

SECURITIES AND EXCHANGE COMMISSION  
(Release No.34-51664; File No. SR-Phlx-2005-24)

May 6, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Disclaimer of Warranties by SIG Indices, LLLP and by Standard and Poor's

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 20, 2005, 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 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 proposes to amend Phlx Rule 1104A (Susquehanna Indices, LLLP Indexes), regarding disclaimer of express or implied warranties, to add the new SIG Coal Producers Index<sup>TM</sup> licensed by Susquehanna Indices, LLLP ("SI") to Phlx. The Exchange also proposes to adopt Phlx Rule 1105A (Standard and Poor's<sup>®</sup> Index), regarding disclaimer of express or implied warranties, with respect to the Standard & Poor's 500 Index ("S&P 500<sup>®</sup> Index") that S&P<sup>®</sup> licensed to the Exchange.

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

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

The text of the proposed rule change is available on Phlx's Web site (<http://www.phlx.com>), the Phlx'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 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 purpose of the proposed rule change is to amend Exchange Rule 1104A, which applies to indexes maintained by SI, to include a new index that was recently licensed by SI to the Exchange.<sup>3</sup> The purpose of the proposed rule change is also to adopt new Phlx Rule 1105A, which is similar to existing rule 1104A but applies to the

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<sup>3</sup> The Exchange currently lists options on the SIG Investment Managers Index<sup>TM</sup>, the SIG Cable, Media & Entertainment Index<sup>TM</sup>, the SIG Casino Gaming Index<sup>TM</sup>, the SIG Semiconductor Equipment Index<sup>TM</sup>, the SIG Semiconductor Device Index<sup>TM</sup>, the SIG Steel Producers Index<sup>TM</sup>, the SIG Specialty Retail Index<sup>TM</sup>, the SIG Footwear & Athletic Index<sup>TM</sup>, the SIG Education Index<sup>TM</sup>, and the SIG Restaurant Index<sup>TM</sup>, and on newly-licensed index, the SIG Coal Producers Index<sup>TM</sup>, pursuant to a license agreement with SI and Exchange Rule 1009A(b). The indexes are trademarks of SIG Indices, LLLP.

Index developed and maintained by S&P<sup>®</sup>, that was recently licensed to the Exchange and indicates that S&P<sup>®</sup> does not make specified express or implied warranties.<sup>4</sup>

Phlx Rule 1104A currently provides that SI makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of the SIG Investment Managers Index<sup>™</sup>, the SIG Cable, Media & Entertainment Index<sup>™</sup>, the SIG Casino Gaming Index<sup>™</sup>, the SIG Semiconductor Equipment Index<sup>™</sup>, the SIG Semiconductor Device Index<sup>™</sup>, the SIG Steel Producers Index<sup>™</sup>, the SIG Specialty Retail Index<sup>™</sup>, the SIG Footwear & Athletic Index<sup>™</sup>, the SIG Education Index<sup>™</sup>, and the SIG Restaurant Index<sup>™</sup>, and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to any of the named indexes or any data included therein.<sup>5</sup> The Exchange is now proposing to amend Rule 1104A to expand the coverage of the rule to include the newly-licensed and listed

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<sup>4</sup> The Exchange currently lists options on Standard and Poor's Depository Receipts ("SPDRs"), pursuant to a license agreement with Standard & Poor's, a division of McGraw-Hill Companies, Inc. "Standard & Poor's<sup>®</sup>", "S&P<sup>®</sup>", "S&P 500<sup>®</sup>", "Standard & Poor's 500", and "500" are trademarks of McGraw-Hill Companies, Inc.

<sup>5</sup> The Exchange noted in its filing to adopt Rule 1104A that the proposed disclaimer was appropriate given that it was similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003)(approving SR-Phlx-2003-21). The Exchange recently amended Rule 1104A to include the SIG Specialty Retail Index<sup>™</sup>, the SIG Steel Producers Index<sup>™</sup>, the SIG Footwear & Athletic Index<sup>™</sup>, the SIG Education Index<sup>™</sup>, and the SIG Restaurant Index<sup>™</sup>, as required by the license agreement between SI and the Exchange. See Securities Exchange Act Release No. 51239 (February 22, 2005), 70 FR 10015 (March 1, 2005)(SR-Phlx-2005-13).

index – the SIG Coal Producers Index™ as required by the license agreement issued to the Exchange.<sup>6</sup>

The Exchange is proposing to establish new Phlx Rule 1105A essentially based on current Phlx Rule 1104A, as required by a licensing agreement between S&P and the Exchange licensing it to trade options on SPDRs and products based on the Index maintained by S&P® and licensed to the Exchange.<sup>7</sup> The purpose of proposed Rule 1105A is to indicate that S&P® makes no express or implied warranties regarding merchantability or fitness for a particular purpose or use with respect to the S&P 500® Index or any data included therein, in connection with the trading of options contracts thereon.

The Exchange believes that proposed Phlx Rule 1105A is similar in concept to current Rule 1104A, would provide S&P® with a disclaimer of any implied or express warranties of merchantability or fitness for a particular purpose in respect of an option on an index that S&P® licensed to the Exchange, and would put S&P® on similar footing with the licensor of other options on indexes to the Exchange.

## 2. Statutory Basis

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<sup>6</sup> The SIG Coal Producers Index™ was listed pursuant to Sec. 19b-4(e) on March 23, 2005.

<sup>7</sup> The Exchange has been listing options on SPDRs since on or about January 10, 2005, pursuant to a provisional license with S&P®. The Exchange has subsequently entered into a permanent license agreement with S&P® that supersedes the provisional license and is proposing new Rule 1105A pursuant to the permanent license agreement.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</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 SIG Indices, LLLP and S&P<sup>®</sup> to continue to maintain indexes so that options on the respective indexes 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.

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 proposed rule change is being designated by the Exchange as “non-controversial” pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

19b-4<sup>11</sup> thereunder, because the proposed 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 thirty 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.<sup>12</sup> Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

Pursuant to Rule 19b-4(f)(6)(iii), a proposed “non-controversial” rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Phlx gave the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission.<sup>15</sup> The Phlx has requested that the Commission waive the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the 30-day operative

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<sup>11</sup> 17 CFR 240.19b-4.

<sup>12</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date of this proposal.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

delay.<sup>16</sup> The Commission believes that accelerating the operative date will help to ensure that all options traded on the indexes are treated uniformly.

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 Act. 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-2005-24 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-2005-24. 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

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<sup>16</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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. Copies of the 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-2005-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland  
Deputy Secretary

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