

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47801; File No. SR-NASD-2003-76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Restate the Certificate of Incorporation of The Nasdaq Stock Market, Inc.

May 6, 2003.

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 April 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act³ and rule 19b-4(f)(3) thereunder,⁴ which renders the rule effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

Nasdaq is restating (but not substantively amending) its certificate of incorporation. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

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

The undersigned, _____, 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 *Restated Certificate of Incorporation of Nasdaq dated June 27, 2000, as previously amended by the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002, and the Certificate of Amendment dated August 7, 2002*, is hereby [amended and] restated *and integrated* to read in its entirety as follows:

Article First—Article Third

No change.

Article Fourth

A. No change.

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 of shares of the series. *Pursuant to the foregoing authority, the Board has previously authorized the issuance of (i) Series A Cumulative Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002, and (ii) Series B Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002. The number of shares included in the Series A Cumulative Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex A hereto, and the number of shares included in the Series B Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex B hereto.*

C. No change.

Article Fifth—Article Eleventh

No change.

Third: That such Restated Certificate of Incorporation has been duly adopted by Nasdaq in accordance with the applicable provisions of Section[s] 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).];

Fourth: That such Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of Nasdaq's certificate of incorporation as heretofore amended or supplemented, and that there is no discrepancy between those provisions

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78S(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

and the provisions of such Restated Certificate of Incorporation.

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

The Nasdaq Stock Market, Inc.

By: _____
(signature)

(printed name)

(title)

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

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

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

[Does hereby certify that:]

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

Annex A

Section 1—Section 13. No change.

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

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

Schedule A

No change.

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

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

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

[Does hereby certify that:]

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

ANNEX B

Section 1—Section 13. No change.

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

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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

2. Statutory Basis

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

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

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

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

⁸ 8 Del. C. 245.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-(b)(2).

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, as amended.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(3) of rule 19b-4 thereunder,¹² because it is concerned solely with the administration of the self-regulatory organization. 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.

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 number SR-NASD-2003-76 and should be submitted by June 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

Office of International Energy and Commodities Policy

[Public Notice 4362]

Finding of No Significant Impact and Summary Environmental Assessment: PMI Services North America, Inc. Pipeline in Cameron County, TX

The proposed action is to issue a Presidential Permit to PMI Services North America, Inc. ("PMI") to construct, connect, operate and maintain a 10⁵/₈-inch outer diameter ("OD") pipeline to convey refined petroleum products and liquid petroleum gas ("LPG") across the border between Mexico and Cameron County, Texas. On behalf of PMI, URS Corporation of Austin, Texas, prepared a draft environmental assessment under the guidance and supervision of the Department of State (the "Department"). The Department placed a notice in the **Federal Register**, 67 FR 65168 (2002), regarding the availability for inspection of PMI's Presidential Permit application and the draft environmental assessment.

Numerous Federal and State agencies independently reviewed the draft environmental assessment. They include: the United States Section of the International Boundary and Water Commission, the Department of Transportation, the Department of the Interior, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Federal Emergency Management Administration, the Department of Defense, the Department of Commerce, the Department of Homeland Security, the Council on Environmental Quality, the Texas Railroad Commission, the Texas Historical Commission, the Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality. Some members of the public also reviewed the draft environmental assessment and submitted comments to the Department.

Comments received from the Federal and State agencies and the public were responded to directly or by incorporation in the analysis contained in the revised draft environmental

assessment and/or by developing measures to be undertaken by PMI to prevent or mitigate potentially adverse environmental impacts.

This summary environmental assessment, comments submitted by the Federal and State agencies and the public, responses to those comments, and the final environmental assessment, as amended, together constitute the "Final Environmental Assessment" of the proposed action by the Department.

Summary of the Environmental Assessment

I. The Proposed Project

The Department is charged with the issuance of Presidential Permits for the construction, connection, operation and maintenance of pipelines crossing international boundaries. See Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993). PMI has applied for a Presidential Permit to construct, connect, operate and maintain a bi-directional 10⁵/₈-inch OD pipeline ("the MB Pipeline") at the U.S.-Mexico border. The MB Pipeline will connect the Transmontaigne terminal at the Port of Brownsville, Brownsville, Texas, with an existing Petróleos Mexicanos (PEMEX) pipeline in the state of Tamaulipas, Mexico. The U.S. portion of the project consists of approximately 17 miles of new pipeline from the Transmontaigne terminal to a location on the Rio Grande west of the unincorporated town of San Pedro, approximately 9 miles northwest of downtown Brownsville. The Mexican portion consists of approximately 11 miles of new pipeline from the Rio Grande crossing to the PEMEX pipeline at the town of Curva, Texas.

A significant portion of the route of the MB Pipeline will follow the Penn Octane ("POCC") pipeline right of way, for which the Department issued a finding of no significant impact ("FONSI") in 1999 (64 FR 42163 (1999)). The MB Pipeline follows the POCC right of way until it reaches the area of the Resaca de la Palma State Park west of Brownsville. Instead of following the POCC pipeline south to the US/Mexico border, the MB Pipeline angles west-southwest to cross the Rio Grande at a point approximately 4 miles upriver of the POCC crossing. The routing for the MB Pipeline has been designed to avoid, to the maximum extent possible, populated areas of Cameron County and sensitive environmental features, including existing State park lands and Federal nature preserve lands.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(3).

¹³ 17 CFR 200.30-3(a)(12).