

registration statement, indenture, security or transaction \* \* \* from any one or more of the provisions of [the 1939 Act], if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the *protection of investors* and the purposes fairly intended by [the 1939 Act].” Section 304(d) (emphasis added).

Armstrong has waived notice of a hearing and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission’s Public Reference Section, File No. 22–28616, 450 Fifth Street, NW., Washington, DC, 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than August 12, 2002. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person’s interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. At any time after August 12, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25662; 812–12530]

### Met Investors Series Trust and Met Investors Advisory LLC; Notice of Application

July 16, 2002.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application for an order under section 12(d)(1)(f) of the

Investment Company Act of 1940 (the “Act”) for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

#### *Summary of the Application:*

Applicants request an order that would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) and the Act.

*Applicants:* Met Investors Series Trust (the “Trust”), all existing and future series of the Trust, and any other registered open-end management investment company and its series that are currently on in the future advised by Met Investors Advisory LLC (the “Adviser”) or any entity controlling, controlled by, or under common control with the Adviser (collectively, the “Funds”), and the Adviser.

*Filing Dates:* The application was filed on May 29, 2001, and amended on July 16, 2002.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 9, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 22 Corporate Plaza Drive, Newport Beach, CA 92660.

#### **FOR FURTHER INFORMATION CONTACT:**

Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission’s Public Reference Branch,

450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

### **Applicants’ Representations**

1. The Trust is organized as a business trust under the laws of the State of Delaware and is an open-end management investment company registered under the Act. The Trust currently offers Class A, Class B, and Class E shares in 22 Funds, one of which is a money market fund subject to rule 2a–7 under the Act (together with any future Funds that are money market funds, the “Money Market Funds;” all other Funds that are not money market funds are collectively referred to as the “Non-Money Market Funds”).<sup>1</sup> Not all Funds offer Class A, Class B, or Class E shares. The Funds selling Class A shares sell such shares to qualified pension and profit sharing plans and to separate accounts of Metropolitan Life Insurance Company and its affiliates (collectively, “MetLife”) to fund variable annuity and variable life contracts. The Class B and Class E shares are sold exclusively to MetLife separate accounts.<sup>2</sup> The Adviser serves as the investment adviser to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”). The Adviser selects other affiliated and unaffiliated investment advisers registered under the Advisers Act (“Subadvisers”) to manage the portfolio for each Fund.

2. Applicants state that each Non-Money Market Fund has, or may be expected to have, uninvested cash (“Uninvested Cash”) held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, and new investor capital. The Non-Money Market Funds also may receive cash (“Cash Collateral,” and together with Uninvested Cash, “Cash Balances”) in connection with a securities lending program (“Securities Lending Agreement”) between the Trust and State Street Bank and Trust Company (“State Street”) under which a Non-Money Market Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. Pursuant to the Securities Lending

<sup>1</sup> All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently relies on the order will comply with the terms and conditions in the application.

<sup>2</sup> Class C shares are authorized for all Funds; however, none are currently being offered.

Agreement, State Street serves as the securities lending agent for the Funds. State Street is not affiliated with the Adviser, the Subadvisers, or any of their affiliates. The Securities Lending Agreement requires that the loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned.

3. Applicants request an order to permit a Non-Money Market Fund to use its Cash Balances to purchase and redeem shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem shares as requested by the Non-Money Market Fund. Applicants believe that the ability to invest Cash Balances in Money Market Funds will benefit the Non-Money Market Funds by providing higher rates of return, ready liquidity, and increased diversification.

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(f) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds in excess of the limitations in sections 12(d)(1)(A) and (B).

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption

fee or asset based distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. To the extent that both a Money Market Fund and Non-Money Market Fund charge a service fee as defined in rule 2830 of the conduct rules of the National Association of Securities Dealers ("NASD Conduct Rules"), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the fee incurred by the Non-Money Market Fund. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of the investment. Before approving any advisory contract with the Adviser or a Subadviser for a Non-Money Market Fund, the board of trustees of the Fund ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Fund. No Money Market Fund will acquire shares of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that because the Funds share a common investment adviser and have identical Boards, each Fund may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Funds.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the

proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that the Non-Money Market Funds will retain their ability to invest their Cash Balances directly in money market instruments in accordance with their investment objectives and policies. Applicants state that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the Board of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and the Adviser and Subadvisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d-1.

8. In considering whether to permit a joint transaction under rule 17d-1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder and that the transactions will be consistent with the Act.

## Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed by the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b-1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund may charge a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the Board of a Non-Money Market Fund is held for the purpose of voting on an advisory contract with the Adviser or a Subadviser under section 15 of the Act, the Adviser and Subadviser will provide the Board with specific information regarding the approximate costs to the Adviser and Subadviser of, or portion of the advisory fee under the existing advisory contract with the Adviser and the Subadviser attributable to, managing the Uninvested Cash of the Non-Money Market Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board's considerations in approving the advisory contract with the Adviser or a Subadviser, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds and the Money Market Funds will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund will require securities of an investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Agreement, a majority of its Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Agreement. The Board also will evaluate the Securities Lending Agreement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46211; File No. SR-Phlx 2002-42]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

July 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2002, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

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

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

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

The Exchange proposes to amend Phlx Rule 1009A(b), Designation of the Index, to delete, and then to repropose, modified capitalization weighting as an approved weighting methodology for index options so that there is no change to the actual present language of Rule 1009A(b). The following is the text of the proposed rule change. Language that is currently in the text of the rule, which is proposed to be deleted and immediately reinserted, is underlined.

### Designation of the Index

Rule 1009A.

(a) No change.

(b)-(b)(1) No change.

(b)(2) The index is capitalization-weighted, price-weighted, *modified capitalization-weighted* or equal dollar-weighted, and consists of ten or more component securities;

(b)(3)-b(10) No change.

(b)(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter; *and a modified capitalization-weighted index will be rebalanced at least twice annually;*

## 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. Purpose

The purpose of the proposed rule change is to first delete, and immediately to reinsert pursuant to Commission approval, language in Rule 1009A(b) relating to modified capitalization weighting as a permissible weighting methodology for narrow-based index options listed and traded pursuant to Rule 1009A(b). The language is currently in effect, inasmuch as it became immediately effective on March 1, 2002, pursuant an Exchange filing made pursuant to section