

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-53 and should be submitted on or before August 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56028; File No. SR-NASDAQ-2007-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change Relating to Three-Character Ticker Symbols

July 9, 2007.

#### I. Introduction

On March 29, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow an issuer with a three-character ticker symbol that transfers its listing to Nasdaq from another listing market to continue using its three-character ticker symbol on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on April 4, 2007.<sup>3</sup>

The Commission received 24 comment letters on the proposal.<sup>4</sup> On

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55563 (March 30, 2007), 72 FR 16391.

<sup>4</sup> See letters from Edward J. Resch, Executive Vice President, Chief Financial Officer and Treasurer, State Street Corporation, dated May 21, 2007 ("State Street Letter"); Larry A. Mizel, Chairman and Chief Executive Officer, M.D.C. Holdings, Inc. ("MDC Letter"), dated May 17, 2007; Jack R. Hartung, Chief Finance and Development Officer, Chipotle Mexican Grill, dated May 15, 2007 ("Chipotle Letter"); Carol R. Kaufman, Sr. Vice President Legal Affairs, The Cooper Companies, Inc., dated May 14, 2007 ("Cooper Companies Letter"); Farooq Kathwari, Chairman, President and CEO, Ethan Allen Interiors, Inc., dated May 9, 2007 ("Ethan Allen Letter"); James J. Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated May 9, 2007 ("Angel Letter"); Jack Sennott, Senior Vice President and Chief Financial Officer, Darwin Professional Underwriters, Inc., dated May 8, 2007 ("Darwin Letter"); Bart J. Ward, Chief Executive Officer, Ward & Company, dated May 8, 2007 ("Ward Letter"); Craig D. Mallick, Corporate Secretary, United States Steel Corporation, dated May 4, 2007 ("United States Steel Letter"); Michael Tenenbaum, Trustee, Strategic Technologies Employees Pension Fund Trust, dated May 2, 2007 ("Strategic Technologies Letter"); Carrie E. Dwyer, General Counsel and Executive Vice President Corporate Oversight, The Charles Schwab Corporation ("Schwab"), dated April 27, 2007 ("Schwab Letter"); Mary Yeager, Assistant Secretary, New York Stock Exchange LLC ("NYSE"), dated April 25, 2007 ("NYSE Letter"); Patrick J. Healy, Issuer Advisory Group, dated April 24, 2007 ("Issuer Advisory Group Letter"); Neal L. Wolkoff, Chairman and Chief Executive Officer, American Stock Exchange LLC ("Amex"), dated April 16, 2007 ("Amex Letter"); Eric W. Nodiff, Sr. V.P. and General Counsel, Cantel Medical Corp., dated April 9, 2007 ("Cantel Medical Letter"); Dave Patch, dated April 6, 2007 ("Patch Letter"); Steve S. Fishman, Chairman and Chief Executive Officer,

May 1, 2007, Nasdaq filed a response to the comment letters.<sup>5</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

Historically, it has been the practice of NYSE, Amex, and the regional exchanges to list securities using three-character ticker symbols, and of Nasdaq to list securities using four- and five-character symbols.<sup>6</sup> Nasdaq recently submitted a proposed rule change to begin listing Delta Financial Corp., a security that transferred its listing from Amex, while retaining its three-character symbol ("DFC").<sup>7</sup>

Nasdaq now proposes to allow any issuer with a three-character ticker symbol that transfers its listing to Nasdaq from another domestic listing market to continue using its three-character ticker symbol on Nasdaq.

#### III. Summary of Comments

Four commenters expressed support for Nasdaq's proposal;<sup>8</sup> the remaining 20 commenters, including 16 issuers listed on NYSE, objected to Nasdaq listing transferred securities with their three-character ticker symbols.<sup>9</sup>

The commenters objecting to the proposal generally argued that the proposal would violate the long-

Big Lots, Inc., dated April 4, 2007 ("Big Lots Letter"); David M. Brain, President and CEO, Entertainment Properties Trust, dated April 3, 2007 ("Entertainment Properties Trust Letter"); Cathy Burzik, President and Chief Executive Officer, Kinetic Concepts, Inc., dated March 30, 2007 ("Kinetic Concepts Letter"); Edward W. Moore, Vice President, General Counsel & Secretary, RPM International Inc., dated March 29, 2007 ("RPM Letter"); Leo Liebowitz, Chairman and Chief Executive Officer, Getty Realty Corp., dated March 29, 2007 ("Getty Realty Letter"); Timothy J. O'Donovan, Chairman of the Board and Chief Executive Officer, Wolverine World Wide, Inc., dated March 28, 2007 ("Wolverine World Wide Letter"); Jason Korstange, SVP, Director of Corporate Communications, TCF Financial Corporation, dated March 28, 2007 ("TCF Financial Letter"); and Edward F. Tancer, Vice President & General Counsel, FPL Group, Inc., dated March 28, 2007 ("FPL Group Letter").

<sup>5</sup> See letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Nancy M. Morris, Secretary, Commission, dated May 1, 2007 ("Nasdaq Response Letter").

<sup>6</sup> It has also been the practice of NYSE, Amex, and the regional exchanges to list securities using two-character ticker symbols. In addition, NYSE lists securities with one-character ticker symbols.

<sup>7</sup> See Securities Exchange Act Release No. 55519 (March 26, 2007), 72 FR 15737 (April 2, 2007) (SR-NASDAQ-2007-025).

<sup>8</sup> See Angel Letter, Schwab Letter, Issuer Advisory Group Letter, and Patch Letter.

<sup>9</sup> See State Street Letter, MDC Letter, Chipotle Letter, Cooper Companies Letter, Ethan Allen Letter, Darwin Letter, Ward Letter, United States Steel Letter, Strategic Technologies Letter, NYSE Letter, Amex Letter, Cantel Medical Letter, Big Lots Letter, Entertainment Properties Trust Letter, Kinetic Concepts Letter, RPM Letter, Getty Realty Letter, Wolverine World Wide Letter, TCF Financial Letter, and FPL Group Letter.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

standing practice of allowing only NYSE-listed securities to use three-character ticker symbols,<sup>10</sup> cause confusion in the marketplace,<sup>11</sup> and circumvent the ongoing efforts of self-regulatory organizations (“SROs”) to develop a national market system plan for the selection and reservation of securities ticker symbols.<sup>12</sup> In addition, two commenters argued that the proposal could cause a shortage of one-, two-, or three-character ticker symbols.<sup>13</sup>

In support of the proposal, some commenters asserted that the proposal would enhance competition among markets and reduce the potential for investor confusion.<sup>14</sup> In its letter, Nasdaq responded to the commenters, stating that it believed that many of the commenters opposing the proposal misunderstood its proposal and the current use of symbols by the securities markets, and reiterated its belief that the proposal would reduce investor confusion and promote competition among exchanges.<sup>15</sup>

#### IV. Discussion

After a careful review of the proposed rule change, the comment letters, and the Nasdaq Response Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,<sup>18</sup> which requires that the rules of an exchange not impose any burden

on competition that is not necessary or appropriate in furtherance of the Act.

#### A. Competition Among the Listing Markets

The Commission notes that national securities exchanges often allow issuers to retain the ticker symbols that identify their securities when such issuers transfer their listings to another exchange, other than Nasdaq.<sup>19</sup> This proposal would allow Nasdaq to participate in this existing practice, along with all other national securities exchanges, for issuers with three-character ticker symbols.<sup>20</sup>

Nasdaq and the commenters supporting the proposal asserted that the proposed rule change would allow publicly-listed issuers to choose their marketplace based on objective factors such as trading quality, costs, and branding, and not based on symbol portability.<sup>21</sup> Currently, an issuer deciding whether to transfer its listing to Nasdaq must consider, among other factors, the fact that it would need to change its ticker symbol. For example, the Schwab Letter stated that, when it considered transferring its listing to Nasdaq, the prospect of changing its symbol was a negative factor in its analysis regarding whether to transfer its listing. Schwab noted that the change in its ticker symbol, resulting from the transferring of its listing to Nasdaq, necessitated operational and systems changes at Schwab and industry-wide at other financial services firms and required the expenditure of other resources to inform its investors of that change.

The Commission notes that when an issuer is seeking to transfer its listing to an exchange other than Nasdaq, such issuer’s analysis is not typically encumbered by considerations of changing its symbol and the attending administrative and other costs associated with that process. The proposed rule change would eliminate the considerations associated with changing its ticker symbol from the decision by an issuer identified by a three-character symbol to transfer its

listing to Nasdaq.<sup>22</sup> Thus, the Commission believes that the proposed rule change, by allowing issuers to retain their three-character ticker symbols upon transferring their listings to Nasdaq, would remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act and would thereby enhance competition between Nasdaq and the other exchanges in the business of providing a listing venue.

#### B. Investor Confusion

The Commission also believes that allowing an issuer to retain the three-character ticker symbol that identifies its security upon transferring its listing to Nasdaq does not increase, and may reduce, the potential for confusion in the marketplace by an issuer changing its ticker symbol. Commenters supporting the proposal asserted that changing an issuer’s ticker symbol often results in investor confusion and costly investment mistakes.<sup>23</sup> In its letter, Schwab stated that its ticker symbol change required it to expend time and resources to combat the confusion that the change would have caused among its individual stockholders who had come to identify it with its three-character symbol. The Commission notes that issuers transferring their listings to exchanges other than Nasdaq typically avoid such confusion by retaining their ticker symbols.<sup>24</sup>

The commenters objecting to the proposal, however, asserted that the proposed rule change, for various reasons, would cause confusion in the marketplace. The majority of such commenters argued that three-character ticker symbols are a hallmark of NYSE-listed securities<sup>25</sup> and that, consequently, expanding the use of three-character ticker symbols to Nasdaq-listed securities would result in investor confusion.<sup>26</sup> The Commission notes, however, that all of the

<sup>10</sup> *Id.*

<sup>11</sup> See Ward Letter, NYSE Letter, Amex Letter, Big Lots Letter, and Wolverine World Wide Letter.

<sup>12</sup> See Ward Letter, NYSE Letter, Amex Letter, and RPM Letter.

<sup>13</sup> See NYSE Letter and Amex Letter. The Amex Letter, among other comment letters, expressed views on Nasdaq listing one- and two-character ticker symbols; however, this proposed rule change relates only to the transfer of three-character ticker symbol listings.

<sup>14</sup> See Angel Letter, Schwab Letter, and Issuer Advisory Group Letter.

<sup>15</sup> See Nasdaq Response Letter.

<sup>16</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78f(b)(8).

<sup>19</sup> See, e.g., Darwin Professional Underwriters (on April 18, 2007, moved from NYSE Arca to NYSE and retaining its symbol DR) and Yamana Gold Inc. (on January 12, 2007, moved from Amex to NYSE and retaining its symbol AUY).

<sup>20</sup> Some of the commenters expressed views on Nasdaq listing one- and two-character ticker symbols; however, these considerations are beyond the scope of this proposed rule change, which covers only the transfer of three-character ticker symbols.

<sup>21</sup> See Issuer Advisory Group Letter and Nasdaq Response Letter.

<sup>22</sup> Of course, an issuer could request a new ticker symbol if so desired.

<sup>23</sup> See Angel Letter, Issuer Advisory Group Letter, and Schwab Letter.

<sup>24</sup> The Nasdaq Response Letter stated that, of the 200 issuers transfers of existing three-character symbols since August 2001, all but one of those issuers have retained their symbols upon their transfer to a new exchange.

<sup>25</sup> Based on this premise, these commenters also argued that three-character ticker symbols signal NYSE’s high qualitative listing standards and that allowing Nasdaq to list securities with three-character ticker symbols would blur the distinction between NYSE-listed and other exchange-listed securities and diminish the branding of NYSE-listed securities.

<sup>26</sup> See Strategic Technologies Letter, NYSE Letter, Cantel Medical Letter, Big Lots Letter, Kinetic Concepts Letter, RPM Letter, Getty Realty Letter, Wolverine World Wide Letter, TCF Financial Letter, and FPL Group Letter.

exchanges, except Nasdaq,<sup>27</sup> may list securities using three-character ticker symbols.<sup>28</sup> Unlike one-character symbols, three-character symbols are not associated by investors with any one market. The Commission also notes that the transfer of securities listings with three-character ticker symbols typically occur among other exchanges without any discernable confusion or disruption to the marketplace.<sup>29</sup>

Another commenter asserted that three-character symbols are exclusive indicators of securities trading on NYSE's and Amex's specialist-based markets, and that it would cause confusion if such symbols were used on Nasdaq's dealer market.<sup>30</sup> However, as the Commission noted above, exchanges other than NYSE and Amex may list securities with three-character symbols.<sup>31</sup>

### C. National Market System Plan Process

Some of the commenters have expressed concern that the proposed rule change would disrupt or circumvent ongoing efforts by the SROs to develop a national market system plan.<sup>32</sup> The Commission recently received two proposed national market system plans for the selection and reservation of ticker symbols submitted by two separate groups of SROs.<sup>33</sup> The Commission is currently considering these plans and intends to publish the proposed plans for public comment.<sup>34</sup>

<sup>27</sup> With the exception of the transfer of the DFC listing, Nasdaq currently only lists securities of companies using four- or five-character symbols. See *supra* note 7 and accompanying text.

<sup>28</sup> For example, as noted in the Angel Letter, the NAIC Growth Fund lists on the Chicago Stock Exchange, Inc. with the ticker symbol "GRF".

<sup>29</sup> Nasdaq has also represented that its recent listing of DFC occurred without any trading problems. The Amex Letter tacitly agreed with this view, but argued that the lack of trading problems associated with DFC is not the best proxy for other companies that may transfer their listings to Nasdaq because it believed that DFC is a microcap company. The Nasdaq Response Letter, however, disputed this argument and the Amex Letter's labeling of DFC as a "microcap company," citing the fact that DFC has a market capitalization of over \$230 million, a figure that it contends is nearly triple the \$67 million market capitalization of the median Amex issuer.

<sup>30</sup> See Amex Letter.

<sup>31</sup> For example, NYSE Arca lists three-character symbols. See *also supra* note 27.

<sup>32</sup> See Ward Letter, NYSE Letter, Amex Letter, and RPM Letter.

<sup>33</sup> See Proposed NMS Plan for the Selection and Reservation of Securities Symbols by the Chicago Stock Exchange, Inc., Nasdaq, National Association of Securities Dealers, Inc., National Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc. (available at <http://www.sec.gov/rules/sro/4-533revised.pdf>) and Proposed NMS Plan for the Selection and Reservation of Securities Symbols by Amex, NYSE and NYSE Arca (available at <http://www.sec.gov/rules/sro/4-534.pdf>).

<sup>34</sup> See Press Release, Commission, SEC Announces Process for Proposals on Securities

The Commission believes that its approval of the proposed rule change is independent of its consideration of these plans. The Commission under Rule 608(b)(2) may declare effective any national market system plan or plans for the selection and reservation of ticker symbols that is consistent with the requirements of the Act. Participants in any such plan would be required to comply with its requirements, which could necessitate changes to SRO rules.<sup>35</sup>

### D. Symbol Shortage

Two commenters argued that the proposal could create a shortage of available three-character ticker symbols.<sup>36</sup> Nasdaq's proposal, however, would only permit it to list securities with three-character ticker symbols when such issuer transfers its listing from another exchange; the proposal would not permit Nasdaq to list new securities with three-character ticker symbols. The Commission, therefore, does not believe Nasdaq's proposal would have a negative impact on the availability of three-character ticker symbols.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NASDAQ-2007-031) be, and hereby is, approved.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-13578 Filed 7-12-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56029; File No. SR-NASD-2007-038]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Customer and the Industry Codes of Arbitration Procedure To Clarify NASD's Jurisdiction Concerning Members of Other Self-Regulatory Organizations

July 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 13, 2007 the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD Dispute Resolution. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend NASD Rules 12100 and 13100 of the NASD Codes of Arbitration Procedure for Customer Disputes ("Customer Code") and for Industry Disputes ("Industry Code") (together, the "Codes") to clarify that, for purposes of the Codes, the term "member" includes any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. Below is the text

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

"Ticker" Symbols (April 5, 2007) (available at <http://www.sec.gov/news/press/2007/2007-63.htm>).

<sup>35</sup> See 15 U.S.C. 78k-1(a)(3) and 17 CFR 242.608(b) and (c). The NYSE Letter referenced a "Symbol Reservation Plan," which it stated has operated to allocate and reserve symbols for over 30 years. The Commission notes, however, that no such plan has been approved by the Commission.

<sup>36</sup> See NYSE Letter and Amex Letter.

<sup>37</sup> 15 U.S.C. 78s(b)(2).