options on the *SIG Investment Managers Index™* and the *SIG Cable, Media & Entertainment Index™* pursuant to a license agreement with *SIG* Indices, LLLP and Exchange Rule 1009A(b). The Exchange recently amended Exchange Rule 1104A to cover the *SIG Cable, Media & Entertainment Index™* pursuant to a requirement in the license agreement. See Securities Exchange Act Release No. 49605 (April 22, 2004), 69 FR 24209 (May 3, 2004). The Exchange is filing the current proposed rule change pursuant to a requirement in the license agreement. *SIG Investment Managers Index™*, *SIG Cable, Media & Entertainment Index™*, *SIG Casino Gaming Index™*, *SIG Semiconductor Equipment*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

rule currently provides generally that Susquehanna Indices, LLP ("SI") makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of SIG Investment Managers Index and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to that index or any data included therein.<sup>9</sup> The Exchange is now proposing to amend Phlx Rule 1104A to update the rule to reflect the name change and to expand the coverage of the rule to include the SIG Casino Gaming Index™, the SIG Semiconductor Equipment Index™, and the SIG Semiconductor Device Index™ which are new indexes upon which options have recently been listed on the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirement under section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and 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 Exchange believes that the proposed rule should encourage SI to continue to maintain the SIG Casino Gaming Index™, the SIG Semiconductor Equipment Index™, and the SIG Semiconductor Device Index™ so that options on them may be traded on the Exchange, thereby providing investors with enhanced investment opportunities.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

Index™, and SIG Semiconductor Device Index™ are trademarks of SIG Indices, LLLP.

<sup>9</sup> The Exchange noted in its filing to adopt Exchange Rule 1104A that it believed that the disclaimer proposed in Exchange Rule 1104A is appropriate given that it is similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR-Phlx-2003-21).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

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

The Phlx has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.<sup>14</sup>

At any time within 60 days of the filing of such 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.<sup>15</sup>

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2004-48 on the subject line.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(a).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See *supra*, note 5.

<sup>15</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on August 19, 2004, the date the Phlx filed Amendment No. 1.

### Paper Comments

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).