

and the provisions of such Restated Certificate of Incorporation.

In witness whereof, the undersigned has executed this certificate this ____ day of ____, 2003.

The Nasdaq Stock Market, Inc.

By: _____
(signature)

(printed name)

(title)

[Certificate of Designations, Preferences and Rights of Series a Cumulative Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of 1,338,402 shares, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

Annex A

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this ____ day of ____, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

Schedule A

No change.

[Certificate of Designations, Preferences and Rights of Series B Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to Section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of one share, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

ANNEX B

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this ____ day of ____, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is restating its certificate of incorporation as a single document. Nasdaq's certificate of incorporation currently comprises the Restated Certificate of Incorporation dated June 27, 2000,⁵ the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, and the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002,⁶ and the Certificate of Amendment dated August 7, 2002.⁷ It is necessary to make several non-substantive modifications to the wording of several of these documents, to allow their assembly into a single, internally consistent document with appropriate internal cross-references. Under Delaware corporate law, the integration of a certificate of incorporation into a single restated document, but without substantive amendment, is required to be approved by a corporation's board of directors but not its stockholders.⁸ On January 29, 2003, the Nasdaq Board of Directors provided the approval required under Delaware law. Nasdaq will file the restated certificate of incorporation with the Secretary of State of the State of Delaware promptly after the submission of this proposed rule change to the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general, and with section 15A(b)(2) of the Act,¹⁰ in particular, in that it is consistent with Nasdaq being so organized and having the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act.

⁵ See Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR-NASD-00-27).

⁶ See Securities Exchange Act Release No. 45638 (March 25, 2002), 67 FR 15268 (March 29, 2002) (SR-NASD-2002-36).

⁷ See Securities Exchange Act Release No. 45135 (December 5, 2001), 66 FR 64327 (December 12, 2001) (SR-NASD-2001-34); Securities Exchange Act Release No. 46060 (June 11, 2002), 67 FR 41558 (June 18, 2002) (SR-NASD-2002-64).

⁸ 8 Del. C. 245.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-(b)(2).