

such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-2003-07 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47937; File No. SR-Phlx-2003-21]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a Disclaimer by Susquehanna Indices, LLP

May 28, 2003.

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 April 2, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On May 23, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to adopt new Rule 1104A, *Susquehanna Indices, LLP Indexes*, to provide a disclaimer with regards to SIG Investment Managers Index™ ("Index"). Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Susquehanna Indices, LLP Indexes Rule 1104A. Susquehanna Indices, LLP makes no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the SIG Investment Managers Index or any data included therein in connection with the trading of option contracts thereon, or for any other use. Susquehanna Indices, LLP 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 any data included therein.

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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 Phlx 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 Phlx 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 Phlx is proposing to adopt new Phlx Rule 1104A, which applies to the Index developed and maintained by Susquehanna Indices, LLP ("SI").⁴ The Index is a modified capitalization-weighted index that reflects the performance of 19 publicly traded investment management companies. The composition of the Index includes managers of mutual funds; trust banks, and broker-dealers with substantial asset management components. According to the Phlx, SI selects component securities for the Index, and is also responsible for all necessary maintenance of the Index. The Phlx currently lists options on the Index pursuant to a license agreement with SI and Phlx Rule 1009A(b).⁵

⁴ SIG Investment Managers Index™ is a trademark of Susquehanna Indices, LLP.

⁵ On June 3, 1994, the Commission approved a Phlx proposed rule change adopting Phlx Rule 1009A(b) in accordance with the Generic Index Option Approval Order for the listing and trading of narrow-based index options. Under Rule 1009A(b), the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.

The Exchange is filing this proposed rule change pursuant a requirement in the license agreement. Proposed Rule 1104A would provide that SI makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Index and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the Index or any data included therein. The Exchange believes that the disclaimer proposed in Rule 1104A is appropriate given that it is similar to disclaimer provisions of American Stock Exchange LLC ("Amex") Rule 902C relating to index options listed on the Amex.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act⁶ in general, and furthers the objectives of section 6(b)(5) of the Act⁷ 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 develop and maintain stock indexes that may qualify for options trading on the Exchange, thereby providing investors with new investment opportunities.

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

The Exchange does not believe that the proposed rule change will result in 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 either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Carla Behnfeltd, Director, Legal Department New Product Development Group, Phlx, to Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated May 22, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Clarifies in the proposed rule text that the proposed disclaimer specifically applies to the SIG Investment Managers Index; and (2) provides more detail on the Susquehanna Indices, LLP disclaimer in the purpose section of the proposal.

its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-21 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-13936 Filed 6-3-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47940; File No. SR-Phlx-2002-77]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Adopt a Specialist Revenue Sharing Program for Trades in the Nasdaq-100 Index Tracking Stock

May 29, 2003.

On December 16, 2002, The Philadelphia Stock Exchange, Inc. ("Phlx" 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 a proposed rule change to adopt a Specialist Revenue Sharing Program for trades in the Nasdaq-100 Index Tracking StockSM ("QQQ"). The Phlx amended the proposed rule change on February 28, 2003.² The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 13, 2003.³ The Commission received one comment on the proposal.⁴ On May 14, 2003, the Phlx responded to the NYSE Letter.⁵

The Exchange proposes a Specialist Revenue Sharing Program in which it would share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association ("CTA") Plan attributable to the QQQ (which is reported on Tape B).⁶ The Exchange proposes to apply its program as of November 1, 2002.

As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),⁷ the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The Phlx has proposed to operate market data revenue sharing program that is similar to existing programs at other self-

regulatory organizations.⁸ Thus, the Commission believes it is reasonable to allow the Phlx to operate a market data revenue sharing program as outlined in the proposal.

Thus, 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 exchange⁹ and, in particular, the requirements of section 6 of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,¹¹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the Phlx to establish the market data revenue sharing program described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2002-77), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety.

³ See Securities Exchange Act Release No. 47456 (March 6, 2003), 68 FR 12138.

⁴ See April 3, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The NYSE Letter asked the Commission to institute disapproval proceedings and to also eliminate all market data rebate programs in both the equities and options markets. Because the NYSE Letter does not specifically address the Phlx proposed rule change, the Commission has not included a full summary of comments in this Order. The NYSE Letter is available for review in the Public Reference Room at the Commission.

⁵ See May 14, 2003, letter from Edith Hallahan, Deputy General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission ("Phlx Response Letter"). The Phlx Response Letter is available for review in the Public Reference Room at the Commission.

⁶ This proposal applies only to QQQ and to no other Tape B security, nor any Tape A security.

⁷ Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

⁸ See e.g., Securities Exchange Act Release Nos. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR-CSE-99-03), 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002) (SR-BSE-2002-10), and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2003) (SR-NASD-2002-149).

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

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).