

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **December 1, 2004 (November 29, 2004)**

THE NASDAQ STOCK MARKET, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-32651
(Commission File Number)

52-1165937
(I.R.S. Employer
Identification No.)

One Liberty Plaza, New York, New York
(Address of principal executive offices)

10006
(Zip code)

Registrant's telephone number, including area code: **(212) 401-8700**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

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Item 1.01. Entry into a Material Definitive Agreement.

On November 29, 2004, The Nasdaq Stock Market, Inc. ("Nasdaq") entered into an exchange agreement (the "Exchange Agreement") with the National Association of Securities Dealers, Inc. (the "NASD") pursuant to which the NASD exchanged 1,338,402 shares of Nasdaq's Series A Cumulative Preferred Stock ("Series A"), representing all of the outstanding shares of Series A, for a like number of newly issued shares of Series C Cumulative Preferred Stock ("Series C"). The Series C will pay quarterly dividends at an annual rate of 3.0% during the period ending July 1, 2006 and at an annual rate of 10.6% for periods thereafter. The holder of the Series C also may be entitled to an additional dividend amount in certain circumstances depending on the amount of time the Series C is outstanding and the market price of Nasdaq's common stock at the time Nasdaq redeems the Series C. This additional dividend amount may be paid in cash or in shares of Nasdaq's common stock at Nasdaq's election. The remaining terms of the Series C, including terms relating to redemption by Nasdaq and voting rights of the Series C, are substantially similar to the terms of the Series A. The exchange of the Series C for the Series A was exempt from registration pursuant to Section 4(2) of the Securities Act of 1933. On November 29, 2004, Nasdaq filed a certificate of designations for the Series C with the Secretary of State of the State of Delaware.

Nasdaq is a subsidiary of the NASD. Copies of the Exchange Agreement and the certificate of designations for the Series C are filed as exhibits to this Form 8-K and are incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 above is incorporated by reference as if fully set forth herein.

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

The information set forth in Item 1.01 above is incorporated by reference as if fully set forth herein.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

1.01 Exchange Agreement between The Nasdaq Stock Market, Inc. and National Association of Securities Dealers, Inc., dated as of November 29, 2004.

5.03 Certificate of Designations, Preferences and Rights of Series C Cumulative Preferred Stock of The Nasdaq Stock Market, Inc.

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SIGNATURES

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

Dated: December 1, 2004

THE NASDAQ STOCK MARKET, INC.

By: /s/ Edward S. Knight

Edward S. Knight

Executive Vice President and General Counsel

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EXCHANGE AGREEMENT

between

THE NASDAQ STOCK MARKET, INC.

and

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Dated as of November 29, 2004

EXCHANGE AGREEMENT, dated as of November 29, 2004 (this "Agreement"), between the National Association of Securities Dealers, Inc., a Delaware non-profit corporation (the "NASD"), and The Nasdaq Stock Market, Inc., a Delaware corporation ("Nasdaq").

WHEREAS, the NASD is the beneficial owner of 1,338,402 shares (the "Existing Shares") of Series A Preferred Stock, par value \$.01 per share, of Nasdaq (the "Series A Preferred Stock"); and

WHEREAS, on the terms and subject to the conditions provided for herein, NASD and Nasdaq desire to exchange the Existing Shares, which constitute all of the shares of Series A Preferred Stock beneficially owned by the NASD as of the date hereof, for 1,338,402 shares (the "New Shares") of Series C Preferred Stock, par value \$.01 per share, of Nasdaq, the terms of which are substantially as set forth in the form of Series C Certificate of Designations attached as Exhibit I hereto (the "Series C Preferred Stock").

NOW, THEREFORE, in consideration of the provisions contained herein, the parties hereto agree as follows:

1. EXCHANGE OF SHARES.

1.01 Exchange of Shares. On the terms and subject to the conditions contained herein, the NASD and Nasdaq agree to exchange the Existing Shares for the New Shares.

2. THE CLOSING.

2.01 Closing. The closing of the exchange of the shares provided for in this Agreement (the "Closing") shall take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, at 10 a.m. on such business day as the parties hereto shall agree after satisfaction of all the conditions provided for in Sections 6 and 7 hereof, other than those that by their nature are to be satisfied on the date of Closing, but subject to the satisfaction or waiver of those conditions, or at such other place and time as the parties hereto shall agree in writing (the time and date of such Closing being referred to herein as the "Closing Date").

2.02 Closing Deliveries.

(a) On the Closing Date, Nasdaq shall deliver to the NASD validly issued certificates representing the New Shares in the name of the NASD.

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(b) On the Closing Date, the NASD shall deliver to Nasdaq validly issued certificates representing the Existing Shares duly endorsed in blank or accompanied by stock powers duly executed in blank, with all necessary stock transfer stamps affixed thereto.

3. COVENANTS.

3.01 Further Actions. The parties hereto agree to use their reasonable best efforts to have the Closing occur as soon as practicable consistent with the provisions of this Agreement.

3.02 Acknowledgement. The parties hereto covenant and agree that Section 3.03 of the Purchase and Sale Agreement, dated as of February 20, 2002, between Nasdaq and the NASD shall not be affected by this Agreement and shall remain in full force and effect.

3.03 SEC Approval. Nasdaq agrees to use its reasonable best efforts to secure SEC approval of the Series C Certificate of Designations as soon as practicable consistent with the provisions of this Agreement.

3.04 Certain Actions of Nasdaq Prior to Redemption of the Series C Preferred Stock. During the period commencing on the Closing Date and terminating on the date of the redemption or purchase in full of all of the then-outstanding shares of Series C Preferred Stock by Nasdaq, Nasdaq shall not, and shall not permit any of its Restricted Subsidiaries to, without the prior written consent of the NASD, which consent shall not be unreasonably withheld, conditioned or delayed (it being understood that conditioning such consent on Nasdaq's agreement to use the net proceeds of such transaction to redeem Series C Preferred Stock shall be deemed to be not unreasonable):

(a) incur or assume any new long-term debt (a, "Long-Term Debt Incurrence"); provided, however, that this clause (a) shall not restrict in any manner any Long-Term Debt Incurrences whereby the amount of net proceeds to, plus the amount of long-term debt assumed by, Nasdaq and its Restricted Subsidiaries, collectively, from Long-Term Debt Incurrences occurring on or any time after February 21, 2002 together with net proceeds to Nasdaq and its Restricted Subsidiaries, collectively, from Extraordinary Asset Sales (as defined below occurring on or any time after February 21, 2002), do not exceed at any time an aggregate outstanding amount equal to \$200,000,000 (or its equivalent in other currencies).

For purposes of this Agreement, "Long-Term Debt Incurrences" shall not include the incurrence of any new long-term debt (i) the purpose of which is to

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refinance debt of Nasdaq or any Restricted Subsidiary, collectively, outstanding on the Closing Date or (ii) pursuant to or under lines of credit to Nasdaq or any Restricted Subsidiary existing on the Closing Date.

(b) sell, transfer or otherwise dispose of assets of Nasdaq held directly or indirectly through any Restricted Subsidiary for cash outside of the ordinary course of Nasdaq's business (an "Extraordinary Asset Sale"); provided, however, that this clause (b) shall not restrict in any manner any sale, transfer or other disposition of assets occurring on or any time after February 21, 2002 resulting in net proceeds to Nasdaq and its Restricted Subsidiaries, collectively, that together with the amount of net proceeds to, plus the amount of long-term debt assumed by, Nasdaq and its Restricted Subsidiaries, collectively, from Long-Term Debt Incurrences occurring on or any time after February 21, 2002 at any time outstanding, do not exceed at any time an aggregate amount equal to \$200,000,000 (or its equivalent in other currencies).

For purposes of this Agreement, "Extraordinary Asset Sales" shall not include (i) any sale, transfer or disposition of assets of a Restricted Subsidiary to Nasdaq, (ii) any sale, transfer or disposition of assets of Nasdaq to a Restricted Subsidiary, if such Restricted Subsidiary agrees in writing for the benefit of the NASD to be bound by the provisions of this Section 3.03(b) with respect to such assets, (iii) any sale, transfer or disposition of assets of Nasdaq in connection with a joint venture, strategic alliance or other similar arrangement, in any such case, the primary purpose of which is other than the raising of capital for Nasdaq and the consideration involved in such transaction is not predominantly comprised of cash, in each case as determined in good faith by the board of directors of Nasdaq (the "Board of Directors") and (iv) any sale of any interest in the capital stock of Nasdaq or any sale by a subsidiary, other than a Restricted Subsidiary, of any interest in its capital stock.

For purposes of this Agreement, the term "Restricted Subsidiary" means any direct or indirect subsidiary of Nasdaq other than (i) any subsidiary set forth on Schedule A hereto and (ii) any subsidiary that is formed in connection with a joint venture, strategic alliance or other similar arrangement and the primary purpose of which is other than the raising of capital, as determined in good faith by the Board of Directors.

3.05 Investor Rights Agreement. The parties hereto covenant and agree that the New Shares, when issued, shall be deemed to be the "Preferred Shares" as such term is defined in the Investor Rights Agreement, dated as of February 20, 2002, between Nasdaq and the NASD (the "Investor Rights Agreement") and shall be treated by the parties as such for all purposes under the Investor Rights Agreement.

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4. REPRESENTATIONS AND WARRANTIES OF THE NASD. The NASD represents and warrants to Nasdaq on the date hereof and as of the Closing Date as follows:

4.01 Organization and Standing. The NASD is a non-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

4.02 Binding Agreement. This Agreement will have been duly and validly executed and delivered on behalf of the NASD and, assuming due authorization, execution and delivery by Nasdaq, will constitute the legal and binding obligation of the NASD enforceable against the NASD in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equity principles (whether considered in a proceeding in equity or at law).

4.03 Title to Shares. The NASD has good and valid title to the Existing Shares, free and clear of all liens, charges, claims, security interests, restrictions, options, proxies, voting trusts or other encumbrances (each an "Encumbrance"), other than Encumbrances created by this Agreement and the Investor Rights Agreement, dated as of February 20, 2002, between Nasdaq and the NASD. Assuming Nasdaq has the requisite power and authority to be lawful owner of the Existing Shares, upon delivery to Nasdaq at the Closing of certificates representing the Existing Shares and upon the NASD's receipt of the New Shares, Nasdaq will acquire all of the NASD's right, title and interest in and to the Existing Shares being delivered to it and will receive good and valid title to the Existing Shares, free and clear of any and all Encumbrances.

4.04 Acquisition of the New Shares. The NASD is acquiring the New Shares not with a view toward, or for the sale in connection with, any distribution in violation of the Securities Act of 1933, as amended (the "Securities Act"). The NASD acknowledges and agrees that (i) for the period of one year following the original issuance of the New Shares (the "No Transfer Period"), the New Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of (each, a "Transfer") without the prior written consent of Nasdaq, (ii) following the No Transfer Period, the Series C Preferred Stock may not be Transferred without registration under the Securities Act and any applicable state securities laws or regulations, except pursuant to an exemption from such registration under the Securities Act and any applicable state securities laws or regulations and (iii) certain contractual restrictions may restrict its ability to Transfer the New Shares.

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4.05 Legends.

(a) The NASD acknowledges and agrees that prior to the one-year anniversary date of the Closing Date, any certificate evidencing the New Shares shall bear a legend substantially as follows:

THE SHARES OF SERIES C PREFERRED STOCK, PAR VALUE \$.01 PER SHARE, OF THE NASDAQ STOCK MARKET, INC. REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED, SOLD OR TRANSFERRED BY THE HOLDER HEREOF PRIOR TO THE ONE-YEAR ANNIVERSARY DATE OF ITS ORIGINAL ISSUANCE WITHOUT THE PRIOR WRITTEN CONSENT OF THE NASDAQ STOCK MARKET, INC.

(b) The NASD acknowledges and agrees that, upon its request, until no longer required by applicable law, following the original issuance of the New Shares, any certificate evidencing the New Shares shall bear a legend substantially as follows:

THE SHARES OF SERIES C PREFERRED STOCK, PAR VALUE \$.01 PER SHARE, OF THE NASDAQ STOCK MARKET, INC. REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION AND MAY NOT BE OFFERED, SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE FEDERAL, STATE OR FOREIGN SECURITIES LAWS.

4.06 Required Approvals, Notices and Consents. Except as set forth herein, no material consent or approval of, other action by, or any notice to, any governmental body or agency, domestic or foreign, or any third party is required in connection with the execution and delivery by the NASD of this Agreement or the consummation by the NASD of the transaction contemplated hereby.

5. REPRESENTATIONS AND WARRANTIES OF NASDAQ. Nasdaq represents and warrants to the NASD on the date hereof and as of the Closing Date as follows:

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5.01 Organization and Standing. Nasdaq is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

5.02 Series C Preferred Stock. At the Closing Date, the New Shares will have been duly authorized and, when transferred to the NASD in accordance with this Agreement on the Closing Date, will be validly issued, fully paid and nonassessable and the issuance of such shares will not be subject to any preemptive or similar rights.

5.03 Binding Agreement. This Agreement will have been duly and validly authorized, executed and delivered by Nasdaq and, assuming due authorization, execution and delivery by the NASD, will constitute the legal and binding obligation of Nasdaq enforceable against Nasdaq in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general equity principles (whether considered in a proceeding in equity or at law).

5.04 Required Approvals, Notices and Consents. Except as set forth herein, no material consent or approval of, other action by, or any notice to, any governmental body or agency, domestic or foreign, or any third party is required in connection with the execution and delivery by Nasdaq of this Agreement or the consummation by Nasdaq of the transaction contemplated hereby.

6. CONDITIONS TO OBLIGATIONS OF THE NASD. The obligations of the NASD are subject to the fulfillment on or prior to the Closing as follows, except, to the extent permitted by applicable law, as may be waived by the NASD pursuant to Section 9.06 hereof:

6.01 Statutes, Rules and Regulations. No statute, rule, regulation or order of any court or administrative agency shall be in effect which prohibits the consummation of the transactions contemplated hereby.

7. CONDITIONS TO OBLIGATIONS OF NASDAQ. The obligations of Nasdaq are subject to the fulfillment on or prior to the Closing as follows, except, to the extent permitted by applicable law, as may be waived by Nasdaq pursuant to Section 9.06 hereof:

7.01 Statutes, Rules and Regulations. No statute, rule, regulation or order of any court or administrative agency shall be in effect which prohibits the consummation of the transactions contemplated hereby.

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7.02 SEC Objection. The SEC shall have not objected, disapproved or otherwise expressed disfavor to Nasdaq, whether in writing or orally, with respect to the Series C Certificate of Designations.

8. TERMINATION.

8.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the parties; and

(b) by either party in the event the Closing has not occurred on or before December 31, 2004.

8.02 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.01, this Agreement shall forthwith become void, and there shall be no liability on the part of any party hereto (or any stockholder, director, officer, partner, employee, agent, consultant or representative of such party) except that (a) nothing herein shall relieve any party from liability for, or eliminate the rights of any party relating to, any willful breach of this Agreement and (b) this Section 8.02 and Sections 9.01, 9.02, 9.03 and 9.09 shall survive termination of this Agreement.

9. MISCELLANEOUS.

9.01 Entire Agreement. This Agreement and all schedules, attachments and exhibits embody the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements, arrangements and undertakings, whether written or oral, relating to matters provided for herein and therein (including those set forth in the term sheet dated as of October 1, 2004 between the parties). There are no provisions, undertakings, representations or warranties relative to the subject matter of this Agreement not expressly set forth herein and therein.

9.02 Expenses. Except as otherwise specifically provided in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transaction contemplated hereby shall be paid by the party incurring such expense.

9.03 Notices. Any notice, demand, claim, notice of claim, request or communication required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly given if

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delivered personally by facsimile transmission or sent by first class or certified mail, postage prepaid to the following addresses,

If to the NASD:

National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006
Facsimile: (202) 728-8894
Attention: General Counsel

with a copy to:

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Facsimile: (212) 848-7179
Attention: Robert Mundheim, Esq. and
James B. Bucher, Esq.

If to Nasdaq:

The Nasdaq Stock Market, Inc.
One Liberty Plaza
New York, New York 10006
Facsimile: (202) 912-3000
Attention: General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Facsimile: (212) 735-2000
Attention: Matthew J. Mallow, Esq. and
Eric J. Friedman, Esq.

or to such other address as any party may request by notifying in writing all of the other parties to this Agreement in accordance with this Section 9.03.

Any such notice shall be deemed to have been received on the date of personal delivery, the date set forth on the Postal Service return receipt, the date of

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delivery shown on the records of the overnight courier or the date shown on the facsimile confirmation, as applicable.

9.04 Survival of Representations and Warranties. Each of the representations and warranties made by the parties in this Agreement shall terminate 12 months after the Closing.

9.05 Benefit and Assignment. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. There shall be no assignment of any interest under this Agreement by any party. Nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.06 Waiver. Any waiver of any provision of this Agreement shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

9.07 Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, the NASD and Nasdaq.

9.08 Construction of this Agreement; Counterparts. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual agreement, and this Agreement shall not be deemed to have been prepared by any single party hereto. The headings of the sections and subsections of this Agreement are inserted as a matter of convenience and for reference purposes only and in no respect define, limit or describe the scope of this Agreement or the intent of any section or subsection. This Agreement may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

9.09 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York applicable to contracts executed and to be performed in the State of New York.

9.10 Public Announcements. No party hereto shall make any public announcement concerning the transactions contemplated by this Agreement without the prior approval of the other party hereto, except as such announcement

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may be required by the applicable laws, rules and regulations. The parties hereto acknowledge that promptly after the execution of this Agreement and the Closing, the parties will make public disclosure, to be mutually agreed upon, of the transactions contemplated by this Agreement.

9.11 Specific Performance. The parties recognize and agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedies, each other party shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any action should be brought in equity to enforce the provisions of the Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

9.12 Further Assurances. The NASD hereby agrees that it shall from time to time, at the request of Nasdaq, execute and deliver to Nasdaq any and all instruments or documents as Nasdaq may reasonably request for the purpose of vesting in Nasdaq the full right, title and interest of the NASD in and to the Existing Shares.

[Signature page follows]

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.

By: /s/ Todd T. Diganci
Name: Todd T. Diganci
Title: EVP & CFO

THE NASDAQ STOCK MARKET, INC.

By: /s/ Ron Hassen
Name: Ron Hassen
Title: SVP & Controller

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Exhibit I
to
Exchange Agreement

Form of Series C Certificate of Designations

EXHIBIT I

SCHEDULE A

1. Nasdaq Global Holdings
 2. Nasdaq International Ltd.
 3. Nasdaq Ltda
 4. Nasdaq Execution Services, LLC
 5. Nasdaq Europe Planning Company Ltd.
 6. Nasdaq Technology Services, LLC
 7. Nasdaq Financial Product Services Ireland Limited
 8. Nasdaq Financial Products Services, Inc.
 9. Nasdaq International Market Initiatives, Inc.
 10. Nasdaq Canada, Inc.
 11. Nasdaq Stock Market Educational Foundation Inc.
 12. Nasdaq Insurance Agency LLC
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**CERTIFICATE OF DESIGNATIONS,
PREFERENCES AND RIGHTS
OF
SERIES C 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):

Section 1. Designation and Amount. The series of preferred stock created hereby shall be designated "Series C Cumulative Preferred Stock," par value \$.01 per share (hereinafter called the "Series C Preferred Stock") and the number of shares constituting such series shall be 1,338,402.

Section 2. Dividends; Ranking.

(a) The holders of the Series C Preferred Stock shall be entitled to receive when, as and if declared by the Board of Directors out of the funds legally available therefor,

(i) during the period commencing July 1, 2004 (the "Calculation Date") and ending the date that is the second anniversary of the Calculation Date (the "Second Anniversary Date") cash dividends, at the annual rate of 3.00% of the Series C Preferred Stock Liquidation Preference (as defined below) per annum per share, and no more, which shall be fully cumulative and shall accrue without interest from the Calculation Date, and

(ii) during the period commencing the date which is the day immediately following the Second Anniversary Date (the "10.60% Dividend Date"), cash dividends, at the annual rate of 10.60% of the Series C Preferred Stock Liquidation Preference per annum per share, and no more, which shall be fully cumulative and shall accrue without interest from the 10.60% Dividend Date.

Notwithstanding the foregoing, no dividends shall accrue in respect of the period commencing on the Calculation Date and ending on September 30, 2004. Dividends shall be paid quarterly in arrears in equal amounts for the periods ended March 31, June 30, September 30 and December 31 of each year (each, a "Quarterly Date") (prorated for any partial dividend period) no later than 15 days after such Quarterly Date (each such date being referred to herein as a "Dividend Payment Date"), commencing with the period ending December 31, 2004 (and in the case of any accrued but unpaid dividends, at such additional times and for such interim periods, if any, as determined by the Board of Directors) to the holders of record as they appear on the stock books of the transfer agent for the Corporation (the "Transfer Agent") on the immediately preceding March 15, June 15, September 15 and December 15, respectively, (and in the case of accrued and unpaid dividends to be paid at such additional times and for such interim periods, if any, on such record dates, which shall be not more than 30 days nor less than 10 days preceding the Dividend Payment Dates, as fixed by the Board of Directors) (each such date being referred to herein as a "Series C Record Date"), provided that holders of shares of Series C Preferred Stock called for redemption on a redemption date falling between any Series C Record Date and the corresponding Dividend Payment Date shall, in lieu of receiving such dividend payment on the Dividend Payment Date fixed therefor, receive such dividend payment together with all other accrued and unpaid dividends on the date fixed for redemption. The amount of dividends payable per share of Series C Preferred Stock for each quarterly dividend period shall be computed, which computation shall be made within five Business Days of the Dividend Payment Date, by dividing the annual dividend amount per share by four and adding to such amount the amount of all accrued and unpaid dividends. The amount of dividends payable for the initial dividend period and dividends payable for any other period that is shorter or longer than a full quarterly dividend period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Holders of shares of Series C Preferred Stock shall not be entitled to receive any dividends, whether payable in cash, property or stock, which are in excess of the cumulative dividends provided for herein.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

(b) The Series C Preferred Stock shall rank, both as to the payment of dividends and as to the distribution of assets upon Liquidation (as defined below), senior to any existing and future classes or series of equity securities of the

(c) So long as any shares of the Series C Preferred Stock are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase, or to effectuate a stock split, on shares of Junior Securities (as defined below)) shall be declared or paid or set apart for payment on Junior Securities, for any period, nor, except for the Series B Preferred Stock, shall any Junior Securities be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of shares of Common Stock made for the purposes of incentive or benefit plans or arrangements of the Corporation or any subsidiary thereof) for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such Junior Securities) by the Corporation (except for conversion into or exchange into other Junior Securities) unless, in each case, prior to or currently with such declaration, payment or setting apart for payment all accrued and unpaid dividends on all outstanding shares of the Series C Preferred Stock shall have been paid or set apart for payment and any such dividend on shares of Junior Securities or consideration for any such redemption, purchase or other acquisition of Junior Securities shall consist only of cash or Common Stock or options, warrants or rights to subscribe for or purchase Common Stock.

(d) As used in this Certificate of Designations, the term “Junior Securities” means any class or series of stock or equity securities of the Corporation that by its terms is junior to the Series C Preferred Stock, either as to the payment of dividends or as to the distribution of assets upon Liquidation, or both, including the Common Stock and the Series B Preferred Stock.

(e) For purposes of the Series C Preferred Stock, the amount of dividends “accrued” on any share of stock of any class or series as of any date shall be deemed to be the amount of any unpaid dividends accumulated thereon to and including the date of such determination.

Section 3. Preference on Liquidation.

(a) In the event of the Liquidation of the Corporation, the holders of the Series C Preferred Stock shall be entitled to have paid to them out of the assets of the Corporation available for distribution to stockholders before any distribution is made to or set apart for the holders of shares of Common Stock, Series B Preferred Stock or other Junior Securities, an amount in cash per share equal to the sum of (x) \$100.00 per share plus all accrued and unpaid dividends thereon, whether or not declared, to the date of Liquidation and (y) the Additional Liquidation Preference (as defined below, such sum, the “Series C Preferred Stock Liquidation Preference”); provided, however, upon a Liquidation in which upon distribution of assets some or all of the consideration shall be paid other than in cash, then the Series C Preferred Stock Liquidation Preference shall be payable in such form of consideration as shall be payable generally to stockholders upon such Liquidation, and if there shall be more than one type

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of consideration payable upon such Liquidation, then the Series C Preferred Stock Liquidation Preference shall be comprised of cash, to the full extent available, and such other type of consideration, it being understood that no holders of Junior Securities shall be entitled to receive any consideration (cash or otherwise) unless and until the aggregate Series C Preferred Stock Liquidation Preference shall have been paid in full.

(b) If, upon any Liquidation, the assets of the Corporation or proceeds thereof distributable among the holders of shares of the Series C Preferred Stock shall be insufficient to permit the payment in full of the Series C Preferred Stock Liquidation Preference for each share of the Series C Preferred Stock then outstanding, then such assets or proceeds thereof shall be distributed among such holders of Series C Preferred Stock ratably in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.

(c) In the event of a Liquidation, the Corporation shall give, by certified mail, return receipt requested, postage prepaid, addressed to each holder of any shares of Series C Preferred Stock at the address of such holder as shown on the books of the Corporation, at least 20 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for determining rights to vote in respect of any such Liquidation and of the date when the same shall take place.

(d) As used in this Certificate of Designations,

(i) the term “Liquidation” shall be deemed to include (1) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (2) the sale, lease, abandonment, transfer or other disposition (each, a “Transfer”) by the Corporation of all or substantially all its assets for cash or other consideration where (A) the Board of Directors is required, pursuant to the law of the state of incorporation of the Corporation, to approve such Transfer and (B) at the time of such Transfer no holder of Series C Preferred Stock, directly or indirectly, in the aggregate, has affirmative voting control of the Corporation either through ownership of capital stock or other equity securities or through representation on the Board of Directors (any Transfer satisfying the foregoing clauses (A) and (B) being referred to herein as a “Qualifying Asset Sale”); provided that a Transfer where the Corporation’s consolidated economic interest in the assets does not change shall not constitute a Qualifying Asset Sale, and (3) any merger or consolidation of the Corporation into or with any other person or persons where (x) the Corporation is not the surviving person and where the holders of shares of Common Stock immediately prior to such merger or consolidation do not hold at least a majority of the Common Stock or the common stock or comparable equity of the surviving or resulting person or of the parent of such surviving or resulting person immediately after such merger or consolidation, (y) the Board of Directors is required, pursuant to the law of the state of incorporation of the Corporation, to approve such merger or consolidation and (z) at the time of such merger or

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consolidation, no holder of Series C Preferred Stock, directly or indirectly, in the aggregate, has affirmative voting control of the Corporation either through ownership of capital stock or other equity securities or through representation on the Board of Directors (any merger or consolidation satisfying the foregoing clauses (x), (y) and (z), being referred to herein as a “Qualifying Merger”). For the avoidance of doubt, “Liquidation” shall not be deemed to include (i) a consolidation or merger of the Corporation into or with any other entity or entities other than a Qualifying Merger, (ii) other than in connection with a Qualifying Merger, a transaction or series of related transactions that results in the transfer of more than 50% of the voting power of the Corporation and (iii) the Transfer by the Corporation of all or substantially all its assets other than in connection with a Qualifying Asset Sale or in connection with a plan of liquidation, dissolution or winding up of the Corporation. Notwithstanding the foregoing, if at any time after the date of the original issuance of the Series C Preferred Stock (the “Issue Date”), the Board of Directors determines in good faith, based upon a review of relevant information, including a written opinion of its independent auditors, that as a result of any change in U.S. generally accepted accounting principles or any applicable U.S. accounting authority, treating a Qualifying Merger or a Qualifying Asset Sale as a Liquidation would no longer permit the Series C Preferred Stock to be accounted for as stockholders’ equity of the Corporation, a “Liquidation” will no longer

be deemed to include a Qualifying Merger or a Qualifying Asset Sale, as the case may be; provided, however, that the Corporation shall provide prompt notice of such determination by the Board of Directors, together with a copy of the written opinion of the Corporation's independent auditors referred to above, to each holder of the Series C Preferred Stock. For purposes of this Section 3(d)(i) and Section 6, "person" means any natural person, corporation, general or limited partnership, limited liability company, joint venture, trust, association or entity of any kind.

(ii) the term "Additional Liquidation Preference" shall mean the amount per share calculated as follows:

(1) If (x) the Liquidation results from a Qualifying Asset Sale or a Qualifying Merger and (y) the Reference Price (as defined in Section 5(h) hereof) is less than the Liquidation Price, then the "Additional Liquidation Preference" shall mean the amount per share calculated as follows:

(A) If the date of Liquidation occurs prior to the First Anniversary Date (as defined below), then the "Additional Liquidation Preference" shall mean the amount per share in cash equal to the amount in respect of deemed additional dividend on \$100.00 calculated at the annual rate of 4.60% for the period

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commencing on the Calculation Date and ending on, but excluding, the date of Liquidation;

(B) If the date of Liquidation occurs after the First Anniversary Date but on or prior to the Second Anniversary Date, then the "Additional Liquidation Preference" shall mean the amount per share in cash equal to (x) \$4.60, plus (y) an amount in respect of deemed additional dividend on \$100.00 calculated at the annual rate of 7.60% for the period commencing on the day immediately following the First Anniversary Date and ending on, but excluding, the date of Liquidation; or

(C) If the date of Liquidation occurs after the Second Anniversary Date, then the "Additional Liquidation Preference" shall mean the amount per share in cash equal to \$12.20; and

(2) If the terms of clause (1) or sub-clauses (1)(A), (1)(B) or (1)(C) above are not applicable, then the "Additional Liquidation Preference" shall equal \$0.00.

(iii) the term "Liquidation Price" shall mean (A) the Closing Price (as defined in Section 5(h) hereof and substituting the date of Liquidation for the redemption date) (in the case of a Liquidation as a result of a Qualifying Asset Sale) and (B) the Closing Price (as defined in Section 5(h) hereof and substituting the date immediately prior to the effective date of the Qualifying Merger for the redemption date) (in the case of a Liquidation as a result of a Qualifying Merger).

Section 4. Voting.

(a) Except as herein provided or as otherwise required by applicable law, holders of Series C Preferred Stock shall have no voting rights.

(b) If and whenever four consecutive quarterly dividends payable on the Series C Preferred Stock have not been paid in full, the number of directors then constituting the Board of Directors shall be increased by two and the holders of the Series C Preferred Stock, voting as a single class, shall be entitled, in accordance with the Certificate of Incorporation and subject to the requirements of applicable laws, rules and regulations, to elect the two additional directors to serve on the Board of Directors at any annual meeting of stockholders or special meeting held in place thereof, or at a special meeting of the holders of the Series C Preferred Stock called as hereinafter provided. Whenever all arrears in dividends on the Series C Preferred Stock then outstanding shall have been paid or the Corporation shall have repurchased and redeemed all then-outstanding shares of Series C Preferred Stock, as the case may be, then the right of the holders of the Series C Preferred Stock to elect such additional two

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directors shall cease (but subject always to the same provisions for the vesting of such voting rights in the case of any similar future arrearages in four consecutive quarterly dividends), and the terms of office of all persons elected as directors by the holders of the Series C Preferred Stock shall forthwith terminate and the number of the Board of Directors shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of shares of the Series C Preferred Stock, the secretary of the Corporation may, and upon the written request of holders of at least 25% of the outstanding shares of Series C Preferred Stock (addressed to the secretary at the principal office of the Corporation) shall, call a special meeting of the holders of the Series C Preferred Stock for the election of the two directors, who shall satisfy all requirements of the Corporation's By-Laws, Certificate of Incorporation, applicable laws, rules and regulations for service as members of the Board of Directors, to be elected by them as herein provided, such call to be made by notice similar to that provided in the By-Laws of the Corporation for a special meeting of the stockholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the secretary within 20 days after receipt of any such request, then any holder of shares of Series C Preferred Stock may call such meeting, upon the notice above provided, and for that purpose shall have access to the stock books of the Corporation. The directors elected at any such special meeting shall hold office until the next annual meeting of the stockholders or special meeting held in lieu thereof if such office shall not have previously terminated as above provided. If any vacancy shall occur among the directors elected by the holders of the Series C Preferred Stock, a successor shall be appointed by the then-remaining director elected by the holders of the Series C Preferred Stock or the successor of such remaining director of a person who satisfies all requirements of the Corporation's By-Laws, Certificate of Incorporation, applicable laws, rules and regulations for service as a member of the Board of Directors, to serve until the next annual meeting of the stockholders or special meeting held in place thereof if such office shall not have previously terminated as provided herein. If at any time both director positions elected by the holders of the Series C Preferred Stock are vacant at the same time, the Board of Directors shall appoint such persons as designated by a majority of the holders of the Series C Preferred Stock who satisfy all requirements of the Corporation's By-Laws, Certificate of Incorporation, applicable laws, rules and regulations for service as a member of the Board of Directors, to serve until the next annual meeting of the stockholders or special meeting held in place thereof if such office shall not have previously terminated as provided herein. Directors elected or appointed in accordance with this Section 4(b) may only be removed with the written consent of at least 66 ²/₃% in Series C Preferred Stock Liquidation Preference of the outstanding shares of Series C Preferred Stock or the vote of holders of

at least 66 ²/₃% in Series C Preferred Stock Liquidation Preference of the outstanding shares of Series C Preferred Stock at a meeting of the holders of Series C Preferred Stock called for such purpose.

(c) Without the written consent of the holders of at least 66 ²/₃% in Series C Preferred Stock Liquidation Preference of the outstanding shares of Series C Preferred Stock or the vote of holders of at least 66 ²/₃% in Series C Preferred Stock Liquidation Preference of the outstanding shares of Series C Preferred Stock at a meeting of the holders of Series C Preferred Stock called for such purpose, the Corporation will not amend, alter or repeal any provision of the Certificate of Incorporation (by merger or

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otherwise) so as to adversely affect the preferences, rights or powers of the Series C Preferred Stock; provided that any such amendment that changes the dividend payable on or the liquidation preference of the Series C Preferred Stock shall require the affirmative vote at a meeting of holders of Series C Preferred Stock called for such purpose or written consent of the holder of each share of Series C Preferred Stock.

(d) In exercising the voting rights set forth in this Section 4, each share of Series C Preferred Stock shall have one vote per share, except that when any other series of preferred stock shall have the right to vote with the Series C Preferred Stock as a single class on any matter, then the Series C Preferred Stock and such other series shall have with respect to such matters one vote per \$100 of stated liquidation preference, disregarding any provision for accrued and unpaid dividends. Except as otherwise required by applicable law or as set forth herein, the shares of Series C Preferred Stock shall not have any relative, participating, optional or other special voting rights and powers and the consent of the holders thereof shall not be required for the taking of any corporate action.

Section 5. *Redemption.*

(a) Optional Redemption. Subject to the provisions of this Section 5, to the extent the Corporation shall have funds legally available for such payment, the Corporation shall have the right, exercisable from time to time, to redeem, at its option, in part or in whole, then-outstanding shares of Series C Preferred Stock at an amount per share equal to the Redemption Price plus the Additional Redemption Amount (each as defined below); provided, however, that no holder of Series C Preferred Stock, directly or indirectly, in the aggregate, has affirmative voting control of the Corporation either through ownership of capital stock or other equity securities, or through representation on the Board of Directors, at the time the Corporation determines to exercise its redemption right pursuant to this Section 5(a).

(b) Mandatory Redemption Upon an IPO. In the event of a sale by the Corporation of shares of Common Stock in the first underwritten public offering (the "IPO") of Common Stock pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the Corporation shall, within 10 Business Days from the consummation of the IPO, use the net proceeds to the Corporation from the IPO (the "IPO Net Proceeds") to redeem, in part or in whole, the maximum number, rounded downward to the nearest share, of outstanding shares of Series C Preferred Stock that may be redeemed at an amount per share equal to the Redemption Price plus the Additional Redemption Amount through application of the IPO Net Proceeds.

(c) Mandatory Redemption Upon a Non-IPO Sale of Capital Stock. In the event of a sale by the Corporation or any of its Restricted Subsidiaries (as defined below) of shares of their capital stock or other equity securities for cash proceeds from time to time, other than in the IPO, the Corporation shall, within 60 days from the consummation of such sale, use the net proceeds to the Corporation or any of its Restricted Subsidiaries from any such sale (the "Stock Sale Net Proceeds") to redeem, in whole or in part, the maximum number, rounded downward to the nearest whole share, of

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outstanding shares of Series C Preferred Stock that may be redeemed at an amount per share equal to the Redemption Price plus the Additional Redemption Amount through application of the Stock Sale Net Proceeds. The obligations of this Section 5(c) shall not apply:

(i) if the aggregate net proceeds in any transaction or series of transactions with respect to sales of capital stock by the Corporation or any Restricted Subsidiary does not exceed \$10,000,000;

(ii) to sales of capital stock in connection with a joint venture, strategic alliance or other similar arrangement, in any such case the primary purpose of which is other than the raising of capital for the Corporation and the consideration involved in such transaction is not predominantly comprised of cash, in each case as determined in good faith by the Board of Directors; provided, however, that for the purposes of this Section 5(c)(ii) any transaction or series of transactions that involves cross-shareholdings obtained through substantially similar cash investments shall not be deemed to have a primary purpose of raising capital or to involve predominantly cash consideration; or

(iii) to any issuance of shares of equity securities, or securities convertible into equity, by the Corporation or a Restricted Subsidiary, as the case may be, pursuant to benefit plans or arrangements for employees, officers, directors or consultants, or pursuant to warrants or convertible subordinated debentures outstanding on the Issue Date.

(d) If the Corporation shall redeem shares of Series C Preferred Stock pursuant to this Section 5, notice of such redemption shall be given by certified mail, return receipt requested, postage prepaid, mailed not less than two days nor more than 45 days prior to the redemption date, to each holder of record of the shares to be redeemed at such holder's address as the same appears on the stock books of the Transfer Agent. Any notice that was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date mailed whether or not the holder receives the notice. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Series C Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of shares to be redeemed from such holder; (iii) the amount payable; (iv) the place or places where certificates for such shares are to be surrendered for payment of the amount per share equal to the Redemption Price plus the Additional Redemption Amount; and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date, except as otherwise provided herein.

(e) Upon surrender in accordance with notice given pursuant to this Section 5 of the certificates for any shares of Series C Preferred Stock (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such

Amount. If fewer than all the outstanding shares of Series C Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors in accordance with this Certificate of Designations and the shares to be redeemed shall be selected pro rata (with any fractional shares being rounded down to the nearest whole share). In case fewer than all the shares of Series C Preferred Stock represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(f) If notice has been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing for the payment of an amount per share equal to the Redemption Price plus the Additional Redemption Amount of the shares called for redemption), (i) except as otherwise provided herein, dividends on the shares of Series C Preferred Stock so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of the Series C Preferred Stock shall cease (except the right to receive from the Corporation an amount per share equal to the Redemption Price plus the Additional Redemption Amount without interest thereon, upon surrender and endorsement of their certificates if so required).

(g) In the event of a redemption of shares of Series C Preferred Stock in which the Corporation is required to pay an Additional Redemption Amount, the Corporation may, at its option, pay the Additional Redemption Amount, in part or in whole, in shares of Common Stock (or fractional shares thereof) in lieu of cash. For purposes of determining the number of shares of Common Stock to be issued in respect of the Additional Redemption Amount, each share of Common Stock to be issued shall have a deemed value of the Applicable Price.

(h) Certain Definitions. As used in this Certificate of Designations,

(i) "Additional Redemption Amount" shall mean the amount per share calculated as follows:

(1) If (A) the redemption date occurs on or prior to the date that is first anniversary of the Calculation Date ("First Anniversary Date") and (B) the Reference Price (as defined below) is less than the Applicable Price (as defined below), then the "Additional Redemption Amount" shall mean the amount per share in cash equal to the amount in respect of deemed additional dividend on \$100,000 calculated at the annual rate of 4.60% for the period commencing on the Calculation Date and ending on, but excluding, the applicable redemption date;

(2) If (A) the redemption date occurs after the First Anniversary Date but on or prior to the Second Anniversary Date and (B) the Reference Price is less than the Applicable Price, then the "Additional Redemption Amount" shall mean the amount per share in cash equal to (x) \$4.60, plus (y) an amount in respect of deemed additional

dividend on \$100,000 calculated at the annual rate of 7.60% for the period commencing on the day immediately following the First Anniversary Date and ending on, but excluding, the applicable redemption date;

(3) If (A) the redemption date occurs after the Second Anniversary Date and (B) the Reference Price is less than the Applicable Price, then the "Additional Redemption Amount" shall mean the amount per share in cash equal to \$12.20; or

(4) If the terms of clauses (1), (2) or (3) above are not applicable, then the "Additional Redemption Amount" shall equal \$0.00.

(ii) "Applicable Price" shall mean (1) the Closing Price (as defined below) (in the case of a redemption pursuant to Section 5(a)), (2) the public offering price per share of Common Stock pursuant to an IPO (in the case of a redemption pursuant to Section 5(b)), (3) the public offering price per share of Common Stock pursuant to a sale of Common Stock (in the case of a redemption pursuant to Section 5(c) where such redemption is the result of a sale of Common Stock) or (4) the Closing Price (in the case of a redemption pursuant to Section 5(c) where such redemption is the result of a sale of capital stock or equity securities other than Common Stock).

(iii) "Closing Price" shall mean the arithmetic average of the 4:00 p.m. Eastern Time closing sales prices of the Common Stock reported on the OTC Bulletin Board or The Nasdaq Stock Market for the 30 consecutive trading days immediately preceding, but not including, the redemption date.

(iv) "Redemption Price" shall mean the redemption price per share in cash equal to \$100.00 plus any accrued and unpaid dividends in arrears to, but excluding, the applicable redemption date.

(v) "Reference Price" shall mean \$7.00.

(vi) "Restricted Subsidiary" shall be deemed to mean any direct or indirect subsidiary of the Corporation other than (i) any subsidiary set forth on Schedule A hereto and (ii) any subsidiary that is formed in connection with a joint venture, strategic alliance or other similar arrangement and the primary purpose of which is other than the raising of capital, as determined in good faith by the Board of Directors.

Section 6. Merger or Consolidation. In the event of a merger or consolidation of the Corporation with or into any person pursuant to which the Corporation shall not be the continuing person and that does not constitute a Liquidation within the meaning of Section 3(d)(i), the Series C Preferred Stock shall be converted

into or exchanged for and shall become preferred shares of such successor or resulting company or, at the Corporation's sole discretion, the parent of such successor or resulting company, having in respect of such successor or resulting company or parent of such successor or resulting company, substantially the same powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions thereon, that the Series C Preferred Stock had immediately prior to such transaction, and with any additional preferences, rights or powers as may be determined by the Corporation that would not adversely affect the preferences, rights or powers of the Series C Preferred Stock.

Section 7. Limitation and Rights Upon Insolvency. Notwithstanding any other provision of this Certificate of Designations, the Corporation shall not be required to pay any dividend on, or to pay any amount in respect to any redemption of, the Series C Preferred Stock at a time when immediately after making such payment the Corporation is or would be rendered insolvent (as defined by applicable law), provided, that the obligation of the Corporation to make any such payment shall not be extinguished in the event the foregoing limitation applies.

Section 8. Shares to be Retired. Any share of Series C Preferred Stock redeemed, exchanged or otherwise acquired by the Corporation shall be retired and canceled and shall upon cancellation be restored to the status of authorized but unissued shares of preferred stock, subject to reissuance by the Board of Directors as Series C Preferred Stock or as shares of preferred stock of one or more other series.

Section 9. Record Holders. The Corporation and the Transfer Agent, if any, may deem and treat the record holder of any shares of Series C Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor the Transfer Agent, if any, shall be affected by any notice to the contrary.

Section 10. Transfer Restrictions. Prior to the one-year anniversary date of the Issue Date, a holder of Series C Preferred Stock may not effect any offer, sale, pledge, transfer or other disposition or distribution (or enter into any agreement with respect to any of the foregoing) of Series C Preferred Stock without the prior written consent of the Corporation

Section 11. Legends.

(a) Prior to the one-year anniversary date of the Issue Date, any certificate representing shares of Series C Preferred Stock shall bear the following legend:

THE SHARES OF SERIES C PREFERRED STOCK, PAR VALUE \$.01 PER SHARE, OF THE NASDAQ STOCK MARKET, INC. REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED, SOLD OR TRANSFERRED BY THE HOLDER HEREOF PRIOR TO NOVEMBER 29, 2005 WITHOUT THE PRIOR WRITTEN CONSENT OF THE NASDAQ STOCK MARKET, INC.

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Subsequent to the one-year anniversary date of the Issue Date, the Corporation agrees, from time to time and at the request of a holder, to issue replacement certificates representing such holder's shares of Series C Preferred Stock that do not bear the legend contained in Section 11(a).

(b) Until no longer required by applicable law, any certificate representing shares of Series C Preferred Stock shall bear the following legend:

THE SHARES OF SERIES C PREFERRED STOCK, PAR VALUE \$.01 PER SHARE, OF THE NASDAQ STOCK MARKET, INC. REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION AND MAY NOT BE OFFERED, SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE FEDERAL, STATE OR FOREIGN SECURITIES LAWS.

Subsequent to registration of the Series C Preferred Stock pursuant to the Securities Act, the Corporation agrees, from time to time and upon request of a holder, to issue replacement certificates representing such holder's shares of Series C Preferred Stock that do not bear the legend contained in Section 11(b). Prior to registration of the Series C Preferred Stock pursuant to the Securities Act, the Corporation agrees, from time to time and upon request of a holder, accompanied by an opinion of counsel for the holder reasonably satisfactory to the Corporation to the effect that registration of the Series C Preferred Stock is not required, to issue replacement certificates representing such holder's shares of Series C Preferred Stock that do not bear the legend contained in Section 11(b).

Section 12. Notices. Except as may otherwise be provided for herein, all notices referred to herein shall be in writing, and all notices hereunder shall be deemed to have been given upon the earlier of (a) receipt of such notice, (b) three Business Days after the mailing of such notice if sent by registered mail (unless first-class mail shall be specifically permitted for such notice under the terms hereof) or (c) the Business Day following the date such notice was sent by overnight courier, in any case with postage or delivery charges prepaid, addressed: if to the Corporation, to its offices at One Liberty Plaza, New York, New York 10006, Attention: General Counsel, or to an agent of the Corporation designated as permitted by the Certificate of Incorporation, or, if to any holder of the Series C Preferred Stock, to such holder at the address of such holder of the Series C Preferred Stock as listed in the stock record books of the Corporation, or as the holder shall have designated by written notice similarly given by the holder and received by the Corporation.

Section 13. Other Rights. Other than as may be prescribed by law, the holders of the Series C Preferred Stock shall not have any other voting rights, conversion rights, preferences or special rights.

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IN WITNESS WHEREOF, the undersigned has caused this Certificate of Designations to be executed this 29th day of November, 2004.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Joan C. Conley

Schedule A

1. Nasdaq Global Holdings
 2. Nasdaq International Ltd.
 3. Nasdaq Ltda
 4. Nasdaq Execution Services, LLC
 5. Nasdaq Europe Planning Company Ltd.
 6. Nasdaq Technology Services, LLC
 7. Nasdaq Financial Product Services Ireland Limited
 8. Nasdaq Financial Products Services, Inc.
 9. Nasdaq International Market Initiatives, Inc.
 10. Nasdaq Canada, Inc.
 11. Nasdaq Stock Market Educational Foundation Inc.
 12. Nasdaq Insurance Agency LLC
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