

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52102; File No. SR-Phlx-2005-38)

July 21, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Disclaimer of Warranties by Lehman Brothers Inc.

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 June 14, 2005, 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 and II below, which Items have been prepared by the Phlx. On July 13, 2005, the Exchange amended the proposed rule change ("Amendment No. 1").³ The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to adopt Phlx Rule 1106A (Lehman Brothers Inc. Indexes) to add a disclaimer regarding data from Lehman Brothers Inc. Indexes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made minor technical changes to the proposed rule text.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

("Indexes"),⁶ express or implied warranties of merchantability or fitness, and liability for damages or claims. The Phlx has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁷ The text of the proposed rule change, as amended, is below. Proposed new language is italicized.

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Rule 1106A.

Lehman Brothers Inc. Indexes

Lehman Brothers Inc. makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto in connection with the trading of any option contract on exchange traded funds based thereon, or for any other purpose. Lehman Brothers Inc. does not guarantee the accuracy and/or completeness of any Lehman Brothers Inc. index, or any opening, intra-day or closing value therefor, or any data included therein or related thereto. Lehman Brothers Inc. makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on exchange traded funds based thereon. In no event shall Lehman Brothers Inc. have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance

⁶ Lehman and Lehman Brothers Inc. are marks owned by Lehman Brothers Inc.

⁷ 17 CFR 240.19b-4(f)(6)(iii).

or occurrence relating to the person's use of any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on exchange traded funds based thereon, or arising out of any errors or delays in calculating or disseminating any such index.

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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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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

The purpose of the proposed rule change, as amended, is to adopt new Phlx Rule 1106A, which applies to Indexes that were recently licensed by Lehman Brothers Inc. ("Lehman") to the Exchange. The Exchange is proposing to establish new Phlx Rule 1106A as required by the licensing agreement with Lehman that allows the Exchange to license, trade, and market options on five iShares products.⁸

⁸ Pursuant to the licensing agreement and Exchange Rule 1009, the Exchange currently lists options on iShares Lehman 1-3 Year Treasury Bond Fund (SHY), iShares Lehman 7-10 year Treasury Bond Fund (IEF), iShares Lehman 20+ Year Treasury Bond Fund (TLT), iShares Lehman Aggregate Bond Fund (AGG), and iShares Lehman TIPS Bond Fund (TBK). The products are sponsored by Barclays Global Investors.

Proposed Phlx Rule 1106A, which is similar in nature to disclaimers of index providers at current Phlx Rules 1104A (SIG Indices, LLLP) and 1105A (Standard and Poor's[®] Index),⁹ establishes, among other things, disclaimers regarding data from the Indexes including no guarantee of accuracy and/or completeness, regarding express or implied warranties of merchantability or fitness for a particular purpose, and regarding liability for damages, claims, losses or delays.

The Exchange believes that proposed Phlx Rule 1106A, being similar in concept to current Phlx Rules 1104A and 1105A as well as rules of other options exchanges,¹⁰ should put Lehman on similar footing with other licensors of options on indexes to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and with Section 6(b)(5) of the Act,¹² 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

⁹ The Exchange noted in its filings to adopt Phlx Rules 1104A and 1105A that the proposed disclaimers were appropriate given that they were similar to disclaimer provisions of American Stock Exchange ("Amex") Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Act Release Nos. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003)(SR-Phlx-2003-21)(adopting Phlx Rule 1004A regarding SIG indices) and 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005)(SR-2005-24)(adopting Phlx Rule 1105A regarding S&P 500 and expanding Phlx Rule 1104A).

¹⁰ See disclaimers and limitation of liability at Amex Rule 902C and at Chicago Board Options Exchange, Inc. Rule 24.14.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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 Lehman 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 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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 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; provided that the Exchange has given the Commission 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

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx satisfied the five-day pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.¹⁶ The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow for the immediate implementation of a rule similar to rules already in place at the Phlx and at other options exchanges. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.¹⁷

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.¹⁸

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For 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).

¹⁸ The effective date of the original proposal is June 14, 2005, and the effective date of the amendment is July 13, 2005. For purposes of calculating the 30-day operative delay and the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on July 13, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See U.S.C. 78s(b)(3)(C).

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. 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-Phlx-2005-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-38. 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. 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-2005-38 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.¹⁹

Margaret H. McFarland
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).