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

On October 29, 1999, the Exchange implemented the E-Session, which permits investors to submit limit orders for execution until 5:30 p.m., Central Time. To encourage members to seek additional order flow during the E-Session, the Exchange developed an E-Session credit program, necessitating a change to the Schedule. The proposal amends the Schedule to provide Exchange specialists and floor brokers with a credit of $.25 per trade executed during the E-Session through October 1, 2000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] The Commission notes that the proposal may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider best execution and disclosure obligations they may have under the federal securities laws in general, and particularly under Rules 10b–10 and 11Ac1–3 under the Act. 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–12, and should be submitted by June 13, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12928 Filed 5–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42790; File No. SR–NASD–00–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending the Nasdaq By-Laws and Restated Certificate of Incorporation

May 16, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on May 11, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is proposing to amend its By-Laws and Restated Certificate of Incorporation. Additions are italicized, deletions are bracketed.

By-Laws of the NASDAQ Stock Market, Inc.

Article I Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

* * * * *

(i) ''Director'' means a member of the Board[, excluding the Chief Executive Officer of the NASD];

(j) ''Industry Director'' or ''Industry member'' means a Director (excluding the President *or the Chief Executive Officer*) or Nasdaq Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding and outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or members's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, or Amex (and any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(q) ''Non-Industry Director'' or ''Non-Industry member'' means a Director (excluding the President *or the Chief Executive Officer)* or Nasdaq Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

* * * * *

(s) ''Public Director'' or ''Public member'' means a Director or Nasdaq Listing and Hearing Review Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq; [and]

(t) ''Rules of the Association'' or ''Rules'' means the numbered rules set forth in the NASD Manual beginning with the rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented [.]*;*

* * * * *

(w) ''Amex'' means American Stock Exchange LLC; *and*

(x) ''Amex Board'' means the Board of Governors of Amex [;].

Article III Meetings of [The Stockholder] Stockholders

Action by Consent of Stockholder

[Sec. 3.1 Any action required or permitted by law to be taken at any meeting of the stockholder of Nasdaq may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder of the outstanding stock.]

Annual Meetings of Stockholders

Sec. 3.1 (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to Nasdaq's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the National Nominating Committee or (iii) by any stockholder of Nasdaq who was a stockholder of record of Nasdaq at the time the notice provided for in this Section 3.1 is delivered to the Secretary of Nasdaq, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 3.1.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of Nasdaq and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of Nasdaq not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by Nasdaq). For purposes of the first annual meeting of stockholders of Nasdaq held after 2000, the first anniversary of the 2000 annual meeting of stockholders shall be deemed to be _____, 2001. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and Rule 14a–11 thereunder (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes proposal to amend the By-Laws of Nasdaq, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on Nasdaq's books, and of such beneficial owner, (B) the class and number of shares of capital stock of Nasdaq which are owned beneficially and of record by such stockholder and such beneficial owner, (c) a representation that the stockholder is a holder of record of stock of Nasdaq entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of Nasdaq's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. Nasdaq may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of Nasdaq.

(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by Nasdaq naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices at Nasdaq not later than the close of business on the tenth day following the day on which such public announcement is first made by Nasdaq.

Special Meetings of Stockholders

Sec. 3.2 Only such business shall be conducted at a special meeting of

stockholders as shall have been brought before the meeting pursuant to Nasdaq's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to Nasdaq's notice of meeting (a) by or at the direction of the Board or the National Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of Nasdaq who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of Nasdaq, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event Nasdaq calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholders entitled to vote in such election may nominate a person or persons (as the case may be) for election of such position(s) as specified in Nasdaq's notice of meeting, if the stockholders's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of Nasdaq not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later then the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commerce a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

General

Sec. 3.3 (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of Nasdaq to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of Nasdaq to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by Nasdaq.

(b) For purposes of this Article III, ''public announcement'' shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by Nasdaq with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in Nasdaq's proxy stateement pursuant to Rule 14a–8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

Conduct of Meetings

Sec. 3.4 The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announed at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedurs and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of Nasdaq, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Article IV Board of Directors

General Powers

Sec. 4.1 No change.

Number of Directors

Sec. 4.2 The [Board shall consist of no fewer than five and no more than ten Directors, the exact number to] *exact number of members of the Board shall* be determined by resolution adopted by the [stockholder of Nasdaq from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the NASD Regulation Board] *Board from time to time.* Any new Director position created as a result of an increase in the size of the Board shall be filed [pursuant to Section 4.4] *in accordance with the Restated Certificate of Incorporation.*

Qualifications

Sec. 4.3 Directors need not be stockholders of Nasdaq. [Only Governors of the NASD Board shall be eligible for election to the Board. The President of Nasdaq shall be a Director.] The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, plus the President *and the Chief Executive Officer (if they are elected Directors),* unless the Board consists of ten *or more* Directors. In such case at least two Directors shall be issuer representatives. [The Chief Executive Officer of the NASD shall be an ex-offico non-voting member of the Board] *At least two Industry Directors*

and two Non-Industry Directors shall be drawn from candidates proposed to the National Nominating Committee by a majority of the non-NASD stockholders of Nasdaq.

Election

Sec. 4.4 Except as otherwise provided by law, these By-Laws, or the Delegation Plan, after the first meeting of Nasdaq at which Directors are elected, *a class of* Directors of Nasdaq shall be elected each year at the annual meeting of the [stockholder] *stockholders,* or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefore, the Directors shall cause such election to be held as soon thereafter as convenient.

Resignation

Sec. 4.5 Any Director may resign at any time either upon written notice of resignation to the Chair of the Board, *the Chief Executive Officer,* the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 4.6 Any or all of the Directors may be removed from office at any time, [with or without cause, only by a majority vote of the NSDA Board] *but only for cause, by the affirmative vote of at least 66⅔ percent of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class.*

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) [*The*] the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the [NASD] Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board[, including not less than 50 percent of the Non-Industry Directors]. On the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.

(b) Except as provided [in Section 4.14(b)] *herein or by applicable law,* the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

Sec, 4,10 No change.

Meetings

Sec. 4.11 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the [stockholder] *stockholders,* no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [4.13] *4.12.*

(b) No change.

(c) Special meetings of the Board may be called by the Chair of the Board, *by the Chief Executive Officer,* by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) No change.

Notice of Meetings; Waiver of Notice

Sec. 4.12 (a) No change.

(b) No change.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, *Except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.*

Committees

Sec. 4.13 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. 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 the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice[, for refusal, failure, neglect, or inability to discharge such committee member's duties].

(b) No change.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of Nasdaq; adopting an agreement of merger or consolidation; recommending to the [stockholder] *stockholders* the sale, lease, or exchange of all or substantially all Nasdaq's property and assets; or recommending to the [stockholder] *stockholders* a dissolution of Nasdaq or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of Nasdaq between meetings of the Board, and which may authorize the seal of Nasdaq to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The [President] *Chief Executive Officer* of Nasdaq shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the [President] *Chief Executive Officer.* An Executive Committee

member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee[, including not less than 50 percent of the Non-Industry committee members]. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of Nasdaq, including recommendations for Nasdaq's annual operating and capital budgets and proposed changes to the rates and fees charged by Nasdaq. The Finance Committee shall consist of three or four Directors. The [President] *Chief Executive Officer* of Nasdaq shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(f) No change.

(g) No change.

(h) Upon request of the Secretary of Nasdaq, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of Nasdaq shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of Nasdaq, and shall report immediately to the Secretary any change in such [classification] information.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 (a) No change.

(b) No contract or transaction between Nasdaq and one or more of its Directors of officers, or between Nasdaq and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmation vote of a majority of the disinterested Directors*, even though the disinterested Directors be less than a quorum;* (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors*, even though the disinterested Directors be less than a quorum;* or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholder] *stockholders* entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between Nasdaq and: the NASD, NASD Regulation, Nasdaq-Amex, or Amex] *stockholders.*

* * * * *

Article V NASDAQ Listing and Hearing Review Council

Appointment and Authority

Sec. 5.1 No change.

Number of Members and Qualifications

Sec. 5.2 No change.

Nomination Process

Sec. 5.3 The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the National Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such [qualifications or classification] *information.*

* * * * *

Article VII Officers, Agents, and Employees

Principal Officers

Sec. 7.1 The principal officers of Nasdaq shall be elected by the Board and shall include a Chair, *a Chief Executive Officer,* a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board and the [President] *Chief Executive Officer,* need be Directors of Nasdaq.

Election of Principal Officers; Term of Office

Sec. 7.2 No change.

Subordinate Officers, Agents, or Employees

Sec. 7.3 In addition to the principal officers, Nasdaq may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, *the Chief Executive Officer,* the President, or any officer designated by the Board, may from time to time determine. Agents and employees of Nasdaq shall be under the supervision and control of the officers of Nasdaq, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. 7.4 No change.

Resignation and Removal of Officers

Sec. 7.5 (a) Any officer may resign at any time upon written notice of resignation to the Board, *the Chief Executive Officer,* the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) No change.

Bond

Sec. 7.6 No change.

Chair of the Board

Sec. 7.7 The Chair of the Board shall preside at all meetings of the Board *and stockholders* at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

[President] *Chief Executive Officer*

Sec. 7.8 *The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board and stockholders at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of Nasdaq and shall have general supervision over the business and affairs of Nasdaq. The Chief Executive Officer shall have all*

powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

President

Sec. [7.8]*7.9* The President shall, in the absence of the Chair of the Board *and the Chief Executive Officer,* preside at all meetings of the Board *and stockholders* at which the President is present. The President [shall be the Chief Executive Officer of Nasdaq and] shall have general supervision over the business and affairs of Nasdaq. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers perform such other duties as may be assigned to the President from time to time by the Board.

Vice President

Sec. [7.9] *7.10* The Board shall elect one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, *the Chief Executive Officer* or the President. The term ''Vice President'' used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Secretary

Sec. [7.10] *7.11* The Secretary shall act as Secretary of all meetings of the [stockholder] *stockholders* and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of Nasdaq, and shall have supervision over the care and custody of the corporate records and the corporate seal of Nasdaq. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of Nasdaq under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, *the Chief Executive Officer* or the President.

Assistant Secretary

Sec. [7.11] *7.12* In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

Treasurer

Sec. [7.12] *7.13* The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of Nasdaq and shall cause the funds of Nasdaq to be deposited in the name of Nasdaq in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of Nasdaq. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, *the Chief Executive Officer* or the President.

Assistant Treasurer

Sec. [7.13] 7.14 In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

Article VIII Indemnification

Indemnification of Directors, Officers, Employees, Agents, Nasdaq Listing and Hearing Review Council and Committee Members

Sec. 8.1 (a) No change.

(b) Nasdaq shall advance expenses (including attorneys' fees and disbursements) *reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition* to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

* * * * *

Article IX Capital Stock

[Sole Stockholder] Certificates

[Sec. 9.1 The NASD shall be the sole stockholder of the capital stock of Nasdaq.] Certificates

[See 9.2 The] *Sec. 9.1 Each* stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in Nasdaq owned by [the] *such* stockholder.

Signatures

Sec. [9.3] *9.2* (a) Certificates for shares of capital stock of Nasdaq shall be signed in the name of Nasdaq by two officers with one being the Chair of the Board, *the Chief Executive Officer,* the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of Nasdaq or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than Nasdaq or its employee, or by a registrar other than Nasdaq or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by Nasdaq with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [9.4] *9.3* (a) A record of all certificates for capital stock issued by Nasdaq shall be kept by the Secretary or any other officer, employee, or agent

designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) Nasdaq shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Nasdaq shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not Nasdaq shall have express or other notice thereof.

Transfers of Stock

Sec. [9.5] *9.4* (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of Nasdaq. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of Nasdaq only upon delivery to Nasdaq or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [9.6] *9.5* Each certificate for capital stock surrendered to Nasdaq for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section [9.7] *9.6* until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Multilated Certificates

Sec. [9.7] *9.6* In the event that any certificate for shares of capital stock of Nasdaq shall be multilated, Nasdaq shall issue a new certificate in place of such multilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, Nasdaq may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any multilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to Nasdaq a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify Nasdaq against any claim that may be against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Fixing of Record Date

Sec. [9.8] *9.7* The Board may fix a record date in accordance with Delaware law.

Article X Miscellaneous Provisions

Corporate Seal

Sec. 10.1 No change.

Fiscal Year

Sec. 10.2 No change.

Waiver of Notice

Sec. 10.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholder] *stockholders,* Directors, or members of a committee of Directors need be specified in any written waiver of notice.

* * * * *

Article XI Amendments; Emergency By-Laws

By [Stockholder] *Stockholders*

Sec. 11.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the [stockholder] *stockholders by the affirmative vote of the holders of at least 66⅔ percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class,* provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. 11.2 No change.

Emergency By-Laws

Sec. 11.3 The Board may adopt emergency By-Laws subject to repeal or change by action of the [stockholder] *stockholders* which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which Nasdaq conducts its business or customarily holds meetings of the Board or the [stockholder] *stockholders,* any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

* * * * *

Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.

The undersigned, _____[Joan C. Conley, Corporate Secretary], *the* of The Nasdaq Stock Market, Inc. (''Nasdaq''), a Delaware corporation, does hereby certify:

First: That the name of the corporation is The Nasdaq Stock Market, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was ''NASD Market Services, Inc.''

Second: That the Certificate of Incorporation of Nasdaq [has been] *is hereby* amended and restated *to read* in its entirety as follows:

Article First

The name of the corporation is The Nasdaq Stock Market, Inc.

Article Second

The address of Nasdaq's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of Nasdaq's registered agent at such address is The Corporation Trust Company.

Article Third

The nature of the business or purposes to be conducted or promoted 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, and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, shall include, *to the extent applicable to Nasdaq*, the responsibilities and functions set forth in the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,'' as approved by the Securities and Exchange Commission, as amended from time to time.

Article Fourth

[Nasdaq shall be authorized to issue a total of 2,000 shares of common stock with no par value.

Article Fifth

Nasdaq shall be governed by the Board of Directors of such number and having such qualifications, powers, and duties as shall be provided in the By-Laws. The Board shall be selected in such manner, and shall serve for such term, as shall be stated in the By-Laws. The Board of Directors shall have the power to adopt, alter, or repeal the By-Laws of Nasdaq at any meeting at which a quorum is present] *A. The total number of shares of stock which Nasdaq shall have the authority to issue is Three Hundred Thirty Million (330,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as ''Preferred Stock), and Three Hundred Million (300,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as ''Common Stock'').*

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the ''Board'') is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as ''Preferred Stock Designation''), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.

(4) Dates at which dividends, if any, shall be payable.

(5) The redemption rights and price or prices, if any, for shares of the series.

(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.

(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.

(9) Restrictions on the issuance of shares of the same series or of any other class or series.

(10) The voting rights, if any, of the holders or shares of the series.

C. 1. Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall any record owner of any outstanding Common Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock (''Excess Shares'') in excess of five percent (5%) of the then-outstanding shares of Common Stock, be entitled or permitted to vote any Excess Shares. For all purposes hereof, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d–3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), as in effect on the date of filing this Restated Certificate of Incorporation.

3. The following definitions shall apply to this paragraph C. of this Article Fourth:

(a) ''Affiliate'' shall have the meaning ascribed to that term in Rule 12b–2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of filing this Restated Certificate of Incorporation.

(b) A person shall be deemed the ''beneficial owher'' of, shall be deemed to have ''beneficial ownership'' of and shall be deemed to ''beneficially own'' any securities:

(i) which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d–3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;

(ii) which such person or any such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such

person in response to a public proxy or consent solicition made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities;

provided, however, that (A) no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the ''beneficial owner'' of, to have ''beneficial ownership'' of or to ''beneficially own'' any securities that are ''beneficially owned'' (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person, and (B) the Voting Trustee, as defined in the Voting Trust Agreement by and among Nasdaq, the National Association of Securities Dealers, Inc., a Delaware corporation (the ''NADS'', and The Bank of New York, a New York banking corporation, as such may be amended from time to time (the ''Voting Trust Agreement''), shall not be deemed, solely by reason of such person's status or authority as such, to be the ''beneficial owner'' of, to have ''beneficial ownership'' of or to ''beneficially own'' any securities that are governed by and held in accordance with the Voting Trust Agreement.

(c) A ''person'' shall mean any individual, firm, corporation, partnership, limited liability company or other entity.

(d) ''Exempt Person'' shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.

(e) ''Subsidiary'' of any person shall mean any corporation or other entity of which securities or other ownership interests have ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such person, and any corporation or other entity that is otherwise controlled by such person.

(f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of Common Stock beneficially owned by any person, (2) whether a person is an Affiliate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (4) the application of any other definition or operative provision hereof to the given facts, or (5) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.

4. The Board shall have the right to demand that any person who is reasonably believed to hold of record or beneficially own Excess Shares supply Nasdaq with complete information as to (a) the record owner(s) of all shares beneficially owned by such person who is reasonably believed to own Excess Shares, and (b) any other factual matter relating to the applicability or effect of this paragraph C. of this Article Fourth as may reasonably be requested of such person.

5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth, in good faith and on the basis of such information and assistance as was then reasonably available for such purpose, shall be conclusive and binding upon Nasdaq and its stockholders.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares beneficially owned by (a) the NASD or its Affiliates until such time as the NASD beneficially owns five percent (5%) or less of the outstanding shares of Common Stock or (b) any other person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of Common Stock. The Board, however, may not approve an exemption under this Section 6(b): (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq and its stockholders that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders, including stockholders that beneficially own Excess Shares, notwithstanding any such finding.

Article Fifth

A. The business and affairs of Nasdaq shall be managed by, or under the direction of, the Board. The total number of directors constituting the entire Board shall be fixed from time to time by the Board.

B. The Board (other than those directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article Fourth hereof, (the ''Preferred Stock Diectors'')) shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Class I directors shall initially serve until the first annual meeting of stockholders following the

effectiveness of this Restated Certificate of Incorporation; Class II directors shall initially serve until the second annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation; and Class III directors shall initially serve until the third annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation. Commencing with the first annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal as possible.

C. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled by the Board. Any director so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

D. Except for Preferred Stock Directors, any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of [the majority of the whole Board of Directors.] *at least 66⅔% of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors (''Voting Stock''), voting together as a single class.*

E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article Four hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of Nasdaq shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of Nasdaq shall automatically be reduced accordingly.

Article Sixth

A. A director of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

B. Any repeal or modification of [the foregoing] paragraph *A.* shall not adversely affect any right or protection of a director of Nasdaq existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article [Sixth] *Seventh*

[Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.] *No action that is required or permitted to be taken by the stockholders of Nasdaq at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders.*

[Article Seventh] *Article Eighth*

In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws of Nasdaq: provided, however, that the By-Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto, provided further that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law or this Restated Certificate of Incorporation, the affirmative vote of the holders of at least 66⅔% percent of the total voting power of the outstanding Voting Stock, voting together as a single class, shall be required in order for the stockholders to adopt, alter, amend or repeal any By-Law.

Article Ninth

Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; provided, however, that the affirmative vote of the holders of at least 66⅔% of the voting power of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth.

Article Tenth

Nasdaq shall have perpetual existence.

Article Eleventh

In light of the unique nature of Nasdaq and its operations and in light of Nasdaq's status as a self-regulatory organization, the Board of Directors, when evaluating (A) any tender or exchange offer or invitation for tenders or exchanges, or proposal to make a tender or exchange offer or request or invitation for tenders or exchanges, by another party, for any equity security of Nasdaq, (B) any proposal or offer by another party to (1) merge or consolidate Nasdaq or any subsidiary with another corporation or other entity, (2) purchase or otherwise acquire all or a substantial portion of the properties or assets of Nasdaq or any subsidiary, or sell or otherwise dispose of to Nasdaq or any subsidiary all or a substantial portion of the properties or assets of such other party, or (3) liquidate, dissolve, reclassify the securities of, declare an extraordinary dividend of, recapitalize or reorganize Nasdaq, (C) any action, or any failure to act, with respect to any holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth, (D) any demand or proposal, precatory or

otherwise, on behalf of or by a holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth or (E) any other issue, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board of Directors deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fradulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Third: That such Restated Certificate of Incorporation has been duly adopted by [the stockholder of] Nasdaq in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware *and in accordance with Section 228 of the General Corporation Law of the State of Delaware (by the written consent of its sole stockholder*).

In witness whereof, the undersigned [have] *has* executed this certificate this ____ [24th day of November, 1997] day of _____, ____.

THE NASDAQ STOCK MARKET, INC.

By:_____

(signature)

[Joan C. Conley] [Corporate Secretary]

_____

(printed 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

The purpose of the proposed rule change is to amend Nasdaq's By-Laws and Restated Certificate of Incorporation (''Certificate'') in accordance with the Restructuring Plan (the ''Restructuring'') approved by NASD members on April 14, 2000, with 3,423 members voting in favor and 652 against the Restructuring. The Restructuring involves broadening the ownership in Nasdaq (which is currently 100 percent owned by the NASD) through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors and strategic partners. In order to implement the Restructuring, Nasdaq must amend its By-Laws and Certificate. The proposed rule change, as described below, includes amendments needed to implement Phase I of the Restructuring. During this Phase, Nasdaq will continue to operate under the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries (the ''Delegation Plan''), as approved by the Commission. Nasdaq will submit an Application For, and Amendments to Application For, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act (Form 1) to obtain exchange registration. After exchange registration, Nasdaq will no longer operate under the Delegation Plan.

By-Laws

Article I

Nasdaq proposes to amend the definitions in Article I(i), (j), and (q) to reflect the newly created Chief Executive Officer position. *See* Article VII, Section 7.8. Nasdaq also proposes conforming amendments in Article IV, Sections 4.5, 4.11(c), 4.13(d) and (e); Article VII, Sections 7.1, 7.3, 7.5, 7.9, 7.10, 7.11, and 7.13; and Article IX, Section 9.2.

Article III

Nasdaq proposes procedures for annual and special meetings of stockholders, including procedures for a stockholder to nominate persons for election to the Board or to propose business to be considered at an annual meeting.

Article IV

Nasdaq proposes to amend Section 4.2 to permit the Board to determine the number of Directors. Currently, this Section requires that the number of Nasdaq Directors equal the number of NASD Regulation Directors. This provisions was designed to balance the roles of the subsidiaries in the current interlocking Board structure and is no longer applicable under the new structure. Under the proposed rule change, any increase in the size of the Board would be filled in accordance with the Certificate, as described below.

Under Section 4.3, Nasdaq proposes to remove the requirement that all Directors also be Governors of the NASD Board. As part of the Restructuring, the non-NASD shareholders will have the right to nominate four Directors who will not be NASD Governors. These four Directors must be proposed to the NASD National Nominating Committee by a majority of non-NASD stockholders of Nasdaq. The number of Non-Industry Directors would continue to equal or exceed the number of Industry Directors, plus the newly created Chief Executive Officer and the Nasdaq President (if they are elected to be Directors). To maintain this balance, the four new Nasdaq Director positions will be evenly split between Industry and Non-Industry Directors.

Nasdaq proposes to amend Section 4.6 by deleting the provision that permits a Director to be removed with or without cause by a majority vote of the Board. Under the proposed rule change, a Director could only be removed for cause by an affirmative vote of at least 66⅔ percent of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class. The Certificate contains a similar provision. *See* Article Fifth, Paragraph D, Certificate.

Nasdaq proposes to amend Section 4.8 to authorize the Nasdaq Board, rather than the NASD Board, to fill vacancies on the Nasdaq Board. *See also* Article Fifth, Paragraph C, Certificate.

Nasdaq proposes to amend Section 4.9 to provide that a quorum for the transaction of business at a Board meeting shall consist of a majority of the Board. The requirement that the quorum also include not less than 50 percent of the Non-Industry directors is eliminated, on the advice of NASD's Delaware Counsel that these provisions would be deemed, under Delaware's General Corporation Law (''Delaware Law''), to confer special voting powers on the non-industry members: Section 141(d) of Delaware Law permits such disparity only where the Directors are elected by separate classes of stock, and such disparity of directors is delineated in the certificate of incorporation.

Nasdaq proposes to amend Section 4.13(a) to eliminate a provision that the Board may remove a committee member only for refusal, failure, neglect, or inability to discharge the committee member's duties. Removal of a committee member would still require a majority vote of the whole Board and notice to the committee member.

Nasdaq proposes to amend Section 4.14(b), which concerns interested party transactions, to permit the authorization or ratification of an interested party transaction by a majority of disinterested Directors, even if the number of such Directors does not constitute a quorum. The Section is further amended by eliminating a provision that excludes from application of the Section any contracts or transactions among the NASD companies. The amended Section will not apply to contracts or transactions among stockholders.

Article IX

The text of Section 9.1, which states that the NASD shall be the sole stockholder of Nasdaq, is deleted. The remainder of Article IX is renumbered accordingly. References to a single stockholder throughout the By-Laws are amended to refer to ''stockholders.''

Article XI

Currently, as sole stockholder of Nasdaq, the NASD may amend the Nasdaq By-Laws. Nasdaq proposes to amend Section 11.1 to eliminate this authority and provide that the Nasdaq By-Laws may be amended by an affirmative vote of the holders of at least 66⅔ percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class. As under the current By-Laws, the Nasdaq Board also may amend the By-Laws. *See also* Article Eighth, Certificate.

Certificate

Nasdaq is amending the Certificate to conform it to the changes described above,, as well as to make the following changes.

Article Fourth

Number of Shares: The Certificate currently authorizes Nasdaq to issues 2,000 shares of common stock. The authorization is increased to 330 million shares.

Blank Check Preferred Stock: Under Delaware Law, a certificate of incorporation of a corporation can authorize the issuance of shares of preferred stock, the terms of which are not set forth in the certificate of incorporation but may be fixed by the board of directors in the future. The Certificate authorizes the issuance of such shares and confers upon the Nasdaq Board such authority.

Scaled Voting: Paragraph C of Article Fourth contains a ''scaled voting'' provision. Pursuant to this provision, beneficial owners of Nasdaq common stock have their voting power capped. Specifically, any person who benefically owns shares of common stock in excess of five percent of the then-outstanding shares of common stock (''Excess Shares'') will not be entitled or permitted to vote any such Excess Shares. This provision is not, however, applicable to: (1) the NASD or its affiliates until such time as NASD beneficially owns five percent of less of the outstanding shares of Nasdaq common stock; or (2) any other person approved by the Board for such an exemption before such person owns more than five percent of the outstanding shares of Nasdaq common stock. The purpose of this latter exemptive provision is to allow some flexibility should Nasdaq seek to enter into a business combination in which it would want to utilize shares of common stock in the transaction. The Nasdaq Board may not approve an exemption for a registered broker or dealer or an affiliate (with certain exceptions for affiliates as defined in the provision) or an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Nasdaq Board may grant an exemption to any other shareholder if the Board determines that granting an exemption would: (1) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Article Fifth

Board Size: Under Delaware Law, the number of directors must be fixed by, or in the manner provided in, the by-laws unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment to the certificate of incorporation. The Certificate vests the Board with the exclusive authority to fix the number of directors of Nasdaq.

Staggered Board: Delaware Law permits a corporation, either in its certificate of incorporation or in a stockholder-adopted by-law, to divide its board of directors into three classes, with the term of office of one-third of the directors expiring each year. A staggered or classified board of directors provides for continuity of membership and limits an acquiror's ability to effect a rapid change in control of a corporation and/or its management, since it will take at least two stockholder meetings, instead of one, for majority control of the board to shift. The Certificate contains such a provision. Under the amended Certificate, Directors elected to the classified board may be removed only for cause and by affirmative vote of at least 66⅔% of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class. *See also* Article IV, Section 4.4, Bylaws.

Filling Vacancies on the Board and Newly-Created Directorship: Under Delaware Law, unless otherwise provided in the certificate of incorporation or by-laws, (i) vacancies and newly-created directorships may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or (ii) if holders of any class or classes of stock are entitled to elect one or more directors, vacancies and newly-created directorships of such class or classes may be filled by a majority of the other directors elected by such class or classes. The Certificate vests the Board with the exclusive authority to fill vacancies on the Board and newly-created directorships.

Article Seventh

Limitations on Stockholder Actions Without Meetings: Unless otherwise provided in the certificate of incorporation, stockholders of a Delaware corporation may take action without meetings, without prior notice and without a vote if a consent or consents in writing setting forth the action taken is signed by the holders of that number of shares that would be required to authorize the taking of such action at a meeting at which all shares were present. The Certificate prohibits stockholder action by written consent.

Articles Eighth and Ninth

Power of Board to Amend By-Laws: Under Delaware Law, stockholders have the power to adopt, amend, or repeal by-laws. However, the certificate of incorporation can also confer this power upon the directors. The Certificate vests

the Nasdaq Board with such concurrent authority.

Supermajority Voting Requirements for By-Law or Certificate Amendments: Delaware Law permits the certificate of incorporation to require a supermajority vote of stockholders for particular corporate action. The Certificate requires the approval of 66⅔% of the outstanding voting power for stockholder approval of amendments to certain provisions of the Certificate and for stockholders to amend the Nasdaq By-Laws.

Article Eleventh

The amended Certificate includes a new constituency provision that reflects the unique nature of the Nasdaq and its operations and status as a self-regulatory organization. To the fullest extent permitted by applicable law, this provision requires the Board to take into account certain factors in evaluating tender or exchange offers, mergers or consolidations, voting exemptions pursuant to Article Fourth, and other issues. These factors include, but are not limited to: (i) the potential impact thereof on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the voting limitations and constituency provision in Articles Fourth and Eleventh of the Certificate will serve the public interest by ensuring that certain individuals or entities cannot gain under influence over the operations of the Nasdaq Stock Market.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Nasdaq neither solicited nor received comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–27 and should be submitted by June 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12926 Filed 5–22–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42785; International Series Release No. 1223; File No. SR–NYSE–00–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of UBS AG

May 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'');[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2000, the New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange is proposing to adopt an interpretation under its rules to accommodate the trading of UBS AG (''UBS''). UBS is a stock corporation incorporated under the laws of Switzerland with a single class of common stock—ordinary shares with a par value of 20 Swiss Francs each—that will trade on both the NYSE and the Swiss Exchange, as well as on other exchanges around the world.

UBS will solicit proxies in a manner that combines characteristics of both the Swiss and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Exchange's Listed Company Manual (''Manual'') to accept UBS's proposed proxy procedures.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.