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March 10, 2008

Via Electronic Mail

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: File Number 4-534 Symbology Plan

Dear Ms. Morris:

We submit this letter on behalf of our clients, Pershing LLC ("Pershing") and National Financial Services LLC ("NFS") (together, the "Commenting Firms"), in response to a request by the Securities and Exchange Commission (the "SEC" or "Commission") for comments on Securities Exchange Act Release No. 34-57171 ("Release 34-57171").[1] Release 34-57171 concerns the first amendment to the Proposed National Market System Plan for the Selection and Reservation of Securities Symbols (the "NMS Symbology Plan") submitted by various listing markets.[2]

I. Background

On February 7, 2005, pursuant to rule 608 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the "Exchange Act"),[3] the Commission sent a letter requesting that the listing markets discuss and develop a national market system plan for reserving, selecting, and allocating securities symbols.[4] In response, two groups of listing markets

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[1] 73 Fed. Reg. 4645 (January 25, 2008)

[2] This amendment was submitted on January 18, 2008 by the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), New York Stock Exchange LLC ("NYSE"), and NYSE Arca, Inc. ("NYSE Arca").

[3] 17 CFR § 242.608.

[4] Letters dated February 7, 2005 from Annette L. Nazareth, then the SEC's Director of the Division of Market Regulation, to Amex, Boston Stock Exchange ("BSE"), CBOE, Chicago Stock Exchange ("CHX"), ISE, Nasdaq Stock Market, Inc. ("Nasdaq"), National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority, Inc. ("FINRA")), National Stock Exchange, Inc. ("NSX"), NYSE, NYSE Arca (then Pacific Exchange), and Philadelphia Stock Exchange, Inc. ("Phlx").

proposed separate plans to govern the reservation and allocation of securities symbols. The listing market groups submitted the proposed plans in a combined NMS Symbology Plan.[5] The SEC published the combined NMS Symbology Plan for comments in SEC Release No. 34-56037 ("Release 34-56037").[6] On July 10, 2007, Amex, NYSE, and NYSE Arca, joined by CBOE and ISE, filed the first amendment to their part of the NMS Symbology Plan. Release 34-57171 addresses that amendment.

Although the amendment addresses specific details of the plan, the Commission has solicited a broad spectrum of comments. The Commission has asked, among other things, whether it should consider other matters, and specifically whether "only root symbols [should] be covered" by the NMS Symbology Plan, or suffixes as well.[7] The Commenting Firms believe that suffixes should be part of the plan, and should be addressed as part of a single, unified symbology convention.

Nasdaq proposed its own suffix convention — the Integrated Platform Suffix Convention (the "Proposed Suffix Convention") — in 2006. It was revised on several occasions. Under the Proposed Suffix Convention, market participants would be required to use special characters as suffixes to identify subordinate issues of a Nasdaq-listed issuer. Industry groups, including the Securities Industry and Financial Markets Association ("SIFMA"), have raised serious concerns about the Proposed Suffix Convention and the significant operational issues that must be resolved to accommodate special character suffixes.[8] The Commenting Firms have direct experience with these issues. As discussed more fully below, the Commenting Firms strongly object to the Proposed Suffix Convention and urge the Commission to conduct a comprehensive review of the NMS Symbology Plan and adopt a single, unified symbology convention.

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[5] Amex, CBOE, ISE, NYSE, and NYSE Arca submitted a three-character plan. Separately, Nasdaq, FINRA, NSX, and Phlx submitted a five-character plan. On April 23, 2007, Nasdaq, NASD, NSX and Phlx, further joined by CHX, filed a supplement to the five-character plan.

[6] 72 Fed. Reg. 39096 (July 17, 2007). The proposed NMS Symbology Plan would govern how the listing markets would reserve and transfer securities symbols among the listing markets participating in the plan. The plan includes provisions on the oversight of the process of reservation and allocation of the securities symbols, fees associated with the plan, and qualifications for new listing markets to participate in the plan.

[7] Release 34-57171, at 6.

[8] *See* FIF/SIFMA NASDAQ Suffix Symbology Survey (Jan. 31, 2008). Forty-five firms participated in the survey, including market-data vendors, service bureaus, major clearing firms, DTCC, and exchanges.

II. Discussion

A. The Proposed Suffix Convention Would Cause Significant Inefficiencies in the National Market System

The industry has long used suffix conventions that are based upon natural language or alpha-numeric characters.[9] The Proposed Suffix Convention would fracture this longstanding practice by requiring firms to use special characters with certain Nasdaq-listed issuers.[10] While the subordinate issues of such Nasdaq-listed issuers would be represented by these special characters, other listing markets would continue to use natural language or alpha-numeric characters. IBM preferred stock, for example, would be listed as "IBM.A#" in Nasdaq, and "IBM PR" or "IMB.PR" in other markets using natural language or alpha-numeric symbology conventions. This has far-reaching consequences for market participants that are required to route orders across markets. When subordinate issues are listed in multiple markets, market participants will be forced to use, understand and translate orders with different symbols to comply with the inter-market sweep requirements of Regulation NMS. Identifying the same subordinate issues with different symbols adds an unnecessary layer of complexity and inefficiency. This is contrary to the statutory purpose of Regulation NMS, which aims to promote an integrated and efficient national market system.[11]

There are similarly significant inefficiencies that will occur in the options markets. The Options Clearing Corporation ("OCC"), the largest options clearing organization in the world, has already informed market participants that it will not adopt the Proposed Suffix Convention. ISE has done the same. This means that the suffixes used by OCC and ISE to identify subordinate issues in the "root securities" of certain options in Nasdaq-listed securities will not match the suffixes used by other market participants. This will cause serious data transmission and translation problems. These disparate standards will also confuse investors. Whether in the equities or options markets, investors will be forced to recognize and understand different suffix conventions that purport to identify the same exact security. This makes little sense.

[9] Generally, major national exchanges such as NYSE and AMEX use variations of alpha-numeric or natural language based suffix conventions, such as the CMS and CQS suffix convention, to represent subordinate issues. For example, the symbol "A" means "Class A," and the symbol "PR" means "Preferred." For a complete list of CMS suffixes, CQS suffixes, and Nasdaq's special character suffixes, *see* http://www.nasdaqtrader.com/Trader.aspx?id=CQSSymbolConvention.

[10] Special characters include, among others, "*," "#," "^," "%," "!," "~," and "$." Additional information on the Proposed Suffix Convention is available at http://www.nasdaqtrader.com/Trader.aspx?id=StockSymChanges.

[11] *See* 15 USC § 78k-1(1)(C).

B. The Proposed Suffix Convention Poses Significant Risks and Technological Challenges to the National Market System

Incorporating special characters into suffix symbology conventions creates serious security concerns in internet-based applications. Industry organizations dedicated to improving application security, including the Open Web Application Security Project ("OWASP"), strongly advise firms against the use of special characters in input fields.[12] Special characters render internet-based applications especially vulnerable to cross-site scripting, a method of attack in which malicious code is injected into an application (often using a technique known as an "SQL injection"). Malicious code enables an attacker to bypass access controls, which has obvious data security implications. This is more than a hypothetical concern. The hacking community is well aware of the Proposed Suffix Convention and its vulnerabilities.[13] Because of the risk of such attacks, OWASP and others strongly recommend against the use of special characters in input fields.[14] If firms are forced to use a suffix convention with special characters, they will need to reprogram their systems with very sophisticated security measures.[15] Such security measures are costly and time-consuming, and may not be entirely successful in preventing cross-site scripting. Unsuccessful security measures could have catastrophic consequences, the costs of which are not captured in any of the firms' estimates.

The process of incorporating special characters required by the Proposed Suffix Convention involves lengthy and costly reprogramming efforts. The back-office systems that need to be reprogrammed include, among others, order entry systems, order management systems, direct market access systems, messaging systems, order and trade status systems, reporting systems, customer service systems, transmission systems, portfolio management and planning systems, and risk management systems. The reprogramming of one firm's back-office systems is, however, only a small part of the process. Special characters are translated by the software programs of market participants in different ways. These differences will result in data mismatches in all sorts of important applications. FTP and NDM file transfers are just one example. Until all of the firms have coordinated their back-office systems, trading discrepancies and mismatches (or "breaks") will occur frequently. The Commenting Firms send and receive data transmissions more than 2,000 times a day to and from other entities. Both of the Commenting Firms will need to harmonize their systems with the systems of all

[12] *See* http://www.owasp.org/index.php/data_validation#data_validation_strategies.

[13] *See* http://ha.ckers.org/blog/20071213/nasdaq-symbology-change.

[14] SIFMA and Financial Information Forum ("FIF") intend to submit comment letters in response to Release 34-57171. Their letters provide further details on technological problems involving special characters.

[15] Indeed, broker-dealers are required to implement security measures to protect customer information. *See* Regulation SP, 15 USC §§ 6801 *et seq.*

of their correspondents to avoid serious data transmission problems. It makes little difference that the Proposed Suffix Convention involves only 192 securities. Reprogramming back-office systems is a difficult and costly process that does not become easier when fewer securities are involved.

These challenges are further complicated because many of the special characters have very specific meanings in database query languages and cannot easily be reprogrammed for some other purpose. The symbols "*" and "%," for example, are wildcard characters in common database query languages. The symbol ";" terminates an instruction in common database query languages. All three symbols are frequently used in database attacks. None should be used to identify subordinate issues in Nasdaq-listed securities.

Systems using telephone order entry and voice-recognition technology also present special challenges because telephones do not provide special characters on their keypads and special characters are difficult to express orally. These are complex and time-consuming operational issues. The Commenting Firms are struggling to resolve these issues on a timely basis.

C. The Costs of Implementing the Proposed <u>Suffix Convention Significantly Outweigh the Benefits</u>

The costs of complying with the Proposed Suffix Convention are massive. The Commenting Firms estimate that they will each need a large team of professionals for a significant amount of time each week between now and the proposed deadline, September 13, 2008. We believe that this will cost approximately $6 million for the Commenting Firms collectively. This does not include the lost opportunity costs that result from devoting so many professionals to the compliance effort. While the costs of compliance are high, the benefits are relatively insignificant. Only 192 securities are subject to conversion under the Proposed Suffix Convention.[16] This is a tiny fraction of securities that accounts for only one-half of one percent of the Commenting Firms' trading volume on a daily basis. The Commenting Firms will spend millions of dollars and thousands of man-hours for what is, in effect, a pilot program. Of course, these costs are not limited to the Commenting Firms. To varying degrees, they would be borne by broker-dealers, service bureaus and market data vendors across the industry. Some of these costs would be passed along to investors. The Commenting Firms believe that these massive costs should be directed towards a uniform,

[16] For those firms (like NFS) that do not actively trade all of the 192 securities covered by the Proposed Suffix Convention, the costs per security are even higher and the benefits are even less significant.

harmonized symbology plan that applies across the national market system.[17]

Nasdaq had delayed the effective date of the Proposed Suffix Convention on several occasions. Nasdaq may believe that delaying the effective date of the Proposed Suffix Convention will reduce the compliance costs faced by the Commenting Firms. Respectfully, it will not. The Commenting Firms cannot abandon their efforts to comply with the Proposed Suffix Convention during periods of deliberation and indecision. They must continue their efforts to resolve the substantial technical challenges brought on by the Proposed Suffix Convention. As long as the uncertainty continues, the Commenting Firms must devote significant resources to the compliance effort. The more delay that occurs, the more time these significant resources are lost. Continued uncertainty and delay only increases costs to the Commenting Firms. The Commenting Firms cannot predict the future and they cannot blindly hope for the best. They will continue to incur massive compliance costs for as long as the Proposed Suffix Convention remains scheduled to become effective.

III. Conclusion

No suffix symbology should be implemented by a single self-regulatory organization's initiative. The Proposed Suffix Convention should be suspended until its costs and benefits can be assessed and reviewed as part of the market integration efforts mandated by Regulation NMS. The Commission, in fact, has broad discretion to subject the proposal to changes and conditions prior to approval:

> "The Commission shall approve such plan or amendment with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act." [18]

The Proposed Suffix Convention would cause serious and pervasive technical and operational difficulties for market participants. We strongly urge the Commission to conduct a comprehensive review of the suffix conventions as part of the NMS Symbology Plan and to consider adopting a single, unified symbology convention. The Commenting Firms, as

[17] It should be noted that Nasdaq has proposed a suffix convention incorporating special characters because its system accommodates only six characters. For Nasdaq to accommodate natural-language symbols that are longer than six characters, Nasdaq would have to modify its platform system.

[18] Regulation NMS, rule 608(b)(2).

market participants that provide clearing and settlement services to financial services firms across the industry, believe that a single, unified symbology convention would promote a harmonized national market system and reduce unnecessary inefficiencies and operational challenges.

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We are grateful for the opportunity to comment on the NMS Symbology Plan on behalf of the Commenting Firms. If you have any questions about our comments or need additional information from the Commenting Firms, please contact me at (212) 508-6142, or my colleague, Bob Frenchman, at (212) 508-6184.

Very truly yours,

Julian Rainero
Bracewell & Giuliani LLP

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Kathleen L. Casey, Commissioner
Dr. Erik R. Sirri, Director of Trading and Markets

Robert Greifeld, CEO, NASDAQ OMX Group, Inc.
Christopher R. Concannon, EVP, NASDAQ OMX Group, Inc.