

Members.⁶ The text of the proposed rule change is available at the Office of the Secretary, NFA, and at the Commission.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

1. Purpose

The Interpretive Notice contains provisions: (1) Prohibiting trading ahead of research reports; (2) prohibiting trading based on knowledge of an imminent block transaction, with an exception for hedging counterparty risk under approved exchange block rules; and (3) requiring a sound basis for evaluating the facts regarding a particular security futures product. The proposed rule change clarifies that these requirements only apply to NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.⁷

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.⁸

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

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA, as they were amended by the CFMA. In fact, the NFA believes that the proposed rule change will level the playing field between broker-dealers that are dual members of NFA and the National Association of Securities Dealers ("NASD") and broker-dealers that are only members of NFA by assuring that dual members are not subject to duplicative regulation.

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

NFA worked with industry representatives in developing the rule change. NFA did not, however, publish the rule change to its membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change has become effective on September 7, 2001.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2001-02 and should be submitted by November 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44920; File No. SR-PHLX-00-75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Changes to TheStreet.com Internet Index

October 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2000, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The PHLX filed Amendment Nos. 1 and 2 to the proposal on September 14, 2001,³ and

¹⁰ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the PHLX: (1) Indicated that the PHLX generally will announce new share amounts on the Wednesday prior to the effective date of a rebalancing; (2) indicated that the PHLX, in consultation with TheStreet.com, Inc. ("TheStreet.com") has established policies and procedures to administer The Street.com Internet Index ("the Index"); (3) stated that the announcement of share amount changes prior to a rebalancing will allow investors to adjust hedging positions in a more cost effective manner; (4) clarified how the proposed changes will enhance the Index and facilitate the development of new products based on the Index; (5) clarified that the share amounts of replacement issues and additional Index components will be determined based on the closing price four business days prior to the date on which the divisor is adjusted; (6) indicated that announcing changes in share amounts of replacement stocks prior to their implementation will allow investors to adjust hedging positions in a more cost effective manner; (7) indicated that the PHLX will not trade options on the existing Index and the revised Index simultaneously; and (8) described the PHLX's policies and procedures to prevent potential misuse by PHLX staff of material, non-public information in connection with the maintenance of the Index.

⁶ The instant proposed rule change amends the text of the Interpretive Notice that was contained in File No. SR-NFA-2001-01. See Securities Exchange Act Release No. 44823 (September 20, 2001), 66 FR 49439 (September 27, 2001).

⁷ 15 U.S.C. 78o(b)(11).

⁸ 15 U.S.C. 78o-3(k).

⁹ 15 U.S.C. 78s(b)(1).

September 21, 2001,⁴ respectively.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change and on Amendment Nos. 1 and 2 from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The PHLX requests approval to continue listing and trading options on TheStreet.com Internet Index (the "Index")⁶ after: (1) Changing the name of the Index to "TheStreet.com Internet Sector Index;" (2) changing the Index rebalancing procedure so that share amounts in the Index will be determined based upon the component shares' last sales prices at the close of trading on the Tuesday prior to expiration Friday in the January cycle; (3) changing the procedure for the inclusion of replacement Index components and additional Index components⁷ so that the average dollar amount of the Index components is determined based upon prices at the close of trading four business days in advance of the anticipated effective date of the replacement; and (4) revising Index policies and procedures to reflect the role of TheStreet.com as a provider of ongoing company and industry analysis as it relates to component inclusion decisions and its role in the decision making process regarding the inclusion of component stocks in the Index.

The text of the proposed rule change is available at the PHLX and at the Commission.

⁴ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated September 20, 2001 ("Amendment No. 2"). Amendment No. 2 clarified the PHLX's timing for implementing the proposed changes.

⁵ The PHLX also submitted a letter from TheStreet.com describing TheStreet.com's policies regarding employee transactions in products based on the Index and TheStreet.com's policies regarding the misuse of material, non-public information concerning the Index.

⁶ TheStreet.com does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation. The PHLX represents that it will have sole discretion over the calculation of the Index.

⁷ In Amendment No. 1, the PHLX indicated that the revised procedure would apply to additional Index components as well as to replacement issues. See Amendment No. 1, *supra* note 3.

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 III 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

In 1998, the PHLX proposed to list and trade options on the Index.⁸ Pursuant to the Notice, the PHLX has listed for trading European-style, cash-settled options on the Index. The PHLX developed the Index pursuant to PHLX Rule 1009A(b) in accordance with the Generic Index Option Approval Order ("Generic Index Approval Order") for the listing and trading of options on narrow-based indexes.⁹ On July 24, 2000, the PHLX increased the number of Index components to 24 stocks.¹⁰ The PHLX now proposes to make certain enhancements to the Index. Specifically, the PHLX seeks approval to continue to list and trade options on the Index after changing the name of the Index and certain aspects of the Index maintenance. The proposed changes are described below.¹¹

(a) *Name Change.* The PHLX proposes to change the name of the Index from "TheStreet.com Internet Index" to "TheStreet.com Internet Sector Index,"

⁸ See Securities Exchange Act Release No. 40685 (November 17, 1998), 63 FR 65630 (November 27, 1998) (notice of filing and immediate effectiveness of file No. SR-PHLX-98-48) ("Notice").

⁹ See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos. SR-Amex-92-35; SR-CBOE-93-59; SR-NYSE-94-17; SR-PSE-94-07; and SR-PHLX-94-10). The Generic Index Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options that satisfy the generic listing standards.

¹⁰ The Index originally contained 20 component securities. See Notice, *supra* note 8. The Notice states that the PHLX will not change the number of Index components to more than 24 or fewer than 16 absent Commission approval.

¹¹ In a separate filing with Commission, the PHLX proposed, among other things, to increase the number of Index components to 25. See File No. SR-PHLX-00-70. The Commission has approved File No. SR-PHLX-00. See Securities Exchange Act Release No. 44921.

the name by which the Index is more widely known in the marketplace, because the PHLX trades a number of options on stock indexes representing various industry groups which the PHLX describes as "sector" index options.¹²

(b) *Calculation of Share Amounts—Quarterly Rebalancing.* The Index is an equal dollar-weighted index, meaning that each of the component stocks is represented in the Index in approximately equal dollar amounts. Following the close of trading on the third Friday of January, April, July, and October, the PHLX rebalances the Index portfolio by changing the number of whole shares of each component so that each company is again represented in "equal" dollar amounts.¹³ If necessary, the PHLX makes a divisor adjustment at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the adjustment.

The current rebalancing schedule prescribes that the PHLX determine the share amounts in the Index after the close of trading on expiration Friday in the January cycle to be effective at the opening on the following Monday. The PHLX proposes to change this procedure so that the PHLX will determine share amounts in the Index based upon the shares' last sales prices at the close of trading on the Tuesday prior to expiration Friday in the January cycle. The PHLX generally will announce the new share amounts on Wednesday.¹⁴ The implementation of the rebalancing will continue to be

¹² The PHLX's sector index options include options on the Index as well as options on the following sector indexes: the Computer Box Maker Index (BMX); the PHLX Oil Service Index (OSX); the Gold-Silver Index (XAU); the National Over-the-Counter Index (XOC); the PHLX Forest and Paper Products Sector Index (FPP); the Over-the-Counter Prime Index (OTX); the Utility Index (UTY); the Semiconductor Index (SOX); the PHLX/KBW Bank Index (BKX); and the Wireless Telecom Sector Index (YLS).

¹³ The PHLX handles day-to-day administrative duties in connection with the Index, including replacements, additions, or deletions of Index securities, Index security weight adjustments, divisor adjustments, quarterly rebalancings, the public dissemination of official information regarding the Index, and recordkeeping. See Amendment No. 1, *supra* note 3.

¹⁴ The PHLX notes that there may be circumstances under which the PHLX will make the share determination and announcement outside of the normal Tuesday and Wednesday schedule. For example, if the PHLX is scheduled to be closed on an expiration Friday, the PHLX would need to determine the share amounts on Monday, and announce them on Tuesday. The PHLX would rebalance the index after the close of trading on Thursday and the revised share amounts and Index divisor would be effective before the opening of trading on Monday morning. See Amendment No. 1, *supra* note 3.

effective on the Monday following expiration Friday and the PHLX will calculate divisor changes based on Friday's closing prices.

The PHLX believes that it is in the interest of investors generally to announce share amount changes prior to rebalancing because the announcement will provide them with an opportunity to adjust any hedging positions in a more cost effective manner.¹⁵ Currently, the PHLX officially determines share amount changes no earlier than the close of business on the business day prior to the effective date of the change. As a result, investors must transact timely position adjustment either prior to the final share determinations (at speculated share amounts) or during non-business hours, thereby adding undue cost and risk to those who use the Index.¹⁶ Under the proposal, all investors will equally have the opportunity to effect portfolio adjustments at a known share amount and during normal business hours.¹⁷ The PHLX believes that the proposed change will enhance the Index.

In addition, the PHLX believes that the proposal will facilitate the development and implementation of potential new products based on the Index by allowing adequate opportunity for various structures of investment vehicles to effectively track the Index by reducing the Index tracking error associated with the execution of transactions that correspond with changes to the Index.¹⁸ For example, the

PHLX notes that an index mutual fund that tracks the Index currently would have to effect transactions either prior to the final share amount determinations (at speculated share amounts) or during non-business hours where decreased liquidity is present, hampering its ability to provide investors with a return that closely tracks the price performance of the Index.¹⁹

(c) *Calculation of Index Share Amounts—Replacement Stocks.* Occasionally, the PHLX must make Index stock replacements outside the normal quarterly rebalancing cycle due, for example, to mergers or acquisitions of the issuers of component stocks. The amount of stock of the replacement issue to be included in the Index is based upon the average dollar value of the remaining components at their closing prices as of the day prior to the replacement. The PHLX proposes to determine the average dollar amount of the remaining components based upon prices at the close of trading four business days in advance of the anticipated effective date of the replacement. The PHLX will also determine the share amounts of the replacement issue based on the closing price four business days prior to the date on which the divisor is adjusted.²⁰

The PHLX proposes to apply this revised procedure to the addition of component stocks to the Index as well as to the replacement of component stocks.²¹ In the case of both replacements of and additions to the component stocks of the Index, the PHLX will determine the average dollar amount of the remaining components (in the case of replacements) and existing components (in the case of additions), and consequently the share amount of the replacing or added component security, based upon prices at the close of trading four business days prior to the effectiveness of the replacement or addition.²² The PHLX will determine any change in the divisor required to ensure Index continuity based upon closing prices the day before the effective date of the replacement.

As with the proposed change in quarterly rebalancings, the PHLX believes that it is in the interest of investors to announce changes in Index share amounts prior to their implementation because the announcement will provide investors with an opportunity to adjust any hedging positions in a more cost

effective manner.²³ The PHLX notes that currently the Exchange officially determines share amounts for replacement stocks no earlier than the close of business on the business day prior to the effective date of the change. As a result, market participants must typically transact timely position adjustments either prior to the final share determinations (at speculated share amounts) or during non-business hours, thereby adding undue cost and risk to those who use the Index.²⁴ Under the PHLX's proposal, all investors will equally have the opportunity to effect portfolio adjustments at known share amounts and during normal business hours.²⁵

(d) *The Role of TheStreet.com with respect to the Index.* According to the PHLX, TheStreet.com's role to date with respect to Index administration has been a consultation role with the Exchange with regard to ongoing company and industry analysis as it relates to Index component inclusion decisions. The PHLX now proposes that TheStreet.com share the responsibility of selecting component securities on an equal basis with the PHLX, so that final decisions with respect to component inclusion are made jointly. In the unlikely event that the PHLX and TheStreet.com were to differ in their judgments regarding the selection of component securities, the PHLX and the TheStreet.com would alternate the final decision making between them.

The PHLX believes that the proposed changes will enhance the Index will and could facilitate the development and implementation of potential new products based upon the Index. Except for the changes described in the current proposal, and in the PHLX's proposal to increase the number of Index components to 25,²⁶ the Index will retain the same attributes and remain subject to all of the maintenance criteria in the PHLX's original proposal to list options on the Index.

On October 12, 2001, the PHLX will post on its web site an information circular to members advising them that on October 16, 2001, the name of the Index will change to "TheStreet.com Internet Sector Index" and that TheStreet.com will become a co-stock selector with the PHLX of Index component securities.²⁷ In addition, the information circular will describe the changes in procedure regarding share amount determinations that also will be

¹⁵ See Amendment No. 1, *supra* note 3.

¹⁶ See Amendment No. 1, *supra* note 3.

¹⁷ See Amendment No. 1, *supra* note 3. Due to changes in the market price of the component securities of the Index occurring between the close of trading on Tuesday (when the PHLX determines share amounts) and the close of trading on Friday (when the PHLX determines the prices to be used in the rebalancing), the Index may be less than perfectly equal dollar weighted upon implementation of the rebalancing. The PHLX believes that the advantages of the proposed change outweigh any resulting inexactness in the equal dollar weighting. In this regard, the PHLX notes that the Commission approved the continued listing and trading of options on the Nasdaq 100 Index ("Nasdaq 100") after the Nasdaq Stock Market, Inc. ("Nasdaq"), the maintainer of the Nasdaq 100, implemented certain changes in the weighting methodology of the Nasdaq 100, including a change comparable to that proposed by the PHLX. See Securities Exchange Act Release No. 40642 (November 5, 1998), 63 FR 63759 (November 16, 1998) (order approving File No. SR-CBOE-98-43). Specifically, the PHLX notes that the changes to the Nasdaq 100 included making index share weight determinations in connection with the rebalancing of the Nasdaq 100 based upon the last sale prices and aggregate capitalization of the Nasdaq 100 at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December, with changes to the Nasdaq 100 weights to be made effective after the close of trading on the third Friday in March, June, September, and December.

¹⁸ See Amendment No. 1, *supra* note 3.

¹⁹ See Amendment No. 1, *supra* note 3.

²⁰ See Amendment No. 1, *supra* note 3.

²¹ See Amendment No. 1, *supra* note 3.

²² See Amendment No. 1, *supra* note 3.

²³ See Amendment No. 1, *supra* note 3.

²⁴ See Amendment No. 1, *supra* note 3.

²⁵ See Amendment No. 1, *supra* note 3.

²⁶ See note 11, *supra*.

²⁷ See Amendment No. 2, *supra* note 4.

effective as of October 16, 2001.²⁸ The information circular will note that the PHLX is increasing the number of Index components to 25,²⁹ effective October 22, 2001, and that the PHLX will calculate the share amounts based on the October 16, 2001, closing prices for the Index's component securities, including the two new component securities.³⁰

The PHLX does not propose to trade options on the current Index side-by-side with options on the revised Index.³¹ While the PHLX asserts that Index user will gain significant benefits from the proposed changes, the PHLX states that side-by-side historical data analysis of the current share amount determination method and the proposed method over the past four quarters shows an aggregate performance differential of less than 1%.³² In addition, the PHLX notes that the proposal does not change the Index's fundamental weighting methodology and method of stock selection.³³

(2) Basis

The PHLX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by making enhancements to the Index which should provide investors with an improved means of hedging exposure to market risks associated with the securities issued by companies in the Internet industry.

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

The PHLX 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

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2

are 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 number SR-PHLX-00-75 and should be submitted by November 7, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The PHLX has asked the Commission to approve the proposal on an accelerated basis to allow the proposed changes to become effective as of October 16, 2001.³⁴

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 exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,³⁵ which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. Specifically, the Commission believes that the proposed changes to the quarterly rebalancing procedure and to the method for calculating Index share amounts for replacement stock and additional Index components will protect investors and contribute to the maintenance of a fair and orderly market by helping market participants to hedge their positions in Index options more effectively and efficiently. According to the PHLX, the PHLX's current quarterly rebalancing

procedure and method for calculating the share amounts for replacement stocks and additional Index components require market participants to make timely adjustments to their hedging positions either prior to the share determinations at speculated share amounts or during non-business hours, thereby adding cost and risk to Index users. The PHLX states that the proposed changes will allow market participants to effect portfolio adjustments at a known share amount and during normal business hours. Accordingly, the Commission believes that the proposal should benefit market participants by helping them to hedge their positions in Index options effectively.

The Commission finds that the proposal to change the Index's name to TheStreet.com Internet Sector Index, the name by which the Index is more widely known in the marketplace, will contribute to the maintenance of a fair and orderly market by eliminating potential confusion and helping market participants to identify the Index as one of the sector indexes on which the PHLX trades options.

As discussed more fully above, the PHLX proposes to revise its procedures so that the PHLX and TheStreet.com will jointly make decisions concerning the inclusion of securities in the Index. The Commission notes that the PHLX and TheStreet.com have policies in place to prevent the potential misuse of material, non-public information in connection with the maintenance of the Index. Specifically, the PHLX prohibits the PHLX operations staff responsible for the maintenance of the Index from trading options on the Index and from trading component stocks of the Index without the prior written consent of the PHLX's Vice President of Market Surveillance.³⁶ TheStreet.com prohibits employees from transacting in any security whose value is derived, in whole or in part, from the value of the Index.³⁷ In addition, TheStreet.com prohibits employees and consultants in possession of non-public information concerning the addition, removal, or weighting adjustment of a component security of the Index from purchasing or selling the component security until the second business day following the public release of the information.³⁸ The Commission believes that the policies and procedures adopted by the PHLX and TheStreet.com address the unauthorized transfer and misuse of material, non-public information in

²⁸ See Amendment No. 2, *supra* note 4.

²⁹ See note 11, *supra*.

³⁰ See Amendment No. 2, *supra* note 4.

³¹ See Amendment No. 1, *supra* note 3.

³² See Amendment No. 1, *supra* note 3.

³³ See Amendment No. 1, *supra* note 3.

³⁴ See Amendment No. 2, *supra* note 4. As discussed more fully above, the revised share amounts for the Index's component securities will become effective prior to the opening of trading on October 22, 2001.

³⁵ 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁶ See Amendment No. 1, *supra* note 3.

³⁷ See note 5, *supra*.

³⁸ See note 5, *supra*.

connection with the maintenance of the Index.

As discussed more fully above, the PHLX will post an information circular on its web site advising members of the proposed changes to the Index prior to their implementation. The Commission believes that the information circular will help to ensure that market participants have been notified adequately about the impending changes to the Index prior to their implementation.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal will allow investors to trade options on the revised Index beginning on October 22, 2001. As discussed more fully above, the revised procedures for calculating the share amounts of the Index's component securities should benefit investors by allowing them to hedge their Index options positions in a more efficient and cost effective manner. Amendment No. 1 strengthens the PHLX's proposal by, among other things, clarifying that the proposed changes to the procedures for calculating the share amounts of component Index securities may allow market participants to hedge their positions in Index options more effectively and by describing the PHLX's policies regarding the misuse of material, non-public information by PHLX staff responsible for maintaining the Index. Amendment No. 2 strengthens the proposal by clarifying the PHLX's schedule for implementing the proposed changes and ensuring that market participants will have notice of the proposed changes prior to their implementation. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,³⁹ to approve the proposal and Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-PHLX-00-75), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44921; File No. SR-Phlx-00-70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to TheStreet.com Internet Index

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 September 8, 2000, 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. The text of the proposal is available for inspection and copying at the places specified in Item III below. On September 14, 2001, Phlx filed Amendment No. 1 to the proposal.³ On October 5, 2001, Phlx filed Amendment No. 2 to the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The Exchange proposes that the approval of the listing and trading of options on the Index be continued upon the removal of a limitation that absent Commission approval, the Index be comprised of no less than 16 component securities and no more than 24 component securities. Under the proposal, the Exchange would instead apply the terms of Phlx Rule

1009A(c)(2) to the Index which specifies that the total number of component securities in an index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing.

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 the 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 III 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

Purpose

On November 17, 1998, the Commission issued a Notice of Filing and Immediate Effectiveness for a Phlx proposed rule change relating to listing and trading options on the Index.⁵ Options on the Index were developed pursuant to Phlx Rule 1009A(b) in accordance with the Generic Index Approval Order for the listing and trading of narrow-based index options.⁶ The Notice specified that absent Commission approval, the Exchange would not change the number of components to more than 24 or fewer than 16. The Index initially consisted of 20 component securities. The index is currently composed of 23 component securities.⁷

The Exchange proposes to remove the limitation on the number of the Index's component securities found in the Notice. Instead, the Phlx proposes that the number of the Index's component securities be governed by Phlx Rule 1009A(c)(2) which provides in relevant part that, for options listed on indices pursuant to Phlx Rule 1009A(b), the total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing. Thus,

⁵ See Securities Exchange Act Release No. 40685 (November 17, 1998), 63 FR 65630 (November 27, 1998) ("Notice").

⁶ See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos. SR-Amex-92-35; SR-CBOE-93-59; SR-NYSE-94-17; SR-PSE-94-07; and SR-Phlx-94-10) ("Generic Index Approval Order").

⁷ See Amendment No. 1, *supra* note 3.

³⁹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁴⁰ 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 Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Marc McKayle, Special Counsel, Division of Market Regulation, Commission, dated September 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the Phlx described component additions and subtractions to TheStreet.com Internet Index ("Index"), and listed the Index's 23 components and share weightings as of September 11, 2001. The Exchange also indicated that it intended to increase the number of Index components to 25 at the quarterly rebalancing, to become effective on October 22, 2001 ("Effective Date"). The Exchange will post an information circular on the Exchange website, at least ten days prior to the Effective Date, to notify its members of the two new component securities.

⁴ This 19b-4 filing represents Amendment No. 2, which replaces the proposal as originally filed, but incorporates Amendment No. 1 to the filing.