

Sanitized Copy

Certificate of Amendment

OF

Certificate of Incorporation

OF

**MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED**

April 23, 1963

(Filed and recorded in Delaware April 25, 1963)

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable amendments of the Certificate of Incorporation of the said corporation and resolved to submit said amendments to the annual meeting of the stockholders of the said corporation called, among other purposes, for the consideration thereof. The resolution of the said Board of Directors setting forth the proposed amendments is as follows:

RESOLVED, that the Board of Directors hereby proposes and declares it to be advisable that the Certificate of Incorporation, as amended and supplemented by all certificates heretofore filed and recorded, be amended so that Section 1, Section 5, Section 6 and Section 8 of Article VI thereof, shall be and read as follows:

“ * * * * *

“SECTION 1. *When Rights Arise.* In order to enable the Corporation to qualify for membership privileges on various securities exchanges, boards of trade, commodities exchanges, clearing corporations or associations, and similar institutions located within and without the United States, whether as a member corporation thereof or otherwise, and to continue so qualified in good standing, and in order to insure that the business of the Corporation will be carried on in a manner consonant with the Corporation's respon-

sibilities to the public as an organization so qualified, the shares of capital stock of the Corporation shall be issued only in the name of the legal owner, and no transfer of such shares shall be effected except on the stock books of the Corporation upon surrender of the stock certificates duly endorsed, and all shares of capital stock of the Corporation shall at all times be held subject to the conditions and restrictions set forth in this Certificate of Incorporation, the provisions of which shall at all times apply equally both to an original holder of shares and to each and every subsequent holder thereof, and each holder of capital stock, by the acceptance of a stock certificate representing shares of the Corporation's capital stock, agrees with the Corporation and with each other holder of capital stock, in consideration of such agreement of each such other holder of capital stock, to such conditions and restrictions, as follows:

“(a) Except as otherwise provided in Section 4 of Article VII hereof, in the event of the death or declaration of incompetency of any holder of capital stock of the Corporation (other than the death or declaration of incompetency of a legal representative of a holder or a trustee of a trust holding shares of such capital stock), the Corporation shall have the right and option which shall be prior to any other right and option, to purchase the shares of capital stock of the Corporation held by the deceased or incompetent holder for a period of ninety (90) days from the earlier of: (i) the date the Corporation receives from the legal representative of such holder written notice, sent by first class registered mail addressed to the Secretary of the Corporation and referring specifically to this Article VI, of the death or declaration of incompetency of such holder, or (ii) the date the Corporation mails written notice, by first class registered mail addressed either to the address of such deceased or incompetent holder appearing on the books of the Corporation or to the address of the legal representative of such holder and referring specifically to this Article VI, that the Corporation is on notice of such death or declaration.

“(b) Except as provided in Section 10 of this Article VI, whenever and as often as any holder of capital stock of the Corporation shall desire to sell, assign, transfer or otherwise dispose of any shares of capital stock of the Corporation, except for the disposition of shares to (i) a trustee or trustees of a testamentary trust, from an estate, and (ii) a successor

trustee or trustees of any trust, from a predecessor trustee or trustees, such holder shall notify the Corporation to such effect, in a written notice, sent by first class registered mail addressed to the Secretary of the Corporation and referring specifically to this Article VI, stating the number of shares which such holder desires to sell, assign, transfer or otherwise dispose of and, if known, the name of the person to whom it is desired to make such sale, assignment, transfer or other disposition. Upon receipt of such notice, the Corporation shall have the right and option which shall be prior to any other right and option, to purchase such shares for a period of ninety (90) days from date of receipt of such notice or, if such holder fails to give such notice, for a period of ninety (90) days from the date the certificate or certificates representing the shares in question are presented to the Corporation for transfer. No holder may sell, assign, transfer or otherwise dispose of shares or give the notice provided for in this paragraph (b) during any option period provided for in this Section 1.

“(c) Whenever it is determined by the Corporation that any holder of capital stock of the Corporation has violated any agreement made by such holder with the Corporation, the Corporation shall have the right and option which shall be prior to any other right and option, to purchase the shares of capital stock of the Corporation held by such holder for a period of ninety (90) days from the date the Corporation mails to such holder written notice, sent by first class registered mail addressed to such holder at his address appearing on the books of the Corporation and referring specifically to this Article VI, of such determination; and whenever it has been determined by an exchange, board of trade, clearing corporation, or similar institution on which the Corporation has membership privileges, that any holder of capital stock of the Corporation has violated any agreement made by such holder therewith, or any such holder shall have been suspended or expelled from, or approval of him as a holder of such capital stock shall have been refused, terminated or withdrawn by any such exchange, board of trade, clearing corporation, or similar institution, the Corporation shall have the right and option which shall be prior to any other right and option, to purchase the shares of capital stock held by such holder for a period of ninety (90) days from the earlier

of (i) the date the Corporation receives from such exchange, board of trade, clearing corporation or similar institution written notice of such determination, suspension, expulsion or refusal, termination or withdrawal of approval, as the case may be, or (ii) the date the Corporation mails written notice, by first class registered mail addressed to the address of such holder appearing on the books of the Corporation and referring specifically to this Article VI, that the Corporation is on notice of such determination, suspension, expulsion or refusal, termination or withdrawal of approval, as the case may be.

“(d) Whenever any holder of Voting Stock of the Corporation, for reasons other than those set forth in paragraph (a), (c) or (g) of this Section 1, ceases to be either a member or an allied member of the New York Stock Exchange or ceases to be an officer or employee of the Corporation actively engaged in its business and devoting the major portion of his time thereto (unless such holder is in active government service or unless the health of such holder does not permit such active engagement in the business of the Corporation), the Corporation shall have the right and option which shall be prior to any other right and option, to purchase the shares of Voting Stock of the Corporation held by such holder (i) in the case of such holder so ceasing to be a member or an allied member of the New York Stock Exchange, for a period of ninety (90) days from the earlier of (A) the date the Corporation receives from such holder written notice, sent by first class registered mail addressed to the Secretary of the Corporation and referring specifically to this Article VI, of such cessation, or (B) the date the Corporation mails to such holder written notice, sent by first class registered mail addressed to such holder at his address appearing on the books of the Corporation and referring specifically to this Article VI, that the Corporation is on notice of such cessation, and (ii) in the case of such holder ceasing to be an officer or employee of the Corporation so engaged, for a period of ninety (90) days from the date the Corporation mails to such holder written notice, sent by first class registered mail addressed to such holder at his address appearing on the books of the Corporation and referring specifically to this Article VI, that it has determined that such holder has ceased to be so engaged.

“(e) Whenever the shares of capital stock of any holder thereof are involuntarily transferred by operation of law or otherwise, other than by a transfer (i) contemplated by paragraph (a) of this Section 1, (ii) occasioned by the death of a legal representative or trustee, or (iii) by a trustee or trustees to a successor trustee or trustees, the Corporation shall have the right and option which shall be prior to any other right and option, to purchase from the transferee the shares of capital stock of the Corporation acquired by such involuntary transferee, for a period of ninety (90) days from the earlier of (A) the date the Corporation receives from the transferee written notice, sent by first class registered mail addressed to the Secretary of the Corporation and referring specifically to this Article VI, of such transfer, or (B) the date the Corporation mails, by first class registered mail addressed to the holder whose shares have been so transferred, at his address appearing on the books of the Corporation and referring specifically to this Article VI, that the Corporation is on notice of such transfer.

“(f) Whenever the Board of Directors of the Corporation shall determine in good faith that, due to special circumstances, it is necessary or desirable for the welfare of the Corporation or for the attainment of the corporate objectives set forth in this Certificate of Incorporation that any holder of capital stock of the Corporation cease to be a holder thereof and such determination shall be confirmed by the action of the holders of a majority of the shares of Voting Stock outstanding at a special meeting called for the purpose or by the written consent of such holders, the Corporation shall have the right and option to purchase the shares of capital stock of the Corporation held by such holder for a period of ninety (90) days from the date the Corporation mails to such holder written notice sent by first class registered mail addressed to such holder at his address appearing on the books of the Corporation and referring specifically to this Article VI, of such determination and the confirmation thereof.

“(g) Whenever any holder of Voting Stock of the Corporation resigns in writing as an officer or employee of the Corporation or retires under any retirement plan or policy of the Corporation, the Corporation shall have the right and option which shall be prior to any other right and option, to

purchase the shares of Voting Stock of the Corporation held by such holder (i) in the case of such holder resigning, for a period of ninety (90) days from the date of the resignation irrespective of the effective date thereof, and (ii) in the case of such holder retiring under any such plan or policy, for a period of ninety (90) days prior to the date such retirement is to become effective.

* * * * *

“SECTION 5. *Time of Determination of Net Book Value.* (a) The net book value of shares of capital stock of the Corporation purchased upon the exercise of any right and option arising pursuant to the provisions of paragraphs (a) or (g) of Section 1 of this Article VI shall be determined by the Corporation as of the close of the regular monthly accounting period during which the event causing such right and option to arise occurred, if pursuant to the provisions of said paragraph (a), or became effective, if pursuant to the provisions of said paragraph (g).

“(b) The net book value of shares of capital stock of the Corporation purchased upon the exercise of any right and option arising pursuant to the provisions of paragraphs (b), (c), (d), (e) or (f) of Section 1 of this Article VI shall be determined by the Corporation as of the close of the regular monthly accounting period next preceding the date sixty (60) days prior to the date on which the Corporation mailed notice of election to exercise such right and option.

“SECTION 6. *Method of Determination of Net Book Value.* Net book value of shares of capital stock of the Corporation for the purposes of this Article VI and Articles VII and XIII hereof shall be determined by the Corporation in accordance with sound accounting principles but shall be adjusted up or down, as the case may be, (i) to reflect the difference in the market value of all memberships owned by the Corporation or covered by so-called a-b-c agreements and the book value thereof, (ii) to reflect the market value of all securities and commodities owned by the Corporation as against the book value thereof, (iii) to reflect the unrealized gain or loss on short sale commitments, (iv) to provide appropriate accruals for all taxes (including all taxes based on income), bonuses and all other employee compensation (including compensation determined and payable after the end of the then

current fiscal year), reserves for contingent liabilities and any other reserves which the Board of Directors of the Corporation may deem proper, and all other items of income and expense attributable to the period prior to the date as of which the determination is made, and (v) to exclude any value whatsoever for customers' lists, records and files and good will appertaining to the name or business of the Corporation. Net book value of such shares, when determined for purposes of this Article VI and Article VII, shall be determined as provided in the preceding sentence, and, in addition, in making such determination there shall be deducted the amount of any dividends payable on shares of the capital stock of the Corporation to stockholders of record on a date subsequent to the appropriate date for the determination of the net book value thereof and prior to the date for the tender or delivery of such shares to the Corporation or to other purchasers designated by the Corporation all in accordance with the appropriate provisions of this Article VI and Article VII.

* * * * *

"SECTION 8. *Method of Exercising Corporation's Right to Purchase Shares.* (a) Exercise of any right and option arising pursuant to the provisions of paragraphs (b), (c), (d), (e) or (f) of Section 1 of this Article VI to purchase any shares of capital stock of the Corporation shall be effected by the Corporation's mailing to the holder of such shares by first class registered mail addressed to such holder at his address appearing on the books of the Corporation and referring specifically to this Article VI, not later than the close of business on the business day next preceding the expiration of the option period, a written notice advising of the election to exercise such right and option, stating the names of the purchasers and the number of shares to be purchased by each of them, the consideration to be paid for the purchase of such shares, and the date upon which payment of such consideration will be made at the principal place of business of the Corporation in the City, County and State of New York, which date shall be not less than twenty (20) days nor more than thirty (30) days following the date of the mailing of such notice. The holder of the shares being so purchased shall deliver the certificate or certificates representing such shares, properly endorsed for transfer, to the Corporation on the date of payment specified in such notice against payment therefor.

“(b) Exercise of any right and option arising pursuant to the provisions of paragraphs (a) or (g) of Section 1 of this Article VI to purchase any shares of capital stock of the Corporation shall be effected by the Corporation’s mailing, by first class registered mail, addressed either to the address of the holder of such shares appearing on the books of the Corporation or to the legal representative of such holder and referring specifically to this Article VI, not later than the close of business on the business day next preceding the expiration of the option period, a written notice advising of the election to exercise such right and option, stating the names of the purchasers, the number of shares to be purchased by each of them, the nature of the consideration to be paid and the date upon which the certificate or certificates representing the shares being purchased, properly endorsed for transfer, are to be delivered to the Corporation at its principal place of business in the City, County and State of New York, which date of delivery shall be a date not less than seven (7) days following the date of mailing of such notice or, in the case of the exercise of any right and option arising pursuant to the said paragraph (g), shall be the date the resignation or retirement of the holder of the shares in question becomes effective (or the next full business day if such date is not a full business day), if such date is more than seven (7) days following such date of mailing. Delivery of such certificate or certificates by the holder thereof shall be made on the date specified against receipt therefor and, if a portion of any shares of Voting Stock represented thereby are to be exchanged for shares of Non-Voting Stock, also against delivery by the Corporation of a certificate or certificates representing such shares of Non-Voting Stock. Upon delivery to the Corporation as provided in this paragraph (b) of the certificate or certificates representing the shares of capital stock being purchased, the holder shall cease to be a holder of the shares represented thereby for all purposes. Not more than ninety (90) days following the date as of which the net book value of the shares being purchased is to be determined pursuant to the provisions of Section 5 of this Article VI, the Corporation shall mail by first class registered mail addressed to the same address another written notice stating the amount of cash or evidence of indebtedness which is to comprise the consideration for the shares of capital stock not exchanged for shares of Non-Voting Stock, and the date upon which payment of such cash or evidence of indebtedness will be made at the principal place of business of the Corporation in the City, County, and State of

New York, which date of payment shall be not less than twenty (20) days nor more than thirty (30) days following the date of the mailing of such notice of payment. On such specified date payment of the cash or evidence of indebtedness stated in such notice shall be made in accordance therewith. All payments in cash shall include interest on the amount of cash specified in the notice of payment, computed at the call money rate in effect from time to time, from the date that the certificate or certificates representing the shares being purchased were obligated to be delivered to the Corporation or were so delivered, whichever is the later, to the date of payment, and all evidence of indebtedness shall bear interest from the same date.

“(c) In the event that there shall be a dispute as to the net book value of shares being purchased pursuant to this Article VI and a determination thereof is to be made by a firm of independent public accountants pursuant to Section 7 of this Article VI, the date of payment shall be postponed until such determination has been made and the Corporation has mailed, by first class registered mail to either the address of the holder of the shares in question appearing on the books of the Corporation or the address of his legal representative written notice of such determination and of the date upon which the payment of the consideration for the shares in question is to be made, which notice shall be given not more than ten (10) days after such determination has been made and shall specify a date for such payment not more than ten (10) days following the mailing of such notice.

“(d) All transfer taxes payable in connection with the purchase of shares pursuant to this Article VI shall be paid by the purchasers of such shares. Upon failure of a holder to deliver the certificate or certificates for the shares being purchased from him on the applicable date as provided in this Section 8 properly endorsed for transfer, the Corporation may cause the consideration to be paid for such shares, or if the total consideration has not then been determined the portion thereof comprised of shares of Non-Voting Stock, to be deposited in trust for such holder with any bank in the City, County and State of New York with aggregate capital and surplus of not less than \$25,000,000, for such period as shall be determined by the Corporation, to be paid to such holder by such bank upon surrender of the certificate or certificates for such shares properly endorsed for transfer. Upon such deposit

the Corporation shall give notice thereof in writing to such holder by mailing such notice by first class registered mail to either the address of such holder appearing on the books of the Corporation or the address of his legal representative, and upon the mailing of such notice, the shares as to which such right and option has been so exercised and for the purchase of which the consideration, or portion thereof, has been so deposited, shall have no further voting or dividend rights until the certificate or certificates for such shares shall be delivered to the Corporation or the aforesaid bank properly endorsed for transfer; PROVIDED, HOWEVER, that in the event that such right and option is so exercised and the consideration is so deposited by a person or persons other than the Corporation, then all dividends that may be payable to shareholders of record on a date on or after the date of deposit and prior to the time at which the certificate or certificates for the shares as to which such right and option has been so exercised and the consideration so deposited are delivered as aforesaid, shall be held in trust by the Corporation for payment to such person or persons who so deposited such consideration when such certificate or certificates are so delivered. In the event of a deposit of a portion of the total consideration as aforesaid the balance of the consideration shall also be so deposited as soon as it is determined.

“ * * * * ”

SECOND: That thereafter, the annual meeting of the stockholders of the said corporation was duly held, and, pursuant to resolution of its Board of Directors, the foregoing proposed amendments were submitted to the stockholders of the said corporation entitled to vote thereon at said annual meeting of stockholders, at which meeting the necessary number of stockholders required by statute voted in favor of such amendments.

THIRD: That the foregoing amendments have been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the said amendments do not effect any change in the issued shares of the corporation.

IN WITNESS WHEREOF, said MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED has caused its corporate seal to be hereunto affixed and this certificate to be signed by its President and its Secretary this 23rd day of April, 1963.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

MERRILL LYNCH, PIERCE,
FENNER & SMITH
INCORPORATED
CORPORATE SEAL
1958
DELAWARE

By GEORGE J. LENESE
President

DONALD T. REGAN
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BE IT REMEMBERED that on this 23rd day of April, 1963, personally came before me, Marjorie Dawe, a Notary Public in and for the County and State aforesaid, George J. Leness, President of MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said George J. Leness, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Secretary of said corporation to said foregoing certificate are in the handwriting of the said President and Secretary of said corporation respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

MARJORIE DAWE
Notary Public

MARJORIE DAWE
NOTARY PUBLIC
STATE OF NEW YORK

MARJORIE DAWE
Notary Public, State of New York
No. 31-0883700
Qualified in New York County
Commission Expires March 30, 1965

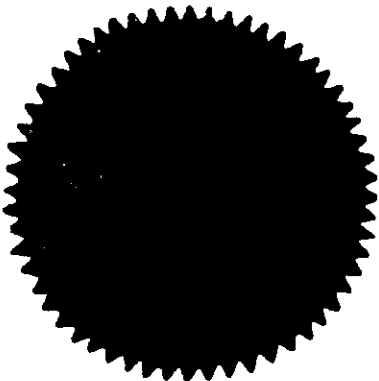
State of Delaware



Office of Secretary of State.

I, Elisha C. Dukes, Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED", as received and filed in this office the
twenty-fifth day of April, A.D. 1963, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover this _____ *first* _____ *day*
of _____ *May* _____ *in the year of our Lord*
one thousand nine hundred and _____ *sixty-three.*



Elisha C. Dukes

Secretary of State

A. L. ...

Asst Secretary of State