



January 15, 2008

Via email to rule-comments@sec.gov

Nancy M. Morris
Secretary
United States Securities and Exchange Commission
Station Place, 100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Symbology Plans (SEC File Nos. 4-533 and 4-534)

Dear Ms. Morris:

We write on behalf of New York Stock Exchange LLC (“NYSE”) to respond to the November 2, 2007, comment letter (the “Nasdaq Comment Letter”) of the Nasdaq Stock Market LLC (“Nasdaq”) and the November 27, 2007, comment letter (the “FINRA Comment Letter”) of the Financial Industry Regulatory Authority (“FINRA”), both of which letters commented on the two proposed symbology plans that the securities markets have filed with the Commission.¹

¹ NYSE, the American Stock Exchange, LLC (“AMEX”) and NYSE Arca, Inc. (“NYSE Arca”) submitted their proposed “National Market System Plan for the Selection and Reservation of Securities Symbols” (the “Three-Character Plan”) to the Commission on March 23, 2007. Chicago Board Options Exchange, Inc. (“CBOE”) and International Securities Exchange, LLC (“ISE”) later joined the Plan as part of the changes proposed in Amendment No. 1 to the Three-Character Plan, which was submitted to the Commission on August 1, 2007.

On that same date, Nasdaq, FINRA, National Stock Exchange, Inc. (“NSX”) and Philadelphia Stock Exchange, Inc. (“PHLX”) submitted their proposed “National Market System Plan for the Selection and Reservation of Securities Symbols” (the “Five-Character Plan”).

The Commission published both proposed symbology plans in the Federal Register for comment on July 17, 2007. (Release No. 34-56037; File Nos. 4-533 and 4-534.)

NYSE has previously submitted comment letters regarding two Nasdaq filings that pertain to symbology: SR-Nasdaq-2007-025 (the “DFC Filing”)² and SR-Nasdaq-2007-031 (the “General Portability Filing”).³ (Both filings related to the portability of three-character trading symbols.) Those two NYSE comment letters address symbology issues extensively and NYSE respectfully requests the Commission to incorporate NYSE’s comments in those letters into this comment letter.

A. The Nasdaq Comment Letter

The Nasdaq Comment Letter compares the Five-Character Plan (which Nasdaq espouses) to the Three-Character Plan (which NYSE supports). Nasdaq’s underlying premise is that the Commission should overturn more than three decades of successful marketplace experience in favor of a plan that makes it more difficult for investors to differentiate NYSE-listed securities from Nasdaq-listed securities. As NYSE has said before,⁴ NYSE sees no public benefit from deviating from the time-honored practice of NYSE and the regional exchanges using three-character symbols and NASDAQ using symbols of four or more characters. This practice has provided investors, securities issuers, and the public at large with a clear and unambiguous ability to differentiate an NYSE symbol from a Nasdaq symbol. The investor confusion that the Five-Character Plan would perpetrate far outweighs any marketing benefits that Nasdaq seeks through the Five-Character Plan.

1. Benefits to Issuers and Investors. A number of the comment letters on the two symbology plans attest to the value that issuers and investors place on this important distinction. Here are some typical examples:

“[W]e consider the 3-Digit NYSE symbol for our stock a symbol of prestige, value and distinction – since NYSE companies adhere to much higher standards than Nasdaq companies and our stockholders recognize this distinction. We would not like to see that value diminished by eliminating the distinction.”⁵

² See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Securities and Exchange Commission (the “Commission”) dated April 23, 2007 (the “NYSE Comment on the DFC Filing”).

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Securities and Exchange Commission (the “Commission”) dated April 25, 2007 (the “NYSE Comment on the General Portability Filing”).

⁴ See letter from Catherine R. Kinney, President and Co-Chief Operating Officer of NYSE, to Robert L. Colby, Acting Director, Division of Market Regulation, dated February 10, 2006 (“NYSE February 2006 letter”).

⁵ See May 14, 2007, letter from Carol Kaufman, Senior Vice President, The Cooper Companies, Inc. (NYSE: COO) to Christopher Cox, Commission Chairman.

“For many of us who have read the tape for years, there is an instant recognition as to the exchange source of a trade with the differing number of characters in the ticker symbol. This [Nasdaq-proposed] change will add confusion to the marketplace.”⁶

“Nasdaq’s effort to adopt ticker symbols of three or fewer characters is predatory and unfairly diminishes the distinguishing benefit to Ethan Allen of our election to be listed on the NYSE.”⁷

“It is a system that has worked well during the best and worst of times. . . . I have relied on securities listed on the NYSE to represent the best in truthfulness and accuracy in financial reporting and in stability of earnings. The three or fewer letters in the ticker symbol makes that reliance very easy. The four or more letters in a public company’s symbol means I must perform an extra level of scrutiny.”⁸

“The ability to instantly recognize our NYSE listing through our ticker symbol adds significant value to the company. . . . [T]he recent change in the ticker symbols used by Nasdaq listed companies is an attempt by Nasdaq to confuse the investing public and to blur and diminish the financial and other significant achievements commonly associated with NYSE listed companies, which have been easily identifiable by a three ticker symbol.”⁹

Industry commentators have also opined that Nasdaq’s use of three-character symbols would blur the difference between NYSE and Nasdaq and introduce investor confusion.¹⁰

2. Tradition of Transparency. The Commission has long espoused the attaching of indicators and identifiers to symbols on the tape in order to inform investors of numerous trade conditions. For example, when a transaction is exempt from Regulation NMS’s trade-through rule, or a transaction is reported late, or a transaction is an average-price trade, the broker-dealer attaches an indicator that advises investors of the condition. NYSE agrees with the Commission that this is sound business practice and of benefit to investors because it adds

⁶ See May 8, 2007, letter from Bart J. Ward, Chief Executive Officer, Ward & Company, to Chairman Cox.

⁷ See May 9, 2007, letter from Farooq Kathwari, Chairman and CEO, Ethan Allen Interiors, Inc. to Chairman Cox.

⁸ See May 2, 2007, letter from Michael Tenenbaum, Trustee, Strategic Technologies Employees Pension Fund Trust, to Chairman Cox.

⁹ See April 4, 2007, letter from Steven S. Fishman, Chairman and Chief Executive Officer, Big Lots, Inc. (NYSE: BIG) to Chairman Cox.

¹⁰ See, for example, Matt Krantz, *Nasdaq Hopes To Attract New Listings As Easy As 1-2-3*, USA TODAY at 1B (Mar. 13, 2007) and Gaston F. Ceron, *In the ABCs of the NYSE, Macy’s Snags the ‘M’*, WALL ST. J. at C3 (Mar. 29, 2007).

transparency and provides a simple means for communicating important information to the marketplace. Nasdaq-listed companies through Nasdaq's history have been associated with 4 and 5 characters, while NYSE-listed companies have been identified with 3 or less. Continuing to distinguish between NYSE and Nasdaq securities constitutes sound business practice and benefits investors for the same reason. Using symbols containing different numbers of characters is the optimal way to accomplish this.

3. The Five-Character Plan Is Anti-Competitive in Nature. The Nasdaq Comment Letter asserts that the Three-Character Plan is anti-competitive and advantageous to the exchanges that list Network A and Network B securities. Yet, the Nasdaq Comment Letter fails to provide any evidence to justify its unsubstantiated assertion that current symbol practices have hurt Nasdaq competitively. The Nasdaq Comment Letter connotes that Nasdaq's goal is to free-ride on the many years of effort that NYSE has spent cultivating its brand, a brand that investors associate with a three-character NYSE symbol. While we acknowledge that the Commission has taken action to allow the portability of three-character symbols in certain circumstances, we stand by the points made in the NYSE Comment on the DFC Filing and the NYSE Comment on the General Portability Filing with regard to the significant qualitative and quantitative distinctions between NYSE and Nasdaq.¹¹ The NYSE maintains that the unfettered use of three-character symbols for securities outside Network A and Network B, as advocated in the Five-Character Plan, would unfairly dilute the NYSE brand.

Indeed, NYSE respectfully submits that it is the Five-Character Plan that is anti-competitive. Nasdaq has not used three-character symbols in its entire 35-year history. Nasdaq's request for permission to employ them now belies Nasdaq's confidence in its own brand and is a blatant attempt to gain an unfair competitive advantage by using the same symbology as NYSE uses. Because NYSE has cultivated the brand value of this asset over time, it should be allowed to reap the benefit of its efforts rather than gifting that value to Nasdaq. To permit Nasdaq to utilize the three-character symbology that has long identified NYSE-listed companies would blur the distinction between markets, dilute the NYSE brand and result in investor confusion. It would remove from the marketplace the transparency inherent in the ability to differentiate a security's listing market at a quick glance. Moreover, it is inconsistent with the principles of true competition, basic considerations of equity, and the preservation of settled expectations, all of which are long-standing hallmarks of the Securities Exchange Act of 1934.

¹¹ The NYSE Comment on the DFC Filing and the NYSE Comment on the General Portability Filing identify the enormous gap between NYSE's listed companies and Nasdaq's listed companies in such areas as aggregate capitalization, average market value, median revenues and profits, inclusion in market indices, and median offering size. They also show that Nasdaq listed companies have far higher volatility and are far more likely to de-list. See the NYSE Comment on the DFC Filing at pp. 6-7 and the NYSE Comment on the General Portability Filing at pp. 5-6.

4. The Predecessor to the Three-Character Plan Has Proven Very Successful. The Nasdaq Comment Letter pays little deference to how well the long-established symbol-management practices that the Three-Character Plan embodies have served the investor community and how the industry has worked together over many years to make symbology allocation work smoothly.

NYSE and the regional markets have worked cooperatively and successfully to make the system work. When ISE was established in 2000, it was granted the right to participate in the Symbol Reservation Plan that has operated to allocate and reserve symbols among the various stock exchanges for more than 30 years. When ISE made its initial public offering in 2005, PHLX, which had reserved the “ISE” symbol, readily agreed to swap that symbol for another, allowing ISE to trade on NYSE under the symbol “ISE.” When a question arose regarding the available supply of three-character symbols, NYSE, AMEX and CBOE together removed 1,000 symbols from reserved status. NYSE initiated meetings with AMEX, ISE, CBOE, NYSE Arca and the Securities Industry Association to forge agreement among the options exchanges and their members to implement explicit strikes, thereby alleviating the pressure on the existing supply of three-character symbols. Despite NYSE’s belief that a national market system plan was unnecessary to address symbol allocation, NYSE took a leading role at formulating such a plan. The options exchanges have sought ways to free up an estimated 3,000 additional symbols in 2009.¹² In short, the Symbol Reservation Plan that has governed the allocation of symbols for more than three decades has withstood the test of time. The Three-Character Plan proposes largely to perpetuate that history.

On the other hand, Nasdaq’s quest to use three-character symbols exacerbates existing supply problems without justification. There are slightly more than 18,000 possible combinations of three or fewer characters and those combinations are shared by securities listed on NYSE, AMEX and the regional exchanges, as well as by options and other derivative products that are listed on other exchanges. In contrast, there are more than 12 million possible combinations using the four or five character symbols that Nasdaq has used historically.

5. The Five-Character Plan Allows for a Disproportionate Number of Symbol Reservations. Nasdaq posits that the Three-Character Plan provides NYSE and AMEX an edge because it allows them to reserve a greater number of symbols than other exchanges. The five markets that submitted the Three-Character Plan had little trouble in agreeing upon the proposed number of reservations, keeping in mind their projected needs. That the Plan awards more symbol reservations to NYSE than to other markets simply reflects the reality that NYSE is likely to list a greater number of securities than those other markets, a reality that is well substantiated by the number of securities that each market has listed in past

¹² See letter from Catherine R. Kinney to Erik R. Sirri, Director, Division of Market Regulation, dated November 20, 2006 (“NYSE November 2006 letter”).

years.¹³ NYSE notes that the ratio of symbol reservations that the Three-Character Plan allocates to NYSE relative to the number of new NYSE listings in an average year is disproportionately smaller than the ratio of symbol reservations to listings of the other participants in the Three-Character Plan.

In NYSE's view, the Five-Character Plan has no reasonable rationale that would justify allowing each exchange to reserve the same number of symbols. A plan should not allow an exchange that averages five new listings per year to reserve 20 symbols and simultaneously allow an exchange that averages 100 new listings per year to also reserve 20 symbols. Such an arrangement would poorly serve the needs of issuers.

6. New Plan Entrants. Nasdaq posits that the Three-Character Plan precludes exchanges and new listing market entrants from meaningful participation in the Plan. This is patently false. Any other market that maintains a market for the listing and trading of securities may become a party to the Plan if (i) its securities are identified by one-, two- or three-character symbols (prior to any suffix or special conditional identifier) and (ii) such of those securities as are listed equity securities are also "Network A" or "Network B" "Eligible Securities" under the CTA Plan. The only actions that the Three-Character Plan requires a new listing market to take in order to join is to sign a current copy of the Plan and to pay a proportionate share of the aggregate development costs. The relative ease with which ISE joined the existing System Reservation Plan attests to the ability of a new market to participate fully and effectively in the Three-Character Plan.

7. Securities with One- or Two-Character Symbols. The Nasdaq Comment Letter cites the provision in the Three-Character Plan that allows an exchange to retain the rights to a one- or two-character symbol after the security bearing that symbol leaves that exchange. Although the parties to the Three-Character Plan have discussed this issue in some detail, their primary concern pertained to post-departure reservation rights for three-character symbols and the Three-Character Plan reflects this. Those parties agreed among themselves to the reservation rights associated with one- and two-character symbols and we urge the Commission to uphold that agreement.

8. Sharing of Costs. The Nasdaq Comment Letter points out that the Three-Character Plan asks each participant to pay an equal share of the Plan's costs, whereas the Five-Character Plan allocates costs according to the percentage of all symbols that each market has reserved. We do not anticipate that establishing or maintaining a symbology plan will cause the markets to incur material costs. Our view is that equal sharing of expenses is appropriate because each participant has an equal say in the management and maintenance of the Plan. However, if the Commission were to disagree, we would not be averse to adopting cost-sharing on the basis of each participant's relative share of reserved symbols.

¹³ For the years 2000 through 2006, NYSE and AMEX accounted for 94 percent of all new listings.

B. The FINRA Comment Letter

The FINRA Comment Letter notes that the two proposed symbology plans allocate symbols to securities markets that list securities for trading. However, FINRA is responsible for the over-the-counter market. In that market, investors trade securities that are not listed on a national securities exchange by means of the OTC Bulletin Board and the Pink Sheets. Therefore, the proposed symbology plans do not apply to OTC equity securities that are not listed on an exchange. This means that if an exchange de-lists a security, thereby relegating it to the over-the-counter market, the security would lose its symbol. The FINRA Comment Letter asks the Commission to permit a security to retain its symbol even after an exchange de-lists the security.

NYSE disagrees. Securities have lost their one-, two- or three-character symbols after de-listing for as long as exchanges have de-listed securities for failure to meet continued listing standards and we believe that this is the proper outcome and that it maximizes investor protection. The de-listing of a security for failure to meet continued listing standards *should* trigger alarm bells for investors. A change in symbols for the security is a clear way to warn investors of the de-listing of the security and the possibly precarious status of the issuer.

The FINRA Comment Letter states that a change in symbols for a security at the time it de-lists risks confusing investors at a time that price transparency is critical. We believe that the contrary is true. The change in symbols at the time of de-listing warns investors of the de-listed status at the precise moment that the warning is most needed. Otherwise, an investor might mistake the de-listed security for a security that continues to meet NYSE listing standards and therefore remains on a sound financial basis.

Conclusion

The Three-Character Plan reflects an agreement among five national securities exchanges as to the appropriate manner for markets that trade Network A, Network B securities, as well as options and other derivative securities, to reserve one-, two- and three-character symbols. NYSE strongly believes that the Three-Character Plan is in the best interests of securities issuers and the general public and urges the Commission to approve it. Unlike the Five-Character Plan, the Three-Character Plan would protect investors and preserve the symbol transparency and competitive landscape that have been hallmarks of the securities industry for more than three decades. It would preserve a system that markets have successfully maintained since NYSE's first use of ticker symbols in 1867.

While we strongly disagree with the Nasdaq Comment Letter's unfounded accusations of unfairness in the Three-Character Plan, our expectation would be that the Plan participants would act in the same cooperative manner that has characterized their sharing of symbols for Network A and Network B securities for many years if experience under the Plan identifies a need for change, or if changes within the securities industry precipitate such a need.

We thank you for this opportunity to comment and remain available to respond to any questions that you might have.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary Yeager", with a long horizontal flourish extending to the right.

Mary Yeager
Assistant Secretary

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Erik Sirri, Director, SEC Division of Market Regulation
Robert L.D. Colby, Deputy Director, SEC Division of Market Regulation
John White, SEC Division of Corporate Finance