NASDAQ®
THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

May 1, 2007

Via email to rule-comments@sec.gov

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549

Re: Response to Comments – SR-NASDAQ-2007-031
Portability of Three-Character Trading Symbols

Dear Ms. Morris:

The Nasdaq Stock Market LLC ("Nasdaq") welcomes the opportunity to respond to comments submitted in connection with the above-captioned proposal to allow issuers that currently use three-character trading symbols to continue using those same symbols if the issuers transfer listing of their securities to Nasdaq from another domestic market. We believe that many of the comments in opposition to the proposal reflect a misunderstanding of our proposal and of the current use of symbols by Nasdaq and other markets. Nasdaq's proposal will reduce investor confusion and promote competition among exchanges.

<u>NYSE Issuer Letters</u>

Many of the commenters on the proposal were New York Stock Exchange issuers ("NYSE Issuers") raising substantially the same concerns regarding the proposal.[1] These comments generally expressed a belief that approval of the proposal would erode the value of an NYSE listing by allowing companies to use three-character symbols even though not listed on the NYSE. They also stated that the use of three or fewer character trading symbols is an important method for investors to differentiate the "quality and achievements" of NYSE companies and their financial and corporate governance standards. Nasdaq believes that these beliefs are based on a misunderstanding of the current use of symbols by markets as well as distinctions between exchanges and their

[1] Comment letters on the proposal were submitted by representatives of NYSE-listed companies Big Lots, Inc., Kinetic Concepts, Inc., Cantel Medical Corp., RPM International, Inc., Getty Realty Corp., Wolverine World Wide Inc., TCF Financial Corp., and FPL Group, Inc.

listing standards. The comments assume that use of three-character symbols is exclusive to the NYSE, when in fact the American Stock Exchange ("AMEX"), NYSEArca, the CBOE and the ISE all list securities using three-character symbols. In fact, there are hundreds of public companies using three-character trading symbols that are not listed on the NYSE. Accordingly, having a three-character symbol tells the investing public nothing about where a particular security is listed.

Further, these comments incorrectly assert that listing on the NYSE equates to meeting the highest listing standards. Today, it is the Nasdaq Global Select Market, and not the NYSE, that has the highest quantitative initial listing requirements of any market in the world, and all Nasdaq Markets (Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market) have comparable qualitative listing requirements to the NYSE, although Nasdaq has substantially stricter rules concerning companies that fail to file required financial reports with the Securities and Exchange Commission (the "Commission"). Further, the NYSE itself assigns one-, two- and three-character symbols on its Arca listing platform, which has standards identical to those of the NASDAQ Global Market,[2] thereby evidencing that the NYSE itself does not view symbol length as a proxy for investors to interpret the listing requirements a company must satisfy Finally, the Commission recently determined that Nasdaq's Capital Market listing standards are substantially similar to those of the AMEX,[3] which today uses three-character symbols for its issuers.

Several of the NYSE Issuers also state that approval of the proposal would circumvent both the current process for allocating trading symbols, as well as the Commission's ongoing efforts to lead the trading markets toward the adoption of a uniform symbol assignment plan. These assertions are also wrong. As Nasdaq demonstrated in its filing, since August 2001 there have been more than 200 transfers of existing three-character symbols for issuers transferring among national securities exchanges. In fact, it appears that the only time a symbol was not transferred was when the company changed its name in conjunction with the transfer and therefore sought a new symbol reflecting the new name. As such, approval of Nasdaq's proposal would be entirely consistent with current symbol-transfer practices among exchanges. With regard to the Commission's symbol assignment plan initiative, Nasdaq has publicly and repeatedly voiced its support for, and full participation in, that effort, and has submitted a detailed proposed plan for Commission review in cooperation with several other exchanges and the NASD.[4]

---

2 Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (approving SR-NYSEArca-2006-85).

3 Securities Act Release No. 33–8791, 72 FR 20410 (April 24, 2007).

4 Proposed NMS Plan for the Selection and Reservation of Securities Symbols by NASDAQ, NASD, NSX and Phlx, Commission File No. 4-533 (March 22, 2007).

IAG Letter

A comment on Nasdaq's proposal was also submitted by the Issuer Advisory Group,[5] "an independent organization that serves to represent the interests of publicly traded companies," and that has an advisory board "with equal representation from companies listed on both the NYSE and Nasdaq."[6] The IAG Letter offers "support for the Nasdaq proposal as it will facilitate the move to an open environment for trading symbols and serve as a catalyst for competition, with no risk of investor confusion or other negative consequences."[7]

Schwab Letter

The only comment from a company that has been impacted by the previous inability to maintain a three-character symbol upon a transfer to Nasdaq was submitted by The Charles Schwab Corporation.[8] In its letter, Schwab notes that the prospect of changing its symbol was a negative factor in its analysis regarding whether to transfer its listing "because of the confusion it would cause among our many individual stockholders that had come to identify us with that symbol." This letter also noted that such restraints on symbol portability only benefit entrenched competitors, not public companies or their investors. Schwab also indicated that as an issuer and as a major financial services firm, it has seen no evidence of investors forming judgments regarding an issuer's quality or soundness of investment based on the length of the issuer's ticker symbol.

AMEX Letter

A comment on Nasdaq's proposal was also submitted by the AMEX.[9] Unfortunately, the AMEX Letter mischaracterizes the proposal as having to do with the portability of one-, two- and three-character symbols, not just three-character symbols as expressly set forth in Nasdaq's filing. The AMEX thereafter makes numerous assertions about potential dire consequences that may occur if full portability of all symbols is allowed, including shortages of symbols, and front-running of the Commission's symbology plan initiative.[10]

---

5 Letter from Pat Healy, Issuer Advisory Group, to Nancy Morris, Secretary, Commission, dated April 21, 2007 (the "IAG Letter").

6 *Id.* at 1.

7 *Id.* at 3.

8 Letter from Carrie E. Dwyer, General Counsel and Executive Vice President, Corporate Oversight, The Charles Schwab Corporation, to Nancy Morris, Secretary, Commission, dated April 27, 2007 (the "Schwab Letter").

9 Letter from Neal Wolkoff, Chief Executive Officer, AMEX, to Nancy Morris, Secretary, Commission, dated April 16, 2007 (the "AMEX Letter").

10 In addition, the AMEX asserts that the length of a trading symbol is a type of short-hand for the specialist market model, despite the fact that that model is rapidly diminishing in distinctiveness and importance because of the advent of Regulation NMS, the introduction of the NYSE Hybrid

The AMEX fails to address, however, the long and consistent history that it shares with the NYSE of allowing companies to do exactly what Nasdaq now proposes – take their three-character trading symbols with them when they transfer to another national securities exchange. Instead, the AMEX insists that the recent transfer to Nasdaq of Delta Financial Corporation, along with its three-character symbol "DFC," should not be considered a general policy of the AMEX regarding portability, but rather a unique event that the AMEX permitted based on the company's desire to retain its historical trading symbol. Given that over the last six years the AMEX has "permitted" over 130 issuers to do exactly the same thing as DFC, without exception, when switching to NYSE and NYSEArca, such a contention is completely unsupportable. Further, based upon our discussions with numerous companies that have transferred to Nasdaq over the years, and as evidenced by the Schwab Letter, we believe that this company's desire to retain its historic symbol is far from unusual.

Equally unsupportable are AMEX claims that approval of the proposal could lead to investor confusion. As Nasdaq noted in its filing, and as supported by the IAG Letter and the Schwab Letter, allowing companies to retain their current symbols when transferring to another exchange will reduce the potential for investor confusion by continuing the association between a particular trading symbol and the securities of the company the symbol represents. In short, investors invest in companies, not the exchanges that companies list on, and the Commission should reject arguments that, like this one, put the interests of exchanges above the needs of the investing public.

The AMEX is even less convincing when basing its arguments on its perceptions of the impact restrictive symbology practices have on issuers considering inter-exchange transfers. According to the AMEX, issuers switching markets don't change their minds about transferring a listing because they can't use their historical symbol. The AMEX again misses the point: companies don't decide to switch and then change their minds. Instead, the burden on competition among exchanges for listings is imposed when companies do not even consider changing their listing to certain markets because they may not be allowed to take their current symbol with them. As noted in the Schwab Letter and the IAG Letter, the inability of a company to transfer and keep its symbol currently operates as a significant disincentive against AMEX- and NYSE-listed companies switching to Nasdaq. Of course, this competitive burden doesn't have the same impact on the NYSE and AMEX, which, under their current entente, allow issuers switching between them to keep their trading symbols.

Much is also made by the AMEX about purported symbol shortages that may occur if the proposal is approved. While first incorrectly attributing such concerns to Nasdaq, the AMEX warns that a "real immediate and present danger" will occur if Nasdaq is permitted to *assign* one-, two-, and three-character symbols. Hyperbole aside,

---

and the AMEX's AEMI trading platforms, and the usage by NYSEArca of a fully electronic exchange platform. Given this argument, AMEX and the NYSE should be forced to use four character symbols now that they have adopted electronic trading platforms previously most closely associated with Nasdaq.

Nasdaq's instant proposal has absolutely nothing to do with the assignment of symbols of any length. The proposal simply seeks to allow issuers that already have assigned three-character symbols the option to continue to use them if they switch to Nasdaq. Nasdaq fails to see how such a process, especially one that is already taking place among other exchanges, will result in any material diminution in the number of available symbols, much less a dangerous one.

Finally, the AMEX raises concerns about vendor readiness, and asserts that the lack of trading problems accompanying the DFC transfer cannot be relied on because it is a "microcap" company. This claim is unsubstantiated based on the size of DFC and its trading activity since its transfer to Nasdaq. DFC's current market capitalization of over $230 million is more than treble the $67 million market capitalization of the median AMEX issuer.[11] Moreover, during April 2007, DFC traded an average daily volume of approximately of 167,000 shares, compared with an AMEX issuer average during the previous month of 31,000 shares.[12] With regard to vendor readiness, the absence of issues associated with DFC trading on Nasdaq was a direct result of the dialogue that Nasdaq initiated with the vendor and broker community in November 2005 to prepare for the ability to trade three-character symbols, efforts that are detailed in Nasdaq's rule filing. Given that broker and vendor systems generally do not differentiate among exchange-listed securities based on company size or volume, there is no credible basis for believing there would be any operational difficulties should Nasdaq accept other exchange transfers with three-character symbols, regardless of the associated trading volume.

<u>NYSE Letter</u>

A comment letter on Nasdaq's proposal was also submitted by the New York Stock Exchange LLC ("NYSE").[13] The NYSE Letter was submitted in coordination with, and cross-references, an analogous comment letter on Nasdaq's rule filing with respect to Delta Financial Corporation's listing on Nasdaq using the ticker symbol "DFC" (the "DFC Filing").[14] The NYSE Letter expounds upon the comments of the NYSE

---

[11] Based on data contained in FactSet as of April 27, 2007 for AMEX-listed common stocks and equivalents.

[12] Based on data contained on www.amex.com listing average AMEX daily volume of 46,909,365 and 1,511 issues during March 2007.

[13] Letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Morris, Secretary, Commission, dated April 25, 2007 (the "NYSE Letter").

[14] Securities Exchange Act Release No. 55519 (March 26, 2007), 72 FR 15737 (April 2, 2007). *See also* Letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Morris, Secretary, Commission, dated April 23, 2007. The NYSE Letter also alleges that the DFC Rule Filing did not satisfy the requirements for filing for immediate effectiveness provided in Rule 19b-4(f)(5) under the Exchange Act and claims that Nasdaq "essentially conceded the inappropriateness of the DFC Filing by submitting [the rule filing at hand] 'regular way.'" This is incorrect – the listing of a single security (DFC) with a three-character symbol is far different than Nasdaq having the unlimited ability to list securities with three-character symbols that transfer to Nasdaq from other

Issuer Letters, which the NYSE urged their listed companies to write,[15] and the AMEX Letter. Finally, the NYSE Letter adds new themes by promoting the symbology plan the NYSE has put forward to the Commission in cooperation with their affiliated exchange, NYSEArca, and the AMEX (the "NYSE Symbology Plan"),[16] which would limit use of one-, two- and three-character symbols to securities reflected on "Network A" or "Network B" as defined in the CTA Plan, in order to "preserve the right[s] of NYSE… without the dilution of its brand."[17]

The preservation of the NYSE "brand" has absolutely no place in the evaluation of a rule filing of another exchange or as the basis for a National Market System plan under the Exchange Act. The NYSE's desire to protect their brand is nothing more than an attempt to preserve what they view as a competitive advantage. As noted above, and supported by the IAG Letter and the Schwab Letter, the NYSE knows that companies are reluctant to switch markets when they are forced to change their symbols. It is a basic economic principle that "firms marketing differentiated products frequently develop and compete on the basis of brands or labels…. Each of these brands may be preferred by different buyers willing to pay a higher price or make more frequent purchases of one branded product over another."[18] Given Nasdaq's leadership and innovation in electronic trading and services available to Nasdaq-listed companies, as well as our lower listing fees, the NYSE relies heavily on brand value to compete in the marketplace, and recognizes that, notwithstanding NYSE's brand-based strategy, Nasdaq is an increasingly successful competitor.[19] It is for this reason that the NYSE objects to the instant proposal, but takes no issue with the AMEX, NYSEArca and other regional exchanges

---

exchanges. The NYSE itself admits to this very distinction, calling Nasdaq's listing of DFC an "extremely limited experience" – precisely the type of filing that does not "significantly affect the protection of investors or the public interest," making the use of Rule 19b-4(f)(5) appropriate for the DFC Filing.

15 *See* Electronic mail from Noreen Culhane, Executive Vice President, NYSE, to NYSE-listed issuers, "Important Notification Regarding Stock Symbols" (March 26, 2007) (copy available upon request).

16 *See* SEC File No. 4-534 (March 22, 2007) (the "NYSE Symbology Plan"). It is worth noting that the prior drafts of this plan that were circulated for discussions amongst the exchanges as late as February 2007 allowed for all exchanges to use one-, two-, and three-character symbols and for general symbol portability amongst exchanges in instances of two- and three-character symbols. However, after the announcement of Nasdaq's intention to list Delta Financial Corporation using the symbol DFC, the NYSE and AMEX insisted on making the draconian changes reflected in the current version. The Commission should ask the NYSE and the AMEX to explain how and why their thoughts on the appropriateness of Nasdaq using one-, two- and three-character symbols and symbol portability changed so drastically in such a short period of time.

17 *Id.* at 3.

18 Glossary of Industrial Organisation Economics and Competition Law, compiled by R. S. Khemani and D. M. Shapiro, commissioned by the Directorate for Financial, Fiscal and Enterprise Affairs, Organization for Economic Co-Operation and Development, 1993, *available at* http://stats.oecd.org/glossary/detail.asp?ID=3153.

19 The NYSE admits that "NYSE and Nasdaq have established themselves as the two leading national markets for the listing of equities." NYSE Letter at 5.

using one-, two- and three-character symbols.[20] The NYSE's pursuit of a brand-oriented strategy has no place in the Commission's analysis of this proposal.

The NYSE also attempts to differentiate Nasdaq and its listed companies by stating that "investment in companies listed on Nasdaq tends to have greater risk for investors," citing misleading volatility statistics and comparing both delistings and the overall change in the number of listed companies over that period.[21] On volatility, the NYSE ignores the fact that any greater volatility on Nasdaq is caused by a number of factors differentiating the typical company listed on the two exchanges, including the higher valuations Nasdaq companies receive, the higher growth rates achieved by Nasdaq companies, and the greater propensity for Nasdaq companies to define new businesses and industries. With respect to delistings, Nasdaq notes that from 2004 to 2006, Nasdaq delisted 97 companies from the Nasdaq Global Market while the NYSE delisted approximately 53 companies.[22] However, 34 of Nasdaq's 97 delistings were solely for failure to comply with the requirement to timely file periodic reports with the SEC – a requirement that the NYSE does not enforce, except in egregious situations.[23] As a result, because many NYSE-listed companies would have been delisted from Nasdaq for failure to comply with Nasdaq's listing requirements, any such comparison is difficult. Regarding the NYSE's comparison of the change in the total number of listed companies, given that merger and acquisition activity among listed companies and private equity buy-outs are often a reason for a company leaving the public markets, using these statistics as a proxy for investor risk is highly flawed.

The NYSE's interest in a "preservation of settled expectations" (*i.e.*, the status quo)[24] that makes it difficult for companies to transfer is contrary to Congress's explicit directive to promote competition among exchanges.[25] In the competition among exchanges for the business of a company that is already listed, symbols do matter. The AMEX correctly notes that "issuers… seek to have a trading symbol that either mimics

---

[20] The Commission should question the NYSE as to why, if it believes Nasdaq is one of the two leading listing markets, it is comfortable with other (and presumably lesser) markets using one-, two- and three-letter symbols under the NYSE Symbology plan while Nasdaq is barred from doing so.

[21] *See* NYSE Letter at 6.

[22] While the NYSE looked at a period from 2000-2006, we note that a number of the delistings during that time were a result of Nasdaq increasing its listing standards. Further, the number of delistings from 2000-2003 reflect the unique market conditions that existed immediately prior to that time that disproportionately affected the Nasdaq Capital Market, which is designed to facilitate capital formation for smaller companies.

[23] *See* "Why Stock Exchanges Matter" (June 22, 2006), *available at* http://www.fool.com/investing/value/2006/06/22/why-do-stock-exchanges-matter.aspx (where the author notes "I found myself looking at Krispy Kreme and wondering why it hadn't been delisted from the NYSE yet. If it was a Nasdaq stock, it would have been slapped with a notice of pending delisting long ago.").

[24] NYSE Letter at 7.

[25] Securities Act Amendments of 1975, Pub. L. 94-29, 89 Stat. 97.

the name of the company or is otherwise identifiable with the company."[26] No symbol is more identifiable with a company that the one they are already using and an issuer should not be compelled to abandon that symbol merely because it has determined that it would be better served by another listing venue. As such, the IAG Letter is correct in noting the likely pro-competitive affect of Nasdaq's proposal and asserting that such increased competition "might well provide increased pricing pressure on listing fees."[27]

In putting forth this proposal Nasdaq does not, as the NYSE alleges, "presuppose that a company has some proprietary right in [its] stock symbol." When used as a trading symbol, no issuer has an ownership right to any letter or combination of letters in the alphabet, and no issuer has the ability to sell, or unilaterally transfer, a symbol to another entity. Instead, trading symbology is a public trust, managed by the markets, under the supervision of the Commission, for the benefit of all market participants and in furtherance of the purposes of the Exchange Act. Those purposes are not served by limiting the ability of companies transferring listings to continue to trade under three-character symbols familiar to the investing public. In contrast, Nasdaq's proposal advances Exchange Act goals and purposes by reducing the potential for investor confusion and enhancing competition among exchanges.

Conclusion

The comments on this proposal demonstrate the importance trading symbols have for public companies and in the competition for listings among exchanges. It is also important in the context of the global competitiveness of U.S. capital markets. As said in the IAG Letter, "it is imperative that any artificial distinctions within our domestic markets be cleaned up as a precursor to establishing international trading standards."[28] This is all the more reason for swift approval of Nasdaq's proposal to promote greater competition among exchanges in furtherance of the goals set out in Section 11A of the Exchange Act.

Very truly yours,

J. C. Conley

Joan C. Conley
Senior Vice President and
Corporate Secretary

---

[26] AMEX Letter at 2.

[27] IAG Letter at 3. *See also* Matt Krantz, *Nasdaq Hopes to Attract New Listings As Easy As 1-2-3*, USA Today at 1B (March 13, 2007) ("While the change may seem mundane, it's significant because it … [m]akes switching exchanges easier.").

[28] IAG Letter at 3.