

settlement.<sup>7</sup> Thomas believes that the PSE should amend Rule 9.12(a)(5) which requires the use of the facilities of a registered securities depository for confirmation and acknowledgement of all transaction in depository-eligible securities.

### III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.<sup>8</sup> Specifically, Section 6(b)(5) states that the rules of the exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. The PSE rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6-1. As a result, the PSE's current rule providing for a T+5 settlement cycle will be inconsistent with the Commission rule. This proposal will amend the PSE's rules to harmonize them with the Commission's Rule 15c6-1 and a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing risks to clearing corporations, their members, and public investors which are inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.<sup>9</sup>

While Thomson's letter supports the PSE's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the PSE should amend Rule 9.12(a)(5), which requires the use of the facilities of a registered securities depository for the

confirmation and acknowledgement of all transactions in depository-eligible securities where payment for securities purchased or delivery of securities sold is to be made by or to an agent of the customer. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the approval of the proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.<sup>10</sup> The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the PSE's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of Rule 15c6-1, the PSE rules will conflict with the Commission's Rule 15c6-1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rule 9.12(a)(5) raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing PSE rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

### IV. Conclusion

For the reasons stated above, the Commission finds that PSE's proposal is consistent with Section 6 of the Act.<sup>11</sup>

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-PSE-94-27) be and hereby is approved and will become effective on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

<sup>10</sup> Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102 (notice of proposed rule filing).

<sup>11</sup> 15 U.S.C. § 78f (1988).

<sup>12</sup> 15 U.S.C. § 78s(b)(2) (1988)

<sup>13</sup> 17 CFR 200.30(a) (12) (1994).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35511; File No. SR-Amex-95-06]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the Morgan Stanley REIT Index.

March 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> notice is hereby given that on February 16, 1995, the American Stock Exchange, Inc. ("Amex" 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 Amex. The Exchange filed Amendment No. 1 to the proposed rule change on March 9, 1995.<sup>2</sup> 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 Amex proposes to trade options on the Morgan Stanley REIT Index ("REIT Index"), a new index developed by Morgan Stanley & Co. Incorporated ("Morgan Stanley") comprised of real estate investment trusts ("REITs")<sup>3</sup> which are traded on the Amex, the New

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> Amendment No. 1 provides additional information regarding the Index components, and states that the Exchange will file with the Commission pursuant to Section 19(b)(1) of the Act should the number of component securities in the Index exceed 116. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivatives Securities, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated March 9, 1995 ("Amendment No. 1").

<sup>3</sup> All components of the Index will be REITs as that term is defined in Sections 856 through 860 of the Internal Revenue Code, 26 U.S.C. §§ 856-60 (1988 & Supp. 1993). *Id.* A REIT is a financial vehicle that allows investors to pool funds for participation in real estate ownership or financing. REITs are subject to special tax treatment and are exempt from corporate level tax if they meet certain qualifications. These qualifications include, but are not limited to, the distribution of 95% of taxable income; that five or fewer individuals cannot own more than 50% of the shares; that over 10% of total assets cannot be sold in one year; and that at least 75% of taxable income be derived from real estate in the form of, for example, rents, mortgages, or gains from the sale of real estate. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivatives Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated March 6, 1995.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> 15 U.S.C. § 78f (1988).

<sup>9</sup> The Commission release adopting Rule 15c6-1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

York Stock Exchange, Inc. ("NYSE"), or through the facilities of the Nasdaq system and are reported Nasdaq national market ("NM") securities. In addition, the Amex proposes to amend Rule 902C(d) to include the REIT Index in the disclaimer provisions of the rule.

## 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 self-regulatory organization 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 self-regulatory organization 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. Introduction

The Exchange is proposing to trade standardized options on the REIT Index, a capitalization weighted index developed by Morgan Stanley, representing a portfolio of the largest and most actively traded REITs, and designated to provide a broad measure of real estate equity performance. The Index does not include healthcare REITs, real estate operating companies or partnerships, or REITs that invest primarily in real estate mortgages or debt securities.

#### 2. Eligibility Standards for Index Components

The REIT Index conforms with Exchange Rule 901C, which specifies criteria for inclusion of stocks in an index on which standardized options will be traded. In addition, Morgan Stanley has included in the Index only those REITs that meet the following standards: (1) A minimum market capitalization of \$100 million; (2) a market price of at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the component security traded on each of the subject days; (3) trading volume in the component security of at least 1.2 million shares during the preceding six months; (4) each component security must be traded on the Amex, NYSE or must be a

Nasdaq NM security; and (5) no component security will represent more than 25% of the weight of the Index, nor will the five highest weighted component securities in the Index, in the aggregate, account for more than 50% of the weight of the Index. The criteria set forth above are the same as or exceed many of the criteria established for the expedited listing of options on stock industry indexes pursuant to Exchange rule 901C, Commentary .02.

#### 3. Maintenance of the Index

In creating the Index, Morgan Stanley identified approximately 87 REITs that meet or exceed the above criteria. In maintaining the Index, the Exchange will review the component securities on a quarterly basis to ensure that the Index continues to represent only the largest and most actively traded REITs. After the close of trading on the last business day of December, March, June, and September, all publicly traded equity REITs (except healthcare stocks and REITs that invest primarily in real estate mortgage or debt securities) will be reviewed to see if they meet the criteria outlined above. After the close of trading on the third Friday of January, April, July, and October, and Exchange will add to the Index all those REITs that meet the criteria and are not currently in the Index.

Those REITs already in the Index that no longer meet the following maintenance criteria will be removed from the Index at the same time. The maintenance criteria for the component securities are: (1) A minimum market capitalization of \$75 million; (2) a market price of at least \$5.00 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the component security traded on each of the subject days; and (3) trading volume in the component security of at least 900,000 shares during the preceding six months.

It is anticipated that the number of components in the REIT Index will increase as more real estate investment companies enter the public market, and those currently in the public market grow in size and trading volume. However, if the number of component securities in the Index shall increase to more than 116 or decrease to fewer than 58, the Exchange will file with the Commission pursuant to Section 19(b)(1) of the Act to obtain additional approval for such Index.<sup>4</sup>

<sup>4</sup> See Amendment No. 1, *supra* note 2.

The number of component stocks in the Index shall remain fixed between quarterly reviews except in the event of certain types of corporate actions such as a merger or takeover which warrants the removal of a component security from the Index prior to its quarterly review. In such case, the divisor shall be recalculated to ensure continuity of the Index's value.

#### 4. Index Calculation

The REIT Index is market capitalization weighted, where the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums and dividing by the current index divisor. The REIT Index is a total return index, in that the regular cash dividends of its component securities are reinvested into the Index portfolio. Therefore, at the close of trading each day, the prices of component securities which will trade "ex-dividend" the next day will be adjusted (downward) by the value of the dividend amount to reflect the price impact on the stock as it trades without ("ex") the dividend on the following day. The divisor is then adjusted to ensure continuity of the Index value. The Index divisor was initially determined to yield a benchmark value of 200 on December 31, 1994. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

#### 5. Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The options on the REIT Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, longer term option series having up to 36 months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list

long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value.

In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise. Position limits on reduced value long-term REIT Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 10,500 contracts on the same side of the market, then the position limit for the reduced value options will be 105,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the Nasdaq system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

#### 6. Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules address surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the REIT Index. The Exchange has designated the Index a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c)<sup>5</sup> will result in a position limit of 10,500 contracts with respect to options on the Index.

<sup>5</sup> Rule 904C(c) relates to position limits for stock index industry groups.

#### 7. Basis

The Exchange 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 designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, and in general to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex believes that the proposed rule change will not impose any burden on competition.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of 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 its reasons for so finding or (ii) as to which the self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 and 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-95-06 and should be submitted by April 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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[Release No. 34-35503; File No. SR-Phlx-94-55]

### Self-Regulatory Organizations; the Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 16, 1995.

On November 14, 1994, the Philadelphia Stock Exchange, Inc., ("Phlx") filed a proposed rule change (File No. SR-Phlx-94-55) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 9, 1995 to solicit comments from interested persons.<sup>2</sup> The Commission received one comment letter.<sup>3</sup> As discussed below, this order approves the proposed rule change.

#### I. Description

In October 1993, the Commission adopted Rule 15c6-1 under the Act<sup>4</sup> which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.<sup>5</sup> Several of the Phlx's rules are interrelated with the T+5 settlement time frame. The

<sup>6</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b) (1988).

<sup>2</sup> Securities Exchange Act Release No. 35176 (December 29, 1994), 60 FR 2417.

<sup>3</sup> Letter from Dr. Keith B. Jarrett, President, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 30, 1995).

<sup>4</sup> 17 CFR 240.15c6-1 (1994).

<sup>5</sup> Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).