

program. The NASD will publish a Notice to Members announcing the effectiveness of the temporary cease and desist order pilot. The pilot will expire two years after the date of publication of Notice to Members.<sup>48</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>49</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47935; File No. SR-NSCC-2003-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Balance Order Transaction Data Reporting and Other Technical Corrections

May 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 10, 2003, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to modify NSCC Procedure V to allow NSCC to report Balance Order transaction data on the Consolidated Trade Summary delivered to participants. The proposed rule change will also correct errors in NSCC Procedure VII.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of NSCC's straight through processing development efforts, NSCC is revising its Continuous Net Settlement and Balance Order processing. As part of this initiative, NSCC has decided to modify the manner in which it reports Balance Order transaction data to participants in order to make such information more readily available in a more efficient and cost effective manner. Starting on July 25, 2003, Balance Order information will be reported on the Consolidated Trade Summary.

The proposed modification to Procedure V, "Balance Order Accounting Operation," implements this change. In addition, the proposed rule change clarifies that the Consolidated Trade Summary is issued on each day that is a settlement day. The proposed rule change further corrects erroneous cross references and a typographical error in Procedure VII, section E, subsections 4(a) and (b), respectively.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>3</sup> and the rules and regulations thereunder because it will enable NSCC to report Balance Order transaction data to its participants in an easier, more cost efficient manner thereby facilitating the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC consulted with the Securities Industry Association's Straight Through Processing Subcommittee in developing the reporting modifications. NSCC

advised participants of the proposed modifications in Important Notice A 5482, P&S 5052 (September 25, 2002). NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change will take effect on July 25, 2003, pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(4)<sup>5</sup> thereunder because the proposed rule effects a change in an existing service of NSCC which neither (1) adversely affects the safeguarding of securities or funds in NSCC's custody or control or for which NSCC is responsible nor (2) significantly affects the rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2003-07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 20549-0609. Copies of

<sup>48</sup> See Amendment No. 4.

<sup>49</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> 15 U.S.C. 78q(b)(3)(F).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

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.<sup>6</sup>

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.*

\* \* \* \* \*

#### 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").<sup>4</sup> 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).<sup>5</sup>

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 Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>7</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 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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Carla Behnfeldt, 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.

<sup>4</sup> SIG Investment Managers Index™ is a trademark of Susquehanna Indices, LLP.

<sup>5</sup> 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.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).