

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 7, 2019

**THE STREET, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction of incorporation)

0-25779

(Commission File Number)

06-1515824

(IRS Employer Identification No.)

**14 WALL STREET, 15<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005**

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (212) 321-5000

**N/A**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	TST	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## **Introductory Note**

As previously disclosed, TheStreet, Inc., a Delaware corporation (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with TheMaven, Inc., a Delaware corporation (“Parent”), and TST Acquisition Co., Inc., a Delaware corporation and an indirect wholly owned subsidiary of Parent (“Merger Sub”). Pursuant to the Merger Agreement, on August 7, 2019 (the “Closing Date”), the Company merged with and into Merger Sub with the Company surviving the Merger as an indirect wholly owned subsidiary of Parent (the “Merger”).

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

#### *Merger*

On the Closing Date, Parent completed the acquisition of the Company through the Merger. At the time of effectiveness of the Merger (the “Effective Time”), each share of common stock, par value \$0.01 per share, of the Company (“Company Common Stock”) issued and outstanding immediately prior to the Effective Time (other than shares, if any, held by the Company, Parent or Merger Sub and shares with respect to which appraisal rights have been properly exercised in accordance with the General Corporation Law of the State of Delaware), was automatically cancelled and converted into the right to receive, (i) an amount in cash equal to \$3.09183364 per share of Company Common Stock and (ii) one contractual contingent value right per share of Company Common Stock (each, a “CVR”) (collectively, the “Merger Consideration”).

#### *Pre-Merger Distribution*

In accordance with the Merger Agreement, the Board of Directors of the Company declared a special cash distribution of \$3.353593 per share which was conditioned on the closing of the Merger, which consists of all its cash on hand immediately prior to the Effective Time, less certain liabilities and expenses relating to the Company’s prior sales of its RateWatch and institutional business units and the Merger Agreement and the related transactions described in this Item 2.01, payable on August 12, 2019 to stockholders of record as of the close of business on August 7, 2019.

#### *CVRs*

Each CVR entitles the holder thereof to receive a pro rata portion of the funds escrowed in connection with the Company’s prior sale of its institutional business units when it is released from escrow, which is currently scheduled to be released after January 31, 2020. The terms and conditions of the CVRs are set forth in a contingent value rights agreement dated August 7, 2019, by and among the Company, Parent and a rights agent (the “CVR Agreement”). Currently, the Company’s management estimates that the aggregate amount that will be released from such escrow is \$520,000, or approximately \$0.09 per share of Company Common Stock. There can be no assurance that this escrow will be released in full or at all since the purchaser in the prior transaction has certain indemnification rights related to pre-closing tax liabilities arising from the prior sale transaction which may be satisfied through receipt of all or a portion of such escrow, therefore each CVR holder may receive a lesser amount per share or possibly no payment at all.

#### *Options*

At the Effective Time, each option granted by the Company to purchase shares of Company Common Stock under its 2007 Performance Incentive Plan, as amended and restated, which was outstanding and unexercised immediately prior to the Effective Time, was cancelled without consideration.

The foregoing description of the Merger Agreement and the transactions contemplated thereby is subject to, and qualified in its entirety by, the full text of the Merger Agreement, including the form of CVR Agreement attached thereto as Exhibit A, a copy of which was filed as Exhibit 2.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on June 12, 2019, and is incorporated herein by reference.

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**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

The information set forth under Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

On August 7, 2019, in connection with the closing of the Merger, the Company notified the Nasdaq Stock Market LLC (“Nasdaq”) that the Certificate of Merger had been filed with the State of Delaware and that, at the Effective Time, each outstanding share of Common Stock was cancelled and converted into the right to receive the Merger Consideration, subject to the terms of the Merger Agreement. The Company requested that Nasdaq delist its Common Stock, and as a result, trading of the Common Stock on Nasdaq was suspended. The Company also requested that Nasdaq file a notification of removal from listing and registration on Form 25 with the SEC to effect the delisting of its Common Stock from Nasdaq and the deregistration of the Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company intends to file with the SEC a Form 15 requesting the termination of registration of the Common Stock under Section 12(g) of the Exchange Act and the suspension of reporting obligations under Sections 13 and 15(d) of the Exchange Act.

**Item 3.03 Material Modification to Rights of Security Holders.**

The information set forth under Items 2.01, 3.01 and 5.03 are incorporated herein by reference.

Upon the Effective Time, each holder of shares of Common Stock issued and outstanding immediately prior to the Effective Time ceased to have any rights as a stockholder of the Company (other than the right to receive the Merger Consideration and any distribution declared prior to the Merger).

**Item 5.01 Change in Control of Registrant.**

The information set forth under Items 2.01 and 3.01 is incorporated herein by reference.

As a result of the Merger, a change in control of the Company occurred, and the Company became an indirect wholly owned subsidiary of Parent. The total amount of consideration payable to the Company’s stockholders in connection with the Merger was approximately \$16.5 million. The funds used by Parent to consummate the Merger came from financing provided by BRF Finance Co., LLC, an affiliated entity of B. Riley FBR, Inc.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The information set forth under Item 2.01 is incorporated herein by reference.

*Directors*

In connection with the closing of the Merger, each of the seven directors of the Company as of immediately prior to the Effective Time (James J. Cramer, Bowers Espy, Kevin Rendino, Eric Lundberg, Larry Kramer, Sarah Fay and Betsy Morgan) resigned as directors of the Company effective as of the Effective Time and are no longer directors of the Company. In accordance with the terms of the Merger Agreement, effective upon completion of the Merger, the board of directors of Merger Sub immediately prior to the Effective Time became the Board of Directors of the Company.

*Officers*

Eric Lundberg, Margaret de Luna and Robert Kondracki each resigned as officers of the Company, effective as of the Effective Time. As previously reported, Eric Lundberg and Margaret de Luna will remain at the Company for the three-month period immediately following the closing of the Merger in consideration for certain benefits that were conditioned upon the closing of the Merger and Robert Kondracki will continue to be employed by the Company on the same terms as his current employment.

*2007 Performance Incentive Plan*

At the Effective Time, the Company’s 2007 Performance Incentive Plan, as amended and restated, was terminated.

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**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The information set forth under Item 2.01 is incorporated herein by reference.

Pursuant to the terms of the Merger Agreement, at the Effective Time, the Company's certificate of incorporation was amended and restated in its entirety. The Restated Certificate of Incorporation of the Company is attached as Exhibit 3.1 hereto and incorporated herein by reference.

In addition, in connection with the Merger, the bylaws of the Company were amended and restated. The Amended and Restated Bylaws of the Company are attached as Exhibit 3.2 hereto and incorporated herein by reference.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

On August 7, 2019, the Company held a special meeting of stockholders (the "Special Meeting"). As of June 20, 2019, the record date for the Special Meeting, there were 5,336,639 shares of Company Common Stock outstanding and entitled to vote at the Special Meeting. At the Special Meeting, 3,850,055 shares of Company Common Stock were represented in person or by proxy, and, accordingly, a quorum was present.

At the Special Meeting, three proposals were considered (each of which is described in detail in the Company's definitive proxy statement filed with the SEC on July 15, 2019):

- (1) to adopt the Merger Agreement, and thereby approve the Merger Agreement and the transactions contemplated thereby, including the Merger (the "Merger Proposal");
- (2) to approve, on a non-binding, advisory basis, the compensation that may be paid or become payable to the Company's named executive officers that is based or otherwise relates to the Merger Agreement and the transactions contemplated by the Merger Agreement (the "Merger-Related Compensation Proposal"); and
- (3) to adjourn the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are not sufficient votes to adopt the Merger Agreement at the time of the Special Meeting (the "Adjournment Proposal").

At the Special Meeting, the Merger Proposal and the Merger-Related Compensation Proposal were approved. Sufficient votes were also received to approve the Adjournment Proposal, but such an adjournment was not necessary in light of the approval of the Merger Proposal. The table below shows the final voting results from the Special Meeting.

		<b>Votes For</b>	<b>Votes Against</b>	<b>Abstentions</b>
<b>Proposal 1 – The Merger Proposal</b>	Company Common Stock	3,754,141	95,460	454
<b>Proposal 2 – The Merger-Related Compensation Proposal</b>	Company Common Stock	2,861,346	983,475	5,234
<b>Proposal 3 – The Adjournment Proposal</b>	Company Common Stock	3,738,563	96,840	14,652

**Item 7.01 Regulation FD Disclosure.**

On August 7, 2019, the Company issued a press release announcing the stockholders' approval of the Merger and approval by the Company of a special cash distribution, contingent on the closing of the Merger, in the amount of \$17.9 million or \$3.35 per share of Company Common Stock payable on August 12, 2019 to stockholders of record on April 7, 2019. A copy of that press release is attached hereto as Exhibit 99.1.

The information set forth in this Item 7.01 of this Current Report on Form 8-K (including Exhibit 99.1) shall not be deemed to be "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>2.1</u></a>	<a href="#"><u>Agreement and Plan of Merger, dated as of June 11, 2019 by and among TheMaven, Inc., TST Acquisition Co., Inc. and TheStreet, Inc. (Incorporated by reference to Exhibit 2.1 of TheStreet, Inc.'s Current Report on Form 8-K, filed on June 12, 2019)</u></a>
<a href="#"><u>2.2</u></a>	<a href="#"><u>Amendment No. 1 to Agreement and Plan of Merger, dated as of July 12, 2019, by and among TheMaven, Inc., TST Acquisition Co., Inc. and TheStreet, Inc.</u></a>
<a href="#"><u>3.1</u></a>	<a href="#"><u>Restated Certificate of Incorporation of TheStreet, Inc.</u></a>
<a href="#"><u>3.2</u></a>	<a href="#"><u>Amended and Restated Bylaws of TheStreet, Inc.</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press release issued by TheStreet, Inc. dated August 7, 2019.</u></a>

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 8, 2019

**THE STREET, INC.**

By: /s/ Doug Smith  
Name: Doug Smith  
Title: Chief Financial Officer

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## AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER

This Amendment No. 1 (this "**Amendment No. 1**") to that certain Agreement and Plan of Merger, dated as of June 11, 2010 (the "**Merger Agreement**"), by and among TheMaven, Inc., a Delaware corporation ("Parent"), TST Acquisition Co., Inc., a Delaware corporation and wholly owned Subsidiary of Parent ("Merger Sub"), and TheStreet, Inc., a Delaware corporation (the "Company"), is made and entered into as of July 12, 2019 by and among the Company, Parent and Merger Sub. All capitalized terms that are used in this Amendment No. 1 but not defined in this Amendment No. 1 shall have the respective meanings ascribed thereto in the Merger Agreement.

WHEREAS, Parent desires to transfer 100% of the outstanding capital stock of Merger Sub from Parent to Maven Media Brands, LLC., a wholly owned subsidiary of Parent;

WHEREAS, the Company desires to consent to such transfer; and

WHEREAS, Parent, Merger Sub and the Company wish to amend certain provisions of the Merger Agreement as provided herein;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants and subject to the conditions herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Consent to Transfer. The Company hereby consents to the transfer of 100% of the outstanding capital stock of Merger Sub from Parent to Maven Media Brands, LLC., a wholly owned subsidiary of Parent.

2. Amendment of Preamble. As a result of the transfer referred to in Section 1 above, the preamble of the Merger Agreement hereby is amended to read in its entirety as follows: "THIS AGREEMENT AND PLAN OF MERGER, dated as of June 11, 2019 (this "**Agreement**"), is made by and among TheMaven, Inc., a Delaware corporation ("**Parent**"), TST Acquisition Co., Inc., a Delaware corporation and an indirect wholly owned Subsidiary of Parent ("**Merger Sub**"), and TheStreet, Inc., a Delaware corporation (the "**Company**")."

3. Amendment to Section 3.2(b). Section 3.2(b) of the Merger Agreement is hereby amended to read in its entirety as follows:

"Designation of Paying Agent; Deposit of Exchange Fund. Such Person as selected by the Company, which Person shall be reasonably acceptable to Parent, shall be designated as the paying agent (the "**Paying Agent**") for the payment of the Merger Consideration as provided in Section 3.1(b). Immediately after the Effective Time, the Escrow Deposit shall be deposited with the Paying Agent (such deposit, the "**Exchange Fund**"). In the event the Aggregate Cash Merger Consideration portion of the Exchange Fund shall be insufficient to make the payments contemplated by Section 3.1(b)(i) Parent shall promptly deposit, or cause to be deposited, additional funds with the Paying Agent in an amount that is equal to the deficiency in the amount required to make such payment. Following the Effective Time, if not already paid, Parent shall promptly cause the Paying Agent to make, and the Paying Agent shall make, payments of the Aggregate Cash Merger Consideration to the holders of Company Common Stock pursuant to Section 3.1(b). The Exchange Fund shall not be used for any purpose other than to fund payments pursuant to Section 3.1, except as expressly provided for in this Agreement."

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4. Amendment to Section 4.4. Section 4.4 of the Merger Agreement hereby is amended to read in its entirety as follows:

“Authority Relative to Agreement. The Company has all necessary corporate power and authority to execute and deliver this Agreement and the other agreements referred to in this Agreement to which it is or will be a party, to perform its obligations hereunder and, subject to receipt of the Requisite Stockholder Approval, to consummate the transactions contemplated hereby and thereby, including the Merger. The execution and delivery of this Agreement and the CVR Agreement by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including the Merger, have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary to authorize the execution of this Agreement or the CVR Agreement or to consummate the transactions contemplated hereby or thereby, including the Merger (other than, with respect to the Merger, the receipt of the Requisite Stockholder Approval, as well as the filing of the Certificate of Merger with the Secretary of State, and other than the declaration of the Pre-Merger Special Distribution or the approval of the Recapitalization (and the filing of a related certificate of amendment of the Company’s Restated Certificate of Incorporation with the Secretary of State)). The Company’s board of directors has approved this Agreement and the CVR Agreement, declared this Agreement to be advisable, approved the transactions contemplated hereby and thereby, determined them to be fair and in the best interest of the Company and its stockholders, and resolved to recommend to the stockholders of the Company the Company Recommendation that they vote in favor of the adoption of this Agreement in accordance with the DGCL. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditor’s rights, and to general equitable principles).”

5. Amendment to Section 4.21. Section 4.21 of the Merger Agreement hereby is amended to read in its entirety as follows:

“Vote Required. The affirmative vote of the holders of outstanding Company Common Stock representing at least a majority of all the votes entitled to be cast thereupon by holders of Company Common Stock (the “Requisite Stockholder Approval”) is the only vote of holders of securities of the Company that is necessary to adopt this Agreement, but excluding the Recapitalization. For the avoidance of doubt, the Requisite Stockholder Approval is the only vote of holders of securities of the Company that is necessary to effect the Recapitalization if the same is submitted to the holders of Company Common Stock for approval.”

6 . Amendment to Appendix A. Appendix A of the Merger Agreement hereby is amended by amending and restating the definition of “Company Recommendation” as follows:

**“Company Recommendation”** shall mean the recommendation of the board of directors of the Company that the stockholders of the Company adopt this Agreement.”

7 . Merger Agreement References. The parties hereto hereby agree that all references to the “Agreement” set forth in the Merger Agreement (including, without limitation, in the representations and warranties of the parties set forth therein) shall be deemed to be references to the Merger Agreement as amended by this Amendment No. 1.

8 . Full Force and Effect. Except as expressly amended or modified hereby, the Merger Agreement and the agreements, documents, instruments and certificates among the parties hereto as contemplated by, or referred to, in the Merger Agreement shall remain in full force and effect without any amendment or other modification thereto.

9 . Counterparts. This Amendment No. 1 may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or by e-mail of a .pdf attachment shall be effective as delivery of a manually executed counterpart of this Agreement No. 1.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Amendment No. 1 to be executed as of the date first written above by their respective officers thereunto duly authorized.

**THE STREET, INC.**

By: /s/ Eric F. Lundberg

Name: Eric F. Lundberg

Title: CEO and CFO

**THE MAVEN, INC.**

By: /s/ James C. Heckman

Name: James C. Heckman

Title: CEO

**TST ACQUISITION CO., INC.**

By: /s/ James C. Heckman

Name: James C. Heckman

Title: CEO

*[Signature Page to Amendment No. 1 to Agreement and Plan of Merger]*

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**  
**OF**  
**THE STREET, INC.**

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FIRST: The name of the corporation (hereinafter called the "Corporation") is:

**THE STREET, INC.**

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, State of Delaware 19808; and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

THIRD: The nature of the business and the purposes to be conducted and promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock which the Corporation shall have the authority to issue is one thousand (1,000), all of which shall be shares of Common Stock, par value of one cent (\$0.01) each.

FIFTH: The Corporation shall have the power to indemnify and advance expenses to any person to the fullest extent permitted by the General Corporation Law of the State of Delaware as it now exists or as it may hereafter be amended. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under this Amended and Restated Certificate of Incorporation, any statute, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to persons who have ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such persons.

SIXTH: To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as director. If the General Corporation Law of the State of Delaware is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the General Corporation Law of the State of Delaware, as so amended. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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SEVENTH: The Corporation is to have perpetual existence.

EIGHTH: In furtherance and not in limitation of the powers conferred upon the stockholders by statute, the Board of Directors is expressly authorized to make, alter or repeal the by-laws of the Corporation, subject to the power of the stockholders to alter or repeal the by-laws made or altered by the Board of Directors.

NINTH: Except as otherwise required in the by-laws of the Corporation, election of directors need not be by written ballot.

TENTH: In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, this Amended and Restated Certificate of Incorporation, and any by-laws of the Corporation; provided, however, that no by-laws hereafter adopted shall invalidate any prior act of the directors which would have been valid if such by-laws had not been adopted.

ELEVENTH: (A) The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

(B) Any repeal or modification of this Article by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

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AMENDED AND RESTATED

BY-LAWS

OF

THE STREET, INC.  
(the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808. The name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

Section 2. Other Offices. The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETING OF STOCKHOLDERS

Section 1. Annual Meetings. Annual meetings of stockholders for the election of directors and for such other business as may be stated in the notice of the meeting shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting.

Section 2. Other Meetings. Meetings of stockholders for any purpose other than the election of directors may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting.

Section 3. Voting. Each stockholder entitled to vote in accordance with the terms of the Amended and Restated Certificate of Incorporation and in accordance with the provisions of these By-Laws shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. Upon the demand of any stockholder, the vote for directors and the vote upon any question before the meeting shall be by ballot. All elections for directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Amended and Restated Certificate of Incorporation or the laws of the State of Delaware.

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A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be opened to the examination of any stockholder for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 4. Quorum. Except as otherwise required by law, by the Amended and Restated Certificate of Incorporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding a majority of the stock of the Corporation entitled to vote shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

Section 5. Special Meetings. Special meetings of the stockholders for any purpose or purposes may be called by the President, any Co-President or Secretary, or by resolution of the directors.

Section 6. Notice of Meetings. Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat at his address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

Section 7. Action Without Meeting. Unless otherwise provided by the Amended and Restated Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 8. Organization. The President or any Co-President, or in the absence of the President or any Co-President, the Chairman of the Board, or, in the absence of the President, any Co-President and the Chairman of the Board, one of the Corporation's Vice Presidents, shall call the meeting of the stockholders to order, and shall act as chairman of the meeting. In the absence of the President, any Co-President, the Chairman of the Board, and all of the Vice Presidents, the stockholders shall appoint a chairman for such meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and the conduct of business. The secretary of the corporation shall act as secretary of all meetings of the stockholders, but in the absence of the secretary at any meeting of the stockholders, the chairman of the meeting may appoint any person to act as secretary of the meeting.

### ARTICLE III

#### DIRECTORS

Section 1. Number and Term. The number of directors of the Corporation initially shall be one (1). The directors shall be elected at the annual meeting of the stockholders and each director shall be elected to serve until his successor shall be elected and qualified. Directors need not be stockholders.

Section 2. Removal. Before the Corporation has issued any shares of its capital stock, any director may be removed either for or without cause at any time by the affirmative vote of a majority of the directors then in office. After the Corporation has issued shares of capital stock, any director or directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of all the shares of stock outstanding and entitled to vote, at a special meeting of the stockholders called for the purpose, and the vacancies thus created may be filled, at the meeting held for the purpose of removal, by the affirmative vote of a majority in interest of the stockholders entitled to vote.

Section 3. Increase of Number. The number of directors may be increased by amendment of these By-Laws by the affirmative vote of a majority of the directors, though less than a quorum, or, by the affirmative vote of a majority in interest of the stockholders, at the annual meeting or at a special meeting called for that purpose, and by like vote the additional directors may be chosen at such meeting to hold office until the next annual election and until their successors shall have been elected and qualified.

Section 4. Powers. The Board of Directors shall exercise all of the powers of the Corporation except such as are by law or by the Amended and Restated Certificate of Incorporation of the Corporation or by these By-Laws conferred upon or reserved to the stockholders.

Section 5. Committees. The Board of Directors may, by resolution or resolutions passed by a majority of the Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee or committees. The member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, or in these By-Laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to amend the Amended and Restated Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, to recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or to amend the By-Laws of the Corporation; and, unless the resolution, these By-Laws, or the Amended and Restated Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 6. Meetings. The newly elected directors shall hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent in writing of all the directors.

Regular meetings of the directors may be held without notice at such places and times as shall be determined from time to time by resolution of the directors.

Special meetings of the Board may be called by the President, any Co-President or the Secretary on the written request of any one director on at least two days' notice to each director and shall be held at such place or places as may be determined by the directors, or as shall be stated in the call of the meeting.

Section 7. Quorum. A majority of the total number of directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned.

Section 8. Compensation. Directors shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

Section 9. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof, may be taken without a meeting, if a written consent thereto is signed by all members of the Board of Directors, or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or committee.

Section 10. Participation by Conference Telephone. Members of the Board of Directors of the Corporation, or any committee designated by such Board may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting shall constitute presence in person at such meeting.

#### ARTICLE IV

##### OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President or two Co-Presidents, a Treasurer and a Secretary, all of whom shall be elected by the Board of Directors and who shall hold office until their successors are elected and qualified. In addition, the Board of Directors may elect a Chairman, one or more Vice Presidents, and such Assistant Secretaries and Assistant Treasurers as they may deem proper. None of the officers of the Corporation need be directors. The officers shall be elected at the first meeting of the Board of Directors after each annual meeting. More than one office may be held by the same person.

Section 2. Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it may deem advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 3. Chairman. The Chairman of the Board of Directors, if one be elected, shall preside at all meetings of the Board of Directors and he shall have and perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 4. President or Co-Presidents. The President or Co-Presidents shall be the chief executive officer(s) of the Corporation and, the President shall have the general powers and duties of supervision, direction, control and management usually vested in the office of president of a corporation, or, if Co-Presidents are elected, the Co-Presidents shall jointly have the general powers and duties of supervision, direction, control and management usually vested in the office of president of a corporation. He or they, as the case may be, shall preside at all meetings of the stockholders if present thereat, and, in the absence or non-election of the Chairman of the Board of Directors, at all meetings of the Board of Directors. Except as the Board of Directors shall authorize the execution thereof in some other manner, any bond, mortgage or other contract entered into on behalf of the Corporation shall be executed by the President, or if Co-Presidents are elected, by both Co-Presidents, and the President or Co-Presidents, as the case may be, shall cause the seal to be affixed to any instrument requiring it and when so affixed the seal shall be attested by the signature of the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer.

Section 5. Vice-President. Each Vice-President shall have such powers and shall perform such duties as shall be assigned to him by the Board of Directors.

Section 6. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He/She shall deposit all monies and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, or the President or any Co-President, taking proper vouchers for such disbursements. He/She shall render to the President or the Co-Presidents and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his/her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he/she shall give the Corporation a bond for the faithful discharge of his/her duties in such amount and with such surety as the Board of Directors shall prescribe.

Section 7. Secretary. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and directors, and all other notices required by law or by these By-Laws, and in case of his/her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the President, any Co-President or by the directors, or stockholders, upon whose requisition the meeting is called as provided in these By-Laws. The Secretary shall record all the proceedings of the meetings of the Corporation and of the directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him/her by the directors or the President or any Co-President. He/She shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the directors or the President or any Co-President, and attest the same.

Section 8. Assistant Treasurers and Assistant Secretaries. Assistant Treasurers and Assistant Secretaries, if any, shall be elected and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the directors.

#### ARTICLE V

#### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other Than Those By or In the Right of the Corporation. Subject to Section 3 of this Article V, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings By or In the Right of the Corporation. Subject to Section 3 of this Article V, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article V, as the case may be. Such determination shall be made (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article V, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his or her conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or 2 of this Article V, as the case may be.

Section 5. Indemnification By a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article V, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article V. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 1 or 2 of this Article V, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article V nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article V.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Amended and Restated Certificate of Incorporation or any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article V shall be made to the fullest extent permitted by law. The provisions of this Article V shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article V but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of Delaware, as the same now exists or may hereafter be amended, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article V.

Section 9. Certain Definitions. For purposes of this Article V, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article V, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article V.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation on Indemnification. Notwithstanding anything contained in this Article V to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 hereof), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof):

(a) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation;

(b) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(c) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements); or

(d) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements).

Section 12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article V to directors and officers of the Corporation.

## ARTICLE VI

### MISCELLANEOUS

Section 1. Resignations. Any director, member of a committee or corporate officer may, provided the same would not result in a breach of any contract to which said person is a party, resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President, any Co-President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 2. Vacancies. If the office of any director, member of a committee or corporate officer becomes vacant, by reason of death, disability or otherwise, the remaining directors in office, though less than a quorum, by a majority vote may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his successor shall be duly chosen.

Section 3. Certificates of Stock. Certificates of stock, signed by the Chairman of the Board of Directors, or the President, any Co-President or any Vice President, and the Treasurer or an Assistant Treasurer, or Secretary or an Assistant Secretary, shall be issued to each stockholder certifying the number of shares owned by him in the Corporation. When such certificates are countersigned (1) by a transfer agent other than the Corporation or its employee, or (2) by a registrar other than the Corporation or its employee, the signatures of such officers may be facsimiles.

Section 4. Lost Certificates. A new certificate of stock may be issued in the place of any certificate theretofore issued by the Corporation, alleged to have been lost or destroyed, and the directors may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the Corporation a bond, in such sum as they may direct, not exceeding double the value of the stock represented by such certificate, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate, or the issuance of any such new certificate.

Section 5. Transfer of Shares. The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock transfer books and ledgers, or to such other person as the directors may designate, by whom they shall be canceled, and new certificates shall thereupon be issued. A record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

Section 6. Stockholders Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 7. Dividends. Subject to the provisions of the Amended and Restated Certificate of Incorporation, the Board of Directors may, out of funds legally available therefore at any regular or special meeting, declare dividends upon the capital stock of the Corporation as and when they deem expedient. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, such sum or sums as the directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the directors shall deem conducive to the interests of the Corporation.

Section 8. Seal. The corporate seal shall be circular in form and shall contain the name of the Corporation, the year of its creation and the words "CORPORATE SEAL DELAWARE." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 9. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors. In the absence of such determination, the fiscal year shall be the calendar year.

Section 10. Checks. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

Section 11. Notice and Waiver of Notice. Whenever any notice is required by these By-Laws to be given, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by statute.

Whenever any notice whatever is required to be given under the provisions of any law, or under the provisions of the Amended and Restated Certificate of Incorporation of the Corporation or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

## ARTICLE VII

### AMENDMENTS

These By-Laws may be altered or repealed and By-Laws may be made at any annual meeting of the stockholders or at any special meeting thereof by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote thereat, or by the affirmative vote of a majority of the Board of Directors, at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors.

Adopted by the Board of Directors  
on August 7, 2019.



**Stockholders of TheStreet Approve Merger with Maven  
and  
Final Special Cash Distribution Announced**

NEW YORK, August 7, 2019 -- TheStreet, Inc. (Nasdaq: TST), a leading financial news and information company, today announced TheStreet's stockholders approved the previously announced merger transaction (the "Merger"), pursuant to which an indirect subsidiary of TheMaven, Inc., a coalition of content producers operating on a shared digital publishing, advertising and distribution platform ("Maven"), will acquire all of the outstanding common shares of TheStreet for \$16.5 million in cash or \$3.09183364 per share (the "Merger Consideration").

In addition to a pro-rata portion of the Merger Consideration, stockholders of TheStreet will receive additional consideration in connection with the closing of the Merger consisting of (i) a final special cash distribution of \$3.35 per share as described below and (ii) a contingent value right, or CVR, which will entitle each holder to receive a pro-rata portion of funds escrowed in connection with the prior sale of its institutional business units when and if such funds are released from escrow in the first quarter of 2020 as further described below.

The Board of Directors has approved a final special cash distribution in the aggregate amount of \$17.9 million or \$3.35 per share, which distribution is contingent on the closing of the Merger (the "Pre-Merger Special Distribution"). The Pre-Merger Special Distribution consists of all cash held by the TheStreet immediately prior to the closing of the Merger less certain excluded liabilities as agreed to among the parties. The distribution will be made to stockholders of record on August 7, 2019 and payable on August 12, 2019.

In addition to the Merger Consideration and the Pre-Merger Special Distribution, stockholders of TheStreet will also receive a CVR which will entitle each holder to receive a pro-rata portion of funds from an outstanding escrow agreement entered into by the Company in connection with the sale of BoardEx and TheDeal. The escrowed funds are currently scheduled to be released after January 31, 2020 and management currently estimates that the aggregate amount that will be released from such escrow is \$520,000 or \$0.09 per share. There can be no assurance that this escrow will be released in full or at all since the purchaser in the prior transaction has certain indemnification rights related to pre-closing tax liabilities which may be satisfied through its receipt of all or a portion of such escrow. Therefore, there is no guaranty that any payment will be made to holders of CVRs in respect of their contingent value rights.

More than 96% of the shares of TheStreet voted at the special meeting were voted in favor of the Merger. TheStreet will file the final vote results on a Form 8-K with the U.S. Securities and Exchange Commission. The Merger is expected to close after the market closes on August 7, 2019. Following the closing of the Merger, TheStreet's common stock will cease to be traded on the Nasdaq Capital Market.

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Moelis & Company LLC acted as the sole financial advisor to TheStreet on the transaction. Lake Street Capital Markets, LLC rendered a fairness opinion to the Board of Directors of TheStreet with respect to the Merger Consideration and Orrick, Herrington & Sutcliffe LLP acted as legal advisor to TheStreet.

**About TheStreet, Inc.**

TheStreet, Inc. (NASDAQ: TST, [www.t.st](http://www.t.st)) is a leading financial news and information provider to investors and institutions worldwide. The Company's flagship brand, TheStreet ([www.thestreet.com](http://www.thestreet.com)), has produced unbiased business news and market analysis for individual investors for more than 20 years.

**About Maven**

Maven ([maven.io](http://maven.io)) is a coalition of Mavens, including individual thought-leaders to world-leading independent publishers, operating on a shared digital publishing, advertising, and distribution platform and unified under a single media brand. Based in Seattle, Maven is publicly traded under the ticker symbol MVEN.

**Notice Regarding Forward-Looking Statements**

This press release contains forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements regarding our planned sale of the Company. Such forward-looking statements are subject to risks and uncertainties, including those described in the Company's filings with the Securities and Exchange Commission ("SEC") that could cause actual results to differ materially from those reflected in the forward-looking statements. Factors that might contribute to such differences include, among others, failure of the merger transaction to close, failure of the Company to receive the expected release of funds from the escrow agreement which is the basis for the CVR, economic downturns and the general state of the economy, including the financial markets and mergers and acquisitions environment; our ability to drive revenue, and increase or retain current subscription revenue, particularly in light of the investments in our expanded news operations; our ability to develop new products; competition and other factors set forth in our filings with the SEC, which are available on the SEC's website at [www.sec.gov](http://www.sec.gov). All forward-looking statements contained herein are made as of the date of this press release. Although the Company believes that the expectations reflected in the forward-looking statements are reasonable, the Company cannot guarantee future results or occurrences. The Company disclaims any obligation to update these forward-looking statements, whether as a result of new information, future developments or otherwise.

Contacts: Eric Lundberg, CEO and CFO, TheStreet, Inc., [Eric.lundberg@thestreet.com](mailto:Eric.lundberg@thestreet.com)

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