

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58904; File No. 4-533)

Nov. 6, 2008

Joint Industry Plan; Order Approving the National Market System Plan for the Selection and Reservation of Securities Symbols Submitted by the Chicago Stock Exchange, Inc., The Nasdaq Stock Market, Inc., National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), National Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

I. Introduction

On July 17, 2007, the Commission published for comment¹ a detailed summary of two proposed plans for the purpose of the selection and reservation of securities symbols: the Five-Characters Plan and the Three-Characters Plan. On January 25, 2008, the Commission published Amendment No. 1 to the Three-Characters Plan for public comment.² The proposed plans were filed jointly by two different groups of self-regulatory organizations (“SROs”) pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (“Act”) (“Rule 608”).³ The Chicago Stock Exchange, Inc. (“CHX”), The Nasdaq Stock Market, Inc. (“Nasdaq”), National Association of Securities Dealers, Inc. (“NASD”) (n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”)),⁴ National Stock Exchange, Inc. (“NSX”), and Philadelphia Stock

¹ See Securities Exchange Act Release No. 56037 (July 10, 2007), 72 FR 39096 (File Nos. 4-533 and 4-534) (“Symbology Notice”). The full text of each plan is also available to interested persons on the Commission’s Web site at www.sec.gov/rules/sro/nms.shtml#4-534 and www.sec.gov/rules/sro/nms.shtml#4-533, respectively.

² See Securities Exchange Act Release No. 57171 (January 18, 2008), 73 FR 4645.

³ 17 CFR 242.608.

⁴ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR-NASD-2007-053).

Exchange, Inc. (“Phlx”) filed the Five-Characters Plan.⁵ The American Stock Exchange LLC (“Amex”), Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), the New York Stock Exchange LLC (“NYSE”), and NYSE Arca, Inc. (“NYSE Arca”) filed the Three-Characters Plan.⁶

Although the two plans are identical in many respects, they differ on several significant matters. The primary difference between the two plans is their scope. The Three-Characters Plan would only cover one-, two-, and three-character symbols; the Five-Characters Plan would cover one-, two-, three-, four-, and five-character symbols. In addition, the plans differ with regard to the parties that are eligible to join the plan; the reservation rights for perpetual and limited-time reservations; the portability of symbols for issuers that move their listing from one market to another; the allocation of costs relating to the plan; and the process of withdrawing from the plan.

The Commission received 61 comments on the proposed plans from 56 commenters.⁷ Twenty-two commenters generally supported the Three-Characters Plan or aspects thereof,⁸

⁵ FINRA, Nasdaq, NSX, and Phlx filed the Five-Characters Plan with the Commission on March 23, 2007. CHX, FINRA, Nasdaq, NSX, and Phlx filed a Supplement to this proposed plan on April 23, 2007. In the Supplement, CHX joined as a party proposing the Five-Characters Plan.

⁶ On March 23, 2007, Amex, NYSE and NYSE Arca filed the Three-Characters Plan with the Commission. In Amendment No. 1 to the Three-Characters Plan, filed on August 3, 2007, CBOE and ISE joined as parties to the proposed plan.

⁷ Letters to the Commission from Edward F. Tancer, Vice President & General Counsel, FPL Group, Inc., dated March 28, 2007 (“FPL Letter”); Jason Korstange, SVP, Director of Corporate Communications, TCF Financial Corporation, dated March 28, 2007 (“TCF Letter”); Timothy J. O’Donovan, Chairman of the Board, Chief Executive Officer, Wolverine World Wide, Inc., dated March 28, 2007 (“Wolverine Letter”); Leo Liebowitz, Chairman and Chief Executive Officer, Getty Realty Corp., dated March 29, 2007 (“Getty Letter”); Edward W. Moore, Vice President, General Counsel & Secretary, RPM International Inc., dated March 29, 2007 (“RPM Letter”); Cathy Burzik, President and Chief Executive Officer, Kinetic Concepts, Inc., dated March 30, 2007 (“KCI Letter”); Clifton H. Morris, Jr., Chairman, AmeriCredit Corp., dated April 2, 2007

(“AmeriCredit Letter”); David M. Brain, President and CEO, Entertainment Properties Trust, dated April 3, 2007 (“Entertainment Properties Letter”); Steven S. Fishman, Chairman, Chief Executive Officer and President, Big Lots, Inc., dated April 4, 2007 (“Big Lots Letter”); Mary J. McGinn, Secretary and Deputy General Counsel, The Allstate Corporation, dated April 5, 2007 (“Allstate Letter”); Eric W. Nodiff, Sr. V.P. and General Counsel, Cantel Medical Corp., dated April 9, 2007 (“Cantel Letter”); James C. Smith, Chairman and CEO, Webster Financial Corporation, dated April 16, 2007 (“Webster Letter”); Michael Tenenbaum, PE, Trustee, Strategic Technologies Employees Pension Fund Trust, dated May 2, 2007 (“Strategic Technologies Letter”); Craig D. Mallick, Corporate Secretary, United States Steel Corporation, dated May 4, 2007 (“U.S. Steel Letter”); Bart J. Ward, Chief Executive Officer, Ward & Company, dated May 8, 2007 (“Ward Letter”); Jack Sennott, Senior Vice President and Chief Financial Officer, Darwin Professional Underwriters, Inc., dated May 8, 2007 (“Darwin Letter”); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated May 9, 2007 (“Angel Letter I”); M. Farooq Kathwari, Chairman, President and CEO, Ethan Allen Interiors, Inc., dated May 9, 2007 (“Ethan Allen Letter”); Carol Kaufman, Sr. VP Legal Affairs, The Cooper Companies, Inc., dated May 14, 2007 (“Cooper Letter”); Jack R. Hartung, Chief Finance and Development Officer, Chipotle Mexican Grill, Inc., dated May 15, 2007 (“Chipotle Letter”); Larry A. Mizel, Chairman of the Board and Chief Executive Officer, M.D.C. Holdings, Inc., dated May 17, 2007 (“MDC Letter”); Will Matthews, dated May 21, 2007 (“Matthews Letter”); Stephen M. Klein, J.D., Chairman and Chief Executive Officer, Omni National Bank, dated May 21, 2007 (“Omni Letter”); Edward J. Resch, Executive Vice President, Chief Financial Officer and Treasurer, State Street Corporation, dated May 21, 2007 (“State Street Letter”); Faith Pomeroy-Ward, Manager, Investor Relations, Adams Respiratory Therapeutics, dated May 22, 2007 (“Adams Letter”); Shayn Carlson, Director of Investor Relations, G&K Services, dated May 22, 2007 (“G&K Letter”); Alan R. Spachman, dated May 22, 2007 (“Spachman Letter”); Mark L. Heimboach, Chief Financial Officer and EVP, Jackson Hewitt Tax Service Inc., dated July 10, 2007 (“Jackson Hewitt Letter”); Daniel R. Coker, President & CEO, Amerigon Incorporated, dated July 31, 2007 (“Amerigon Letter”); Betsy Atkins, dated August 2, 2007 (“Atkins Letter”); Eric A. Blanchard, Senior Vice President, General Counsel and Secretary, United Stationers Supply Company, dated August 3, 2007 (“United Stationers Letter”); Albert A. Pimentel, Executive Vice President and Chief Financial Officer, Glu Mobile Inc., dated August 3, 2007 (“Glu Letter”); Ryan Ellis, Executive Director, American Shareholders Association, dated August 3, 2007 (“ASA Letter”); Rick Stewart, CEO, Amarin Corporation plc, dated August 9, 2007 (“Amarin Letter”); Steve Bene, Senior Vice President and General Counsel, Electronic Arts Inc., dated August 9, 2007 (“Electronic Arts Letter”); Bing Yeh, President & CEO, Silicon Storage Technology, Inc., dated August 10, 2007 (“Silicon Storage Letter”); Kathy Lanterman, Senior Vice President and Chief Financial Officer, Silicon Graphics, Inc., dated August 9, 2007 (“SGI Letter”); Paul Jennings, President and CEO, Innospec Inc., dated August 10, 2007 (“Innospec Letter”); Harry W. Kellogg, Jr., Vice Chairman, SVB Financial Group, dated August 10, 2007 (“SVB Letter”); Arlen W. Gelbard, Chief Administrative Officer and General Counsel, E*Trade, dated August 10, 2007 (“E*Trade Letter”); MDS Office, Sobha Developers Ltd, dated August 10, 2007

while 22 commenters generally supported the Five-Characters Plan or aspects thereof.⁹ The remaining 12 commenters did not expressly support one plan or another.¹⁰

(“Sobha Letter”); John Ritchie, Chief Financial Officer, Electronics For Imaging, dated August 10, 2007 (“EFI Letter”); Adi Bar-Lev, Director of IR, Top Image Systems Ltd., dated August 13, 2007 (“Top Image Letter”); Lonnie R. Brock, CFO, Double Eagle Petroleum Co., dated August 13, 2007 (“Double Eagle Letter”); Joe Ovsenek, Senior Vice President, Corporate, Silver Standard Resources Inc., dated August 15, 2007 (“Silver Standard Letter”); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated August 16, 2007 (“Angel Letter II”); Manisha Kimmel, Executive Director, Financial Information Forum, dated August 23, 2007 (“FIF Letter I”); Patrick J. Healy, Issuer Advisory Group, dated September 6, 2007 (“Issuer Advisory Letter”); S. Lee Clifford, President and CEO, SFB Market Systems, dated September 25, 2007 (“SFB Letter”); Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ Stock Market LLC, dated November 2, 2007 (“Nasdaq Letter I”); Barbara Sweeney, Senior Vice President and Corporate Secretary, The Financial Industry Regulatory Authority, Inc., dated November 27, 2007 (“FINRA Letter”); Mary Yeager, Assistant Secretary, New York Stock Exchange, LLC, dated January 15, 2008 (“NYSE Letter”); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated February 13, 2008 (“Angel Letter III”); Manisha Kimmel, Executive Director, Financial Information Forum, dated February 14, 2008 (“FIF Letter II”); Marianne Brown, Chief Executive Officer, Omgeo, LLC, dated February 15, 2008 (“Omgeo Letter”); Joan Conley, Senior Vice President & Corporate Secretary, The NASDAQ Stock Market LLC, dated February 26, 2008 (“Nasdaq Letter II”); John Panchery, Managing Director, Art Trager, Vice President, and Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 28, 2008 (“SIFMA Letter”); Julian Rainero, Partner, Bracewell & Guiliani LLP, dated March 10, 2008 (“Bracewell & Guiliani Letter”); Jamie Shay, Head of SWIFT Standards, Society for Worldwide Interbank Financial Telecommunication, dated March 18, 2008 (“SWIFT Letter”); Scott Atwell, FPL Global Steering Committee Co-Chair, FIX Protocol, dated March 24, 2008 (“FIX Letter”); and Thomas P. Moran, Associate Vice President & Associate General Counsel, Nasdaq, dated March 26, 2008 (“Nasdaq Letter III”).

⁸ See FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, Kinetic Concepts Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Allstate Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Ward Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, MDC Letter, State Street Letter, Jackson Hewitt Letter, and NYSE Letter.

⁹ See Matthews Letter, Omni Letter, Adams Letter, G&K Letter, Amerigon Letter, Atkins Letter, United Stationers Letter, Glu Letter, ASA Letter, Amarin Letter, Electronic Arts Letter, Silicon Storage Letter, SGI Letter, Innospec Letter, SVB Letter, E*Trade Letter, Sobha Letter, EFI Letter, Top Image Letter Double Eagle Letter, Silver Standard Letter, Nasdaq Letter I, and Nasdaq Letter II.

This order approves the Five-Characters Plan, with changes and subject to conditions as the Commission deems necessary or appropriate, thus authorizing CHX, FINRA, Nasdaq, NSX, and Phlx to act jointly to implement the Five-Characters Plan, as modified herein, as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.¹¹ This order also requires, within 60 days of this approval order, that any SRO that chooses to list securities or to designate securities for quoting on a quotation medium to join the Five-Characters Plan, as modified herein, and to act jointly with CHX, FINRA, Nasdaq, NSX, and Phlx to implement the approved plan.¹² The approved Five-Characters Plan is attached here as Appendix A.

II. Background

A. Section 11A of the Act

In 1975, Congress directed the Commission, through the enactment of Section 11A of the Act,¹³ to facilitate the establishment of a national market system to link together the individual markets that trade securities. Congress found the development of a national market system to be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among the exchange markets.¹⁴ Section 11A(a)(3)(B) of the Act directs the Commission, “by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority

¹⁰ See RPM Letter, Angel Letter I, Angel Letter II, Angel Letter III, Spachman Letter, FIF Letter I, FIF Letter II, Issuer Advisory Letter, SFB Letter, FINRA Letter, Omgeo Letter, SIFMA Letter, Bracewell & Guiliani Letter, SWIFT Letter, and FIX Letter.

¹¹ 15 U.S.C. 78k-1. See also 17 CFR 242.608(b)(2).

¹² 15 U.S.C. 78k-1(a)(3)(B).

¹³ 15 U.S.C. 78k-1.

¹⁴ 15 U.S.C. 78k-1(a)(1)(C).

under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.”¹⁵ The Commission’s approval of a national market system plan is conditioned upon a finding that the proposed plan 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 mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.”¹⁶

B. Limited Symbol Supply

Pursuant to Rule 601 of Regulation NMS under the Act,¹⁷ all SROs are required to report every trade in listed equity securities¹⁸ and Nasdaq securities¹⁹ made through their facilities, and to make such information public. Each SRO reports every transaction to the ticker tape using the ticker symbol for that security, the volume of the trade, and the price of the trade. Currently, there are three ticker tapes: Tape A reports the stocks that are listed on NYSE, Tape B reports the stocks that are listed on Amex, as well as securities listed on any other national securities exchange (except securities also listed on NYSE and Nasdaq), and Tape C reports the stocks that are listed on Nasdaq. Tapes A and B disseminate market information pursuant to the Consolidated Tape Association Plan (“CTA Plan”), while Tape C disseminates market information pursuant to the Nasdaq Unlisted Trading Privileges Plan.

¹⁵ 15 U.S.C. 78k-1(a)(3)(B).

¹⁶ 17 CFR 242.608(b)(2). See also 15 U.S.C. 78k-1(a).

¹⁷ 17 CFR 242.601.

¹⁸ 17 CFR 242.600(b)(34) defines “listed equity security” as “any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange.”

¹⁹ 17 CFR 242.600(b)(41) defines “Nasdaq security” as “any registered security listed on The Nasdaq Stock Market, Inc.”

Securities symbols are a key element in the operation of a national market system and essential to the dissemination of trade information in a common format. The term “ticker symbol” originates from the ticker tape.²⁰ Prior to the introduction of the ticker, it was customary for messengers to manually disseminate quotations.²¹ In 1867, an employee of the NYSE developed the stock ticker.²² A system of symbols and abbreviations developed as the only practical method for reporting transactions, because the full description of the issuer, security, number of shares sold, the price, and other market data would slow the dissemination of trade information so that the ticker would fall behind the market.²³ In December 1966, the ticker tape was fully automated.²⁴

Recently, concerns about the scarcity of available symbols have highlighted the need for a symbol reservation national market system plan to efficiently and fairly manage symbol supply. As the securities markets have grown over the years, the availability of one-, two-, and three-character symbols has diminished.²⁵ Several factors have been increasing the demand for

²⁰ The ticker tape started in 1867, when all trades made on an exchange were sent out by telegraph and printed on a piece of paper. Although the process is now automated, the securities industry participants continue to refer to the electronic reporting of information as the “tape.” See Hal McIntyre, *How the US Securities Industry Works*, 194-95 (The Summit Group Press) (2000).

²¹ See S. S. Huebner, Ph.D., Sc.D., *The Stock Market*, 218 (Appleton-Century-Crofts, Inc.) (1934).

²² E.A. Calahan. See George L. Leffler, Ph.D., *The Stock Market*, 162 (The Ronald Press Company) (1951).

²³ See note 21 *supra* at 222. The first ticker was very slow and not practical, until Thomas A. Edison, another employee of the NYSE, improved its speed and efficiency. See note 22 *supra* at 162.

²⁴ See Richard J. Teweles and Edward S. Bradley, *The Stock Market*, 148 (John Wiley & Sons, Inc.) (1998).

²⁵ There are 26 combinations for one-character symbols, 676 combinations for two-character symbols, and 17,576 combinations for three-character symbols, for a total of 18,278 one-, two-, and three-character symbols.

one-, two-, and three-character symbols. In recent years, exchanges have begun listing new and innovative products, such as exchange-traded funds, that are now competing with listed companies for symbols.

In addition, Nasdaq, which when operated as a facility of NASD (n/k/a FINRA)²⁶ only listed securities with four- and five-character symbols, has begun using two- and three-character symbols and has expressed its desire to use one-character symbols as well for Nasdaq-listed issuers. It has been the practice of the NYSE to list companies using one-, two-, and three-character symbols and of other exchanges (including Amex and regional exchanges) to list companies using two- and three-character symbols. Until recently, Nasdaq was the only listing market that did not assign securities one-, two-, or three-character symbols; instead, Nasdaq had assigned securities it listed four- and five-character symbols. In November 2005, however, Nasdaq announced its intention to begin listing companies with one-, two-, and three-character symbols.²⁷ Since that time, Nasdaq has made a series of announcements detailing its plans, and has worked with the industry to test trading systems to ensure the proper functionality for such symbols.²⁸ In March 2007, Nasdaq filed with the Commission a proposed rule change to allow companies transferring their listings to Nasdaq to retain their three-character symbols.²⁹ And, in

²⁶ Nasdaq began operations as a national securities exchange in Nasdaq-listed securities on August 1, 2006, and in non-Nasdaq-listed securities on February 12, 2007. See www.nasdaq.com/about/FAQsExchange.stm. See also Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

²⁷ See Head Trader Alert 2005-133 (November 14, 2005), available at www.nasdaqtrader.com.

²⁸ See e.g., Nasdaq Head Trader Alerts 2006-144 (September 29, 2006), 2006-193 (November 16, 2006), 2006-201 (December 6, 2006), and 2007-008 (January 25, 2007), each available at www.nasdaqtrader.com

²⁹ See Securities Exchange Act Release No. 55563 (March 30, 2007), 72 FR 16391 (April 4, 2007) (SR-NASDAQ-2007-031) (notice for the proposal to allow three-character symbol portability for companies transferring their listings to Nasdaq). The

April 2008, Nasdaq filed with the Commission an immediately effective proposed rule change to allow an issuer with a two-character symbol to transfer its listing to Nasdaq and retain its two-character symbol.³⁰

Finally, the proliferation of standardized options has decreased the availability of three-character symbols.³¹ Developing a formal process to reserve, select, and allocate symbols fairly and efficiently among the listing markets should help promote a fair and orderly national market system and protect investors.

C. Weaknesses in the Existing Reservation System

Currently, the listing markets assign securities symbols under an informal understanding among the markets. Under this system, each SRO keeps its own records of reserved symbols. If an SRO wishes to reserve a particular symbol, the SRO will consult its own list of reserved symbols and then, if it believes that the symbol is available, will notify the other SROs that it is reserving that symbol. If no other SRO objects, then the listing SRO has successfully reserved that symbol and each SRO would be responsible for updating its own records of reserved symbols accordingly.

Commission approved this proposal in July 2007. See Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (“Nasdaq Three-Character Portability Order”). See also Securities Exchange Act Release No. 55519 (March 26, 2007), 72 FR 15737 (April 2, 2007) (SR-NASDAQ-2007-025) (allowing a single company, Delta Financial Corp., to retain its three-character symbol upon transferring its listing from Amex to Nasdaq).

³⁰ See Securities Exchange Act Release No. 57696 (April 22, 2008), 73 FR 22987 (April 28, 2008) (SR-NASDAQ-2008-034). The Commission notes that its approval of the Five-Characters Plan, as modified herein, is consistent with this change and with its approval of the Nasdaq Three-Character Portability Order. See id. As discussed further below, see infra notes 105-117 and accompanying text, the approved plan would allow the automatic portability of all one-, two-, three-, four-, and five-character symbols of issuers transferring their listing from one exchange to another.

³¹ The options exchanges have expressed their intention to shift to a different symbology. See <http://www.theocc.com/initiatives/symbology/default.jsp>.

There are several weaknesses in the current informal system. The absence of universal reservation records may lead to confusion about the availability of certain symbols and may result in disputes between listing markets about the availability of particular symbols. Any such confusion or disagreement between the listing markets could disrupt the listing process or raise the potential for symbol duplication and investor confusion.

In addition, under the existing system, listing markets may reserve an excess amount of symbols indefinitely, which could exacerbate the strain on symbol supply. Market fears about supply constraints and competition for listings could drive listing markets to reserve an excess amount of symbols, either to protect their interests in the event of needing such symbols in the future or to give themselves advantages over their competitors in securing future listings. For example, a listing market could use the existing symbol reservation system to withhold unused symbols from their competitors, trade reserved symbols only with certain, allied exchanges, or use their power to withhold desired symbols to compel other listing markets not to trade symbols with their direct competitors.

Finally, the existing system does not universally permit issuers transferring their listing to a new exchange to keep their ticker symbols. Thus, the original listing market and the new listing market for a transferred listing could become embroiled in a dispute over the right to use the issuer's ticker symbol, which could disrupt trading in that security, and such uncertainty could affect an issuer's decision in selecting a listing venue or moving from one venue to another.

Disagreements over the use of securities symbols have arisen in the past. For example, in 1999, NYSE, Amex, and Nasdaq were involved in a dispute regarding the symbol "Q," which Amex and Nasdaq planned to use for the Nasdaq 100 Trust. However, NYSE claimed that it had

reserved that symbol and sued to enjoin the use of that symbol. Amex and Nasdaq eventually agreed to use a different symbol for the Nasdaq 100 Trust.³²

These weaknesses in the existing informal symbol reservation system could potentially have significant market consequences as exchanges compete more aggressively for listings and the supply of available symbols becomes more restricted over time. For this reason, the Commission believes that it is necessary to adopt a national market system plan for reserving and allocating symbols among the SROs to maintain fair and orderly markets. Consistent with the principles of Section 11A of the Act, in February 2005, Commission staff requested the listing markets to commence joint discussions to develop such a national market system plan.³³ A national market system plan for symbology should mitigate confusion or disagreement about the rights to particular securities symbols and should allow symbols to be used in a manner that is efficient and promotes competition between the listing markets.

III. Discussion

In the notice publishing for comment both the Three-Characters Plan and the Five-Characters Plan, the Commission asked for comments on whether it should approve one or two plans. Four commenters provided feedback on this issue and each supported the approval of a single symbology plan.³⁴ One of these commenters stated that having two different plans for short and long tickers adds needless complexity to an already complex market structure and that

³² See, e.g., Big Board Drops its Lawsuit Against Amex, The New York Times, March 10, 1999, Section C, p. 10.

³³ See Letters from Annette L. Nazareth, then Director of the Division of Market Regulation, Commission, to Amex, Boston Stock Exchange (“BSE”), CBOE, CHX, ISE, Nasdaq, NASD, NSX, NYSE, Pacific Exchange (the predecessor to NYSE Arca) and Phlx, dated February 7, 2005 (“February 2005 Letters”).

³⁴ See FIF Letter I, FIF Letter II at 1, Angel Letter II at 3, Angel Letter III at 1, Omgeo Letter at 1, and SWIFT Letter.

the additional complexity of two plans would create increased costs for SROs as well as additional costs to the Commission to regulate two plans, which would be borne ultimately by taxpayers and investors.³⁵ The Commission agrees with these commenters that approving two plans for the reservation of symbols would place undue costs and burdens on listing SROs, including new entrants. The Commission also notes that, currently, the proposed plans both establish a process for the selection and reservation of one-, two-, and three-character securities symbols. Therefore, approval of both plans would establish two competing, inconsistent systems for selecting and reserving one-, two-, and three-character symbols, which the Commission believes would not be in furtherance of the purposes of the Act. The Commission finds that approving a single plan, rather than both plans, 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 and is in furtherance of the purposes of the Act because a single plan would promote the smooth and orderly operation of the marketplace.

After carefully considering the proposed plans and the issues raised by the comment letters, the Commission has determined to approve, pursuant to Section 11A(a)(3)(B) of the Act³⁶ and Rule 608,³⁷ the Five-Characters Plan, with changes and subject to conditions set forth herein as the Commission has deemed necessary or appropriate.³⁸ As discussed in detail below,

³⁵ See Angel Letter II at 3 and Angel Letter III at 2.

³⁶ 15 U.S.C. 78k-1(a)(3)(B).

³⁷ 17 CFR 242.608.

³⁸ The Commission has modified the proposed Five-Characters Plan to make the following changes: (i) to modify the plan to state that, 90 days following the Commission's approval, it will be the exclusive means of allocating and using symbols of one-, two-, three-, four-, and five-characters in length and to specify that there is no difference between capital and lowercase letters (see infra note 41 and accompanying text); (ii) to

in approving the Five-Characters Plan, the Commission finds that the Five-Characters Plan is necessary and appropriate in the public interest and in furtherance of the purposes of the Act. The Five-Characters Plan is more comprehensive than the Three-Characters Plan because it covers one-, two-, three-, four-, and five-character symbols. The Commission also believes it would better promote fair competition among exchanges that list securities because it does not constrain the portability of symbols (as the Three-Characters Plan does), but instead makes all symbols automatically portable when a listed issuer transfers its listing to another exchange. This portability would enable issuers to make listing decisions based on factors that relate to the quality of the listing markets such as trading quality, costs, and branding, rather than on considerations of symbol portability. In summary, the Five-Characters Plan provides a system for reserving and allocating securities symbols that should provide clarity and order to the symbol reservation process, mitigate the current constraints on symbol supply, and promote fair competition between the various SROs.

This order authorizes CHX, FINRA, Nasdaq, NSX, and Phlx to act jointly to implement the Five-Characters Plan, as modified herein, as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.³⁹ This order also requires any SRO that chooses to list securities on its market or to designate securities for quoting on a

modify the start date for the initial reservation process from upon Commission approval of the plan to 60 days following the Commission's approval (see infra notes 141-143 and 190-191 and accompanying text); (iii) to limit the use of one-, two-, and three-character symbols for securities listed on a national securities exchange and to restrict securities trading over-the-counter to using only four- or five-character symbols (see infra notes 85-89 and accompanying text); and (iv) to clarify that securities that de-list and trade on the over-the-counter market would not have portability rights for the original listing symbol (see infra notes 168-172 and accompanying text).

³⁹ 15 U.S.C. 78k-1.

quotation medium to join the Five-Characters Plan and to act jointly with other parties to the plan to implement the approved plan.⁴⁰

In connection with requiring SROs that list, or designate for quoting, securities, the Commission is also modifying the plan to provide that, 90 days from the date of this Order, the Five-Characters Plan shall be the exclusive means of allocating and using symbols of one-, two-, three-, four-, or five-characters in length. In addition, for clarity, the Commission is specifying that there will be no difference between capital letters and lowercase letters, thus limiting the choices of letters to 26. The Commission believes these changes are necessary and appropriate for the dissemination of trade information in a common format.⁴¹

A. Five-Characters Plan's Consistency with Section 11A of the Act

Many of the provisions of the proposed Five-Characters Plan are similar or identical to parallel provisions in the proposed Three-Characters Plan. Particularly, the plans would establish the Intermarket Symbol Reservation Authority ("ISRA") composed of plan participants and set forth how it would be administered. Both plans also have the same provisions regarding the use of a third-party processor and a symbol reservation database, the general process of reserving perpetual and limited-time reservations, the use of a waiting list, the right to reuse a symbol, the ability to request the release of a symbol, the terms of confidentiality, the non-transferability of rights under the plan, and the process of amending the plan.⁴² Despite these

⁴⁰ 15 U.S.C. 78k-1(a)(3)(B). The Commission did not receive any comments regarding whether it should require SROs to join an approved plan.

⁴¹ The Commission notes that, while the proposed plans were silent on these points, this clarification is necessary to avoid the possibility of confusion regarding the scope of the approved plan.

⁴² See discussion infra Part III(B) for a discussion of these provisions.

significant areas of consensus, however, there are several important differences between the proposed plans.

Many of the commenters that favored the proposed Five-Characters Plan asserted that it would enhance competition among markets by putting all exchanges on a fair and level playing field and would reduce the potential for investor confusion by allowing a fair framework for symbol portability.⁴³ Several commenters stated that the proposed Five-Characters Plan would give all exchanges equal rights under the proposal.⁴⁴ Some of these commenters also stated that the proposed Five-Characters Plan would provide greater choice for public companies and cause less confusion for investors.⁴⁵ One commenter asserted that the proposed Five-Characters Plan is inherently more fair and reasonable than the proposed Three-Characters Plan.⁴⁶

The Commission agrees with the commenters supporting the Five-Characters Plan and finds that, as discussed in greater detail below, the Five-Characters Plan, as modified herein, is consistent with Section 11A of the Act, and is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

1. Scope of Plan

One primary difference between the two proposed plans relates to scope: the proposed Three-Characters Plan would only cover one-, two-, and three-character symbols; the Five-Characters Plan, on the other hand, would cover the reservation and allocation of all one-, two-,

⁴³ See Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, Innospec Letter, SVB Letter, E*Trade Letter, EFI Letter, Top Image Letter, Double Eagle Letter, and Silver Standard Letter.

⁴⁴ See Adams Letter, Atkins Letter, and Sobha Letter. See also ASA Letter, which stated that fair and equal competition is the core of the Five-Characters Plan.

⁴⁵ See Amerigon Letter, United Stationers Letter, Glu Letter, Amarin Letter, Electronic Arts Letter, Silicon Graphics Letter, SVB Letter, E*Trade Letter, Top Image Letter, Double Eagle Letter, and Silver Standard Letter.

three-, four-, and five-character symbols. Both of the proposed plans would cover only root symbols, without any suffix or special conditional identifier.⁴⁷

The Commission believes that the Five-Characters Plan, which would establish a uniform system for the selection and reservation of symbols (“Symbol Reservation System”) of one-, two-, three-, four-, or five-character securities symbols,⁴⁸ is more comprehensive, and therefore offers a more efficient and effective mechanism for allocating symbols than the Three-Characters Plan.⁴⁹ The Three-Characters Plan would leave unanswered the appropriate methodology for allocating four- and five-character symbols.

Although Nasdaq is currently the primary listing exchange for issuers using four- and five-character symbols,⁵⁰ the Commission believes that it will further the purposes of the Act to approve a plan for the reservation and allocation of symbols with one-, two-, three-, four-, and five-character symbols in order to permit all exchanges to begin utilizing such symbols, particularly in light of the limited availability of one-, two-, and three-character symbols.

⁴⁶ See Matthews Letter.

⁴⁷ See Section IV(a) of the proposed plans.

⁴⁸ See Section I(b) of the Five-Characters Plan. The Five-Characters Plan would cover only root symbols (i.e., without any suffix or special conditional identifier) that are NMS securities as currently defined in Rule 600(a)(46) of Regulation NMS under Act and any other equity securities quoted, traded, and/or trade reported through an SRO facility. See Preamble and Sections I(b) and IV(a) of the Five-Characters Plan. The Three-Characters Plan would cover only root symbols of one-, two- or three-characters for Network A and Network B Eligible Securities (as defined in the CTA Plan) and listed options reported to OPRA. The Three-Characters Plan states that, for listed equity securities, no such symbols would be allocated or used other than for Network A or Network B Eligible Securities. See Sections I(b) and IV(a) of the Three-Characters Plan.

⁴⁹ As discussed below, one commenter suggested expanding the length of securities symbols to 10 or 12 characters. See Angel Letter III at 3. Currently, the markets only use root symbols of one- through five-characters in length.

⁵⁰ The Commission notes that NYSE Arca currently lists an issuer with a four-character security symbol, namely Golden Cycle Gold Corporation (ticker symbol: GCGC).

Indeed, the Commission believes that allowing all exchanges to list four- and five-character securities symbols should help ensure that the supply of available securities symbols does not become constrained.

Some commenters urged a broader scope than that proposed in either plan. Seven commenters advocated the adoption of a national market system plan that provides a single suffix symbology across all SROs.⁵¹ In response, Nasdaq had initially commented that the plan should only cover root symbols because the use of symbol suffixes is unique to individual markets.⁵² Subsequently, however, Nasdaq urged that the Commission commence a process for adopting a uniform inter-market equity symbol suffix plan.⁵³ The Commission is supportive of considering such an initiative. To avoid a delay in the implementation of a symbology national market system plan for root symbols, however, the Commission believes it is appropriate to consider any such initiative separately following the approval of the Five-Characters Plan. Accordingly, the Commission finds the scope of the Five-Characters Plan in its focus on root symbols is appropriate in the public interest and that it will further the purposes of the Act.

⁵¹ See FIF Letter I, FIF Letter II at 1, Angel Letter II at 3, Angel Letter III at 1, Omgeo Letter at 1, SIFMA Letter, Bracewell & Guiliani Letter, SWIFT Letter, and FIX Letter. One commenter also noted that current inconsistencies in suffix symbology and condition identifiers make it difficult for data vendors to pass through accurate data, which can cause confusion and loss for investors. See Angel Letter I at 8 and Angel Letter III at 1. This commenter also believed that the plan should cover, in addition to equity securities, options, futures, securities futures, mutual funds, and indices and that it should incorporate representation from the derivatives exchanges, issuers, investors, and brokers. See Angel Letter I at 10, Angel Letter II at 4, and Angel Letter III at 1. In addition, this commenter urged the development of a new symbology plan in what he anticipates will be a global trading environment. See Angel Letter III at 2.

⁵² See Nasdaq Letter II at 3.

⁵³ See Nasdaq Letter III. See also Head Trader Alert 2008-36 (March 27, 2008), available at www.nasdaqtrader.com.

2. Parties to the Plan

The proposed plans have different criteria for determining the eligibility for parties to join their plan. The proposed Three-Characters Plan would only allow an SRO to join the plan if it maintains a market for the listing and trading of securities that are identified by one-, two-, or three-character symbols and if their listed equity securities are also “Network A” or “Network B” “Eligible Securities” as those terms are defined in the CTA Plan.⁵⁴

The Five-Characters Plan, on the other hand, would allow any SRO to join the plan as long as it maintains a market for the listing and trading of securities that are identified by one-, two-, three-, four-, or five-character symbols.⁵⁵ A party would also be required to have the actual technical and physical capability through its facilities to immediately quote and report trades in securities either using one-, two-, or three-character symbols, if it seeks to reserve symbols of one-, two-, or three-characters in length, or using four- or five-character symbols, if it seeks to reserve symbols of four- or five-characters in length.⁵⁶ In addition, this plan would require, as conditions to becoming a new participant, that an SRO pay a proportionate share of the aggregate development costs and sign a current copy of the plan.⁵⁷

⁵⁴ The CTA Plan defines “Network A Eligible Securities” to mean Eligible Securities listed on NYSE and “Network B Eligible Securities” to mean, in relevant part, Eligible Securities listed on the Amex, BSE, CBOE, CHX, ISE, NSX, NYSE Arca, Phlx or on any other exchange other than Nasdaq, but not also listed on NYSE.

⁵⁵ See also supra note 48.

⁵⁶ See Section I(b) of the Five-Characters Plan.

⁵⁷ See Section I(c) of the Five-Characters Plan. For additional discussion regarding the plan’s provision relating to costs, see discussion infra notes 118-124 and accompanying text.

Many commenters argued that Nasdaq should not be allowed to list one-, two-, and three-character symbols because such symbols are indicative of an NYSE listing.⁵⁸ Some of these commenters argued that an issuer's use of a one-, two-, or three-character symbol signaled the NYSE brand and "companies listed on NYSE meet the highest corporate governance and financial standards in the world;"⁵⁹ consequently, some stated, the Nasdaq issuers' use of such symbols could lead to investor confusion.⁶⁰ One such commenter, a trustee and portfolio manager of a small pension fund, stated that it relies on the use of one-, two-, and three-character symbols to identify NYSE securities and makes investment decisions based on such reliance, citing the financial reporting requirements and stability of earnings of NYSE securities; this commenter further stated that it generally performs "an extra level of scrutiny in view of the longevity of firms that have been listed in the over the counter market" because it presumes that those securities are not NYSE-listed securities.⁶¹ NYSE also argued that Nasdaq's attempt to use three-character symbols exacerbates the existing supply problems without justification.⁶²

⁵⁸ See FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, KCI Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Allstate Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Ward Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, State Street Letter, and Jackson Hewitt Letter. See also NYSE Letter at 2.

⁵⁹ See Allstate Letter; see also, e.g., FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, KCI Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, State Street Letter, and Jackson Hewitt Letter. See also NYSE Letter at 4.

⁶⁰ See TCF Letter, Wolverine Letter, Big Lots Letter, Ward Letter. See also NYSE Letter at 3.

⁶¹ See Strategic Technologies Letter. The NYSE Letter also argued that investors, securities issuers, and the public rely on the different symbol lengths to distinguish NYSE and Nasdaq securities. See NYSE Letter at 2.

⁶² See NYSE Letter at 5.

Many other commenters, however, challenged these assertions and argued that Nasdaq should have the same rights to list one-, two-, or three-character symbols as NYSE and any other exchange.⁶³ One commenter noted that one-, two-, and three-character ticker symbols have previously been used by Amex and other regional exchanges and that commenters implying that one-, two-, and three-character symbols are associated only with NYSE ignore current practice and the historical record.⁶⁴ Another commenter stated that, due to the fact that markets can no longer claim a majority share of the trading in their listed securities, the correlation of the number of letters in a ticker symbol and its listing on a particular exchange is an increasingly obsolete consideration.⁶⁵ One commenter also noted that NYSE and Amex issuers, similarly, should have the flexibility to use longer ticker symbols that may be more readily identifiable with their company.⁶⁶

The Commission believes that any SRO with the capacity to maintain a market for the listing of securities that are identified by one-, two-, three-, four-, or five-character symbols should be able to reserve those symbols.⁶⁷ As noted above, the Five-Characters Plan would

⁶³ See G&K Letter, Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Graphics Letter, E*Trade Letter, Silicon Storage Letter, Innospec Letter, EFI Letter, and Nasdaq Letter I. See also SVB Letter, Top Image Letter, and Double Eagle Letter, which state that all exchanges and issuers should be able to list three- or fewer character symbols.

⁶⁴ This commenter stated that Amex, BSE, and other regional exchanges have used one- or two-character ticker symbols in the past. See Angel Letter I at 6, Angel Letter II at 2, and Angel Letter III at 2. This commenter also argued that shorter ticker symbols should go to the most actively-traded stocks, some of which are Nasdaq-listed, because the reduced typing and remembering effort required for such symbols would make it a more economically efficient solution. See Angel Letter I at 5.

⁶⁵ See Issuer Advisory Letter at 2. See also Angel Letter I at 4.

⁶⁶ See Angel Letter II at 3.

⁶⁷ The Commission notes that Nasdaq is no longer a facility of a national securities association and is now a national securities exchange. See supra note 26.

permit any SRO that maintains a market for the listing and trading of plan securities to become a party to the plan.⁶⁸ The Commission believes that SROs that have listing standards for plan securities, though they may not be actively listing such securities, and that maintain a market for the trading of plan securities would satisfy this requirement and would be permitted, though not required, to become parties to the plan. Joining the plan would enable such SROs to reserve symbols in anticipation of beginning a listings business.⁶⁹ In addition, the Commission is requiring any SRO that chooses to list securities on its market or to designate securities for quoting on a quotation medium to join the approved plan.⁷⁰

The Commission does not agree with commenters who believe that the use of one-, two- or three-character symbols by Nasdaq issuers will “blur and diminish the financial and other significant achievements commonly associated with NYSE listed companies”⁷¹ or confuse investors who today purportedly identify such symbols as associated with NYSE. Many issuers not listed on NYSE utilize such symbols and have for a significant period of time and, therefore, any automatic association of such symbols with NYSE’s listing standards or brand is mistaken.⁷² Therefore, the Commission finds that the provision on eligible parties in the proposed Five-Characters Plan is preferable and is necessary and appropriate in the public interest, for the

⁶⁸ See Section I(c) of the Five-Characters Plan.

⁶⁹ Parties to the plan are entitled to place up to 20 symbols on each of its perpetual reservation lists for one-, two-, or three-character symbols and four- or five-character symbols, respectively. See *infra* notes 90 and 93-95 and accompanying text. The Commission notes that, for limited-time reservations, the plan requires a party to have a reasonable basis for using a limited-time reservation within a 24-month period. See *infra* notes 91-92 and accompanying text.

⁷⁰ See *infra* notes 192 and 197-198 and accompanying text.

⁷¹ See Big Lots Letter.

⁷² See *supra* note 64 and accompanying text.

protection of investors and the maintenance of fair and orderly markets, and that it assures fair competition among exchange markets, consistent with Section 11A(a)(1)(C)(ii) of the Act.⁷³

The Commission also believes that the Five-Characters Plan will further the purposes of the Act because it promotes competition among listing markets, including potential new listing markets. As described in further detail below, and unlike the Three-Characters Plan, the Five-Characters Plan provides each party to the plan with an equal allotment of perpetual and limited-time reservations.⁷⁴ The Five-Characters Plan also permits the portability of an issuer's symbol from one SRO to another, allowing competing listing venues to attract transferred listings without requiring issuers to change their ticker symbol.⁷⁵ In addition, the Five-Characters Plan would allocate to any new party joining the plan a pro-rata portion of the initial development costs based upon the number of symbols initially reserved by such new party during its first twelve months as a party to the plan.⁷⁶

3. Reservation and Use of Symbols

⁷³ See 15 U.S.C. 78k-1(a)(1)(C)(ii).

One commenter also argued that rights to ticker symbols should be allocated directly to issuers, rather than to the SROs. See Issuer Advisory Letter at 3. See also Angel Letter I at 3 and Angel Letter III at 4, arguing that issuers have stronger claims to symbols than their exchanges. The Commission believes, however, that developing a symbol reservation plan directly among the issuers would present significant challenges—including implementation and administrative challenges, and believes that continuing to allow listing markets to reserve and then allocate those symbols to qualified issuers is more workable and efficient.

Because the Five-Characters Plan, as filed, listed the name of all SROs, including those that were not signatories to the plan, the Commission has deleted the names of SROs listed in Section I(a) of the Five-Characters Plan who are not signatories to the plan at this time.

⁷⁴ See discussion infra notes 77-104 and accompanying text.

⁷⁵ See discussion infra notes 105-117 and accompanying text.

⁷⁶ See discussion infra notes 118-124 and accompanying text.

Both proposed plans have provisions allowing parties to the plan to reserve symbols in perpetuity (“perpetual reservations”) and for a limited time (“limited-time reservations”). Specifically, both proposed plans provide that, within 30 days of Commission approval of the plan (unless such time is extended by the Policy Committee),⁷⁷ parties may submit to the Processor⁷⁸ requests for initial reservation of symbols.⁷⁹ The proposed plans’ differ as follows: (1) how reservation rights are allocated among the individual parties; (2) the number of symbols that may be reserved on the perpetual reservation and limited-time reservation lists, respectively; and (3) how limited-time reservations may be secured. These differences and the reasons the Commission finds that the Five-Characters Plan’s provisions on reservation rights, as modified herein, are appropriate in the public interest for the maintenance of fair and orderly markets and fair competition between the markets, consistent with the Section 11A(a)(1)(C) of the Act,⁸⁰ are discussed below.

a. Allocation of Reservation Rights Among Parties

The proposed Three-Characters Plan awards greater reservation rights to NYSE and Amex than to the other parties to the plan. Specifically, the proposed Three-Characters Plan would allow NYSE and Amex each to reserve 200 symbols as perpetual reservations and 1,500

⁷⁷ ISRA will be administered by a Policy Committee, which will consist of one voting member and one alternate voting member representing each party. See Section II(a) and (c) of the Five-Characters Plan. See also Section II(a) and (c) of the Three-Characters Plan, which is identical to the corresponding provision of the Five-Characters Plan.

⁷⁸ The Processor will be an independent third party to which ISRA will delegate the operation of the Symbol Reservation System. See Section III of the Five-Characters Plan. See also Section III of the Three-Characters Plan, which is identical to the Five-Characters Plan.

⁷⁹ The Commission is modifying the Five-Characters Plan’s provision on the timing for the initial reservation process. See infra notes 77-104 and accompanying text for the discussion of this modification.

⁸⁰ 15 U.S.C. 78k-1(a)(1)(C).

symbols as limited-time reservations, while other parties to the plan could only reserve 40 symbols as perpetual reservations and up to 500 limited-time reservations.⁸¹ The Five-Characters Plan, on the other hand, awards equal reservation rights among all the parties – any eligible party to the plan could reserve 20 perpetual reservations and 1,500 limited-time reservations of one-, two-, and three-character symbols and 20 perpetual reservations and 1,500 limited-time reservations of four- and five-character symbols.⁸² The Five-Characters Plan also requires a party intending to include a symbol on its limited-time reservations lists to have a reasonable basis for using such symbol within 24 months.

With respect to these provisions on reservation rights, the Commission finds that the Five-Characters Plan will further the purposes of the Act. The Five-Characters Plan allocates all reservation rights equally among all parties to the plan, consistent with fair competition principles. NYSE argued that the proposed Three-Characters Plan reservation provisions reflect the reality of its own likelihood to list a greater number of securities than the other markets.⁸³ Nasdaq, however, disputed this assertion and stated that the allocation of reservations in this provision of the Three-Characters Plan is out of proportion to historic symbol usage.⁸⁴ Nasdaq also argued that this provision would be discriminatory and that such discrimination is not compelled by market needs and is inconsistent with the equal regulation and pro-competition mandates of the Act. While the Commission recognizes that currently NYSE and Amex markets

⁸¹ The proposed Three-Characters Plan, as amended, provided that NYSE Arca and CBOE each may have 500 limited-time reservations and that ISE may have 200 limited-time reservations. The plan would leave the precise number of limited-time reservations for other SROs to be decided when such SROs join the proposed plan.

⁸² See Section IV(b)(1)(A) and (B) of the Five-Characters Plan. The Commission notes that the reservation lists do not apply to securities symbols already in use, but rather relate to unused ticker symbols.

⁸³ See NYSE Letter at 6.

encompass the overwhelming majority of primary listings for issuers with one-, two-, and three-character symbols, the Commission does not believe that the dominance of any particular market should be enshrined in a national market system plan. Moreover, the Commission believes that the Five-Characters Plan's proposed allotments would permit active listing markets to reserve more than enough securities symbols for their listing business. The Five-Characters Plan, in contrast to the proposed Three-Characters Plan, would promote fair competition among the markets by providing all participants with the same number of reservations. Such equal reservation rights make it easier for an existing SRO or new entrant to compete on an equal basis with primary listing markets.

One commenter stated that OTC Bulletin Board ("OTCBB")⁸⁵ and Pink Sheet⁸⁶ issuers should not have the same rights to use securities symbols as issuers listed on national securities exchanges.⁸⁷ The commenter noted that, in the past, if a Nasdaq-listed firm desired to use a ticker symbol that was in use by an OTCBB or Pink Sheet issuer, it could usually get such a symbol. In addition, the commenter noted that such issuers have not paid any listing fees to be traded on those markets and that many of them are shell companies with no operations or defunct companies. The commenter believed that only "legitimate" SEC registrants that meet the listing standards of the exchanges should be able to establish rights to ticker symbols.

⁸⁴ See Nasdaq Letter II at 2.

⁸⁵ The OTCBB is a quotation service for over-the-counter equity securities run by FINRA, a national securities association.

⁸⁶ Pink Sheets is an interdealer electronic quotation system that displays quotes from market makers for many over-the-counter securities. To be quoted on the Pink Sheets, an issuer need only find one market maker to quote its shares, and Pink Sheets-traded issuers need not have audited financial statements. See www.pinksheets.com.

⁸⁷ See Angel Letter I at 10.

The Commission agrees and believes that significant investor confusion and harm could occur if such securities, which currently trade using four- or five-character symbols, were to begin trading with one-, two-, or three-character symbols. The Commission believes that it is important to distinguish between securities trading only on over-the-counter trading venues and those listed on national securities exchanges. Exchange listing standards are approved by the Commission and must include corporate governance requirements that comply with Rule 10A-3 under the Act.⁸⁸ Issuers traded on over-the-counter equity venues (including the OTCBB and Pink Sheets) are not subject to such listing standards. Therefore, such securities can be substantially different from those listed on a national securities exchange. The Commission does not believe any similar distinction exists among the national securities exchanges. Accordingly, the Commission believes that it is appropriate to limit securities not listed on a national securities exchange to using four- or five-character symbols, whereas it is not appropriate to similarly distinguish between exchange-listed securities. The Commission believes that issuers trading solely on the OTCBB, Pink Sheets, and any other over-the-counter venue should be limited to using four- and five-character symbols, as they do today, as any change from this current practice would unnecessarily confuse investors and could lead to investor harm. The Commission finds that it is necessary and appropriate in the public interest, and for the protection of investors and the maintenance of fair and orderly markets, that only issuers listed on a national securities exchange be allowed to use one-, two-, and three-character symbols.⁸⁹ Therefore, the Commission is modifying the Five-Characters Plan to prohibit an SRO from reserving or using one-, two-, and three-character symbols for any issuer not listed on a national securities exchange.

⁸⁸ 17 CFR 240.10A-3.

b. Number of Perpetual and Limited-Time Reservations

The Three-Characters Plan contemplates allocating some SROs as many as 200 perpetual reservations. In contrast, the Five-Characters Plan would allow no more than 40 perpetual reservations for each party.⁹⁰ The Commission believes that, because the Five-Characters Plan allows the overwhelming majority of unused symbols remain available for future use, exchanges would not be able to hold securities symbols in a manner that stifles or burdens competition. In this regard, the Commission believes that the perpetual reservation provisions of the Five-Characters Plan are more favorable to new entrants. The Commission also believes that the Five-Characters Plan's allotment of 1,500 limited-time reservations for one-, two-, and three-character symbols and 1,500 limited-time reservations for four- and five-character symbols should adequately offset the low number of permitted perpetual reservations, and allow SROs to reserve a sufficient number of symbols in the short-term for any pending use.

Both proposed plans permit limited-time reservations for a period of 24 months, after which time the Processor would release such symbols to be available for reservation by parties on the waiting list for a given symbol or, in the absence of a waiting list, for general availability.⁹¹ The Five-Characters Plan requires a party to have a reasonable basis for using a limited-time reservation within such 24-month period while the Three-Characters Plan has no such comparable requirement.⁹² Under the Five-Characters Plan, if a party does not use a

⁸⁹ 17 CFR 242.608.

⁹⁰ The Five-Characters Plan would allow each party to place 20 symbols on each of its perpetual reservation lists for one-, two-, or three-character symbols and four- or five-character symbols, respectively.

⁹¹ See Sections IV(b)(1)(B) and IV(b)(5) of the proposed plans.

⁹² Because "reasonable basis" was not defined in the Five-Characters Plan, the Commission requested comment about it in the Symbology Notice. No commenters specifically responded to this request. The Commission believes that it is necessary and appropriate

limited-time reservation within the 24-month reservation period and no party reserves the symbol after the Processor releases it, then the original party would be able to subsequently reserve the symbol for an additional 24-month period, once again subject to the requirement that it has a reasonable basis for doing so. The Commission does not view the “reasonable basis” requirement in the Five-Characters Plan as mandating the usage of a symbol within 24 months, but believes that this requirement should help prevent the arbitrary reservation of symbols, particularly in an anti-competitive manner.

One commenter argued that there should be no perpetual reservations because having a perpetual reservation would allow an exchange to exclude others from ever using a symbol.⁹³ The Commission notes that, though they disagreed on the precise number of perpetual reservations each party should be able to reserve, the signatory SROs to both proposed plans agreed to the availability of perpetual reservations,⁹⁴ and believes that perpetual reservations are not inconsistent with Rule 608 under the Act, which requires that the plan be 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. Nonetheless, the Commission believes that the number of such perpetual reservations should be kept to a minimum and believes that the Five-Characters Plan’s allocation of 40 perpetual reservations to each party is

in the public interest to have the Policy Committee determine the appropriate interpretation and application of terms used in the plan, such as the term “reasonable basis.” To the extent that any of the parties to the plan are aggrieved by the determination of the Policy Committee in this regard, the Commission notes that it has the authority to hear appeals by such parties. See Rule 608(d), 17 CFR 242.608(d); see also supra notes 133-137 and accompanying text.

⁹³ See Angel Letter I at 6, 9 and Angel Letter II at 3, and Angel Letter III at 4.

⁹⁴ See Section IV(b)(1)(A) of the proposed plans.

appropriate. The Commission acknowledges that new entrants that join the plan after the initial reservation process would have fewer options for selecting their perpetual reservations, as compared to the parties participating in the initial reservation process. But the Commission believes that, given the relatively low number of perpetual reservations allowed under the Five-Characters Plan (particularly as compared to the Three-Characters Plan), such new entrants would still have access to an adequate number of symbols and notes that they would also have the same right to have 40 perpetual reservations each. In addition, the Commission notes that, once an SRO assigns a symbol from its perpetual reservation list to an issuer, that symbol becomes portable to other listing markets if the issuer using the symbol were to transfer its listing to another SRO.⁹⁵ Because the Five-Characters Plan would limit each party to no more than 40 perpetual reservations and because an issuer using such a symbol could transfer its listing to another SRO if it chose to do so, the Commission finds that the Five-Characters Plan’s provisions with respect to perpetual reservations are not anticompetitive and are appropriate in the public interest.

Finally, one commenter also stated that symbols should be allocated on a “first-come, first-served” basis with a “use it or lose it” feature.⁹⁶ The Commission believes that the Five-Characters Plan’s provisions relating to processing symbol requests for limited-time reservations incorporate this very principle.

c. Legacy Reservations

Under both proposed plans, during the initial reservation process, a party in reserving a symbol that it claims was properly reserved under the current informal system prior to the

⁹⁵ See Section IV(f) of the Five-Characters Plan.

⁹⁶ See Angel Letter I at 9 and Angel Letter III at 4.

effective date of the plan would have priority over other parties also reserving such symbol.⁹⁷ Under the Five-Characters Plan, however, such party would have priority over other SROs to retain reservation of that symbol (a “legacy reservation”) only if the party represents that it has a reasonable basis⁹⁸ to believe that it would utilize such symbol within the next six months. Moreover, such reservation would not count towards the party’s perpetual reservations or limited-time reservations, but instead be reserved as a separate, additional legacy reservation.⁹⁹ If the party does not use such symbol within the allotted six-month period, it would lose the reservation unless the party requests an extension for an additional six-month period. In requesting such an extension, the party would have to have a reasonable basis to believe that it would utilize such symbol within the additional six-month period. If the symbol has not been used within the additional six-month period, the symbol would be released by the Processor.¹⁰⁰ The Three-Characters Plan also assigns priority for symbol reservations to parties that claim to have properly reserved such symbols under the current informal system prior to the effective date of the plan, but it does not place such reservations on a separate “legacy reservation” list nor does it establish a separate process for using such symbols.¹⁰¹

One commenter suggested establishing a 90-day remaining life to all symbols currently reserved by the exchanges, after which all symbol reservations by exchanges will cease to exist.¹⁰² Another commenter endorsed an approach similar to that in the Five-Characters Plan, proposing a transitional provision allowing for an exchange to assert a legacy reservation for up

⁹⁷ See Section IV(b)(2)(A) of the proposed plans.

⁹⁸ See supra note 92.

⁹⁹ See Section IV(b)(2)(A) of the proposed plans.

¹⁰⁰ See id.

¹⁰¹ See Section IV(b)(2)(A) of the Three-Characters Plan.

to 12 months for a pending use.¹⁰³ The Commission finds that the legacy reservation provision in the Five-Characters Plan is in the public interest, consistent with Section 11A(a)(1)(C) of the Act, because it provides an appropriate transition period for symbol reservations held prior to the Commission’s approval of the Five-Characters Plan.¹⁰⁴

4. Portability of Symbols

Another key difference between the two proposed plans relates to the portability of symbols. In Amendment No. 1 to the proposed Three-Characters Plan, that plan was amended to allow for the automatic portability of three-character symbols (i.e., allowing an issuer with a three-character ticker symbol to automatically continue to use that symbol upon transferring its listing to another SRO).¹⁰⁵ Nonetheless, the proposed Three-Characters Plan maintains that one- and two-character symbols would not be automatically portable if a listed issuer moves to another exchange. Under that proposed plan, the rights to a one- or two-character symbol of the issuer transferring to another exchange would remain with the former SRO unless the former SRO consents to the transfer of the symbol to the new SRO. The only exception would be, in the case of two-character symbols, if the new SRO demonstrates that it has a compelling business need that substantially outweighs the business needs of the former SRO. This determination

¹⁰² See Issuer Advisory Letter at 3.

¹⁰³ See Sobha Letter.

¹⁰⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁰⁵ Two commenters expressed concerns that an earlier proposed rule change of Nasdaq to allow the transfer of issuers with three-character symbols to Nasdaq (SR-NASDAQ-2007-031) could circumvent efforts to develop a national market system plan for symbology. See RPM Letter and MDC Letter. In the Nasdaq Three-Character Portability Order, see supra note 29, the Commission addressed this concern and noted that its approval of that proposed rule change was independent of its consideration of the proposed NMS plans. As the Commission stated then, “[p]articipants in any such plan would be required to comply with its requirements, which could necessitate changes to SRO rules.” See Nasdaq Three-Character Portability Order at 38641.

would be made by the Processor and would be final. Under the proposed Three-Characters Plan, this exception would not apply to one-character symbols, which could not be transferred to a new SRO without the consent of the former SRO, even if the new SRO was able to demonstrate a compelling business need that substantially outweighed the business needs of the former SRO. In contrast, the Five-Characters Plan would provide the automatic portability of any symbol in the event that an issuer transfers its listing to another exchange (i.e., without requiring the consent of the former SRO).¹⁰⁶

Many commenters have supported the portability provision of the Five-Characters Plan.¹⁰⁷ Some commenters argued that the portability provision of the proposed Three-Characters Plan would create artificial restrictions on symbol use and portability that would not benefit listed companies or the investing public.¹⁰⁸ One commenter stated that disallowing symbol portability is an anti-competitive and unfair practice.¹⁰⁹ Another commenter argued that the inconvenience and transition costs involved with requiring a company to change its ticker symbol upon transferring from the NYSE to another exchange amount to an unfair restraint of

¹⁰⁶ See Section IV(f) of the Five-Characters Plan.

¹⁰⁷ See Omni Letter, Adams Letter, Amerigon Letter, Atkins Letter, United Stationers Letter, Glu Letter, ASA Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, E*Trade Letter, Innospec Letter, SVB Letter, EFI Letter, Top Image Letter, and Double Eagle Letter, and Nasdaq Letter II at 3.

¹⁰⁸ See Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, Innospec Letter, E*Trade Letter, EFI Letter, Top Image Letter, Double Eagle Letter.

¹⁰⁹ See Issuer Advisory Letter at 2.

trade.¹¹⁰ Two commenters also likened securities symbols to telephone numbers and argued that they should belong to the issuer and be fully portable.¹¹¹

One commenter noted that issuers expend more effort and resources to associate a particular symbol with their company than anyone else, and therefore should be allowed to take their symbol with them when they move to another exchange.¹¹² This commenter also stated that, over time, investors tend to associate a particular ticker symbol far more with a company than with a particular exchange and that, therefore, in terms of reducing investors' search and transaction costs, it makes sense to award the rights to a particular ticker symbol to the issuer that has been using the ticker symbol, rather than the exchange where it originally listed.¹¹³ Furthermore, this commenter stated that changing an issuer's ticker symbol can result in confusion for investors and researchers and be the source of costly investment mistakes, noting that data vendors often do not catch a symbol change on time.¹¹⁴ One issuer cited its own experience with transferring its listing from NYSE to Nasdaq and consequently changing its symbol; though it ultimately decided to switch listing venues, the issuer stated the need to change its ticker symbol was a negative factor because of the time and resources it had to expend to make sure its investors were aware of the symbol change.¹¹⁵ Finally, one commenter also noted that allowing symbol portability would strengthen competition between markets.¹¹⁶

¹¹⁰ See ASA Letter.

¹¹¹ See Spachman Letter, Angel Letter I at 5-6, Angel Letter II at 2, and Angel Letter III at 3 and 4.

¹¹² See Angel Letter I at 4.

¹¹³ Id.

¹¹⁴ See Angel Letter I at 5. See also Nasdaq Letter II at 3.

¹¹⁵ See E*Trade Letter. See also Nasdaq Letter II at 3.

¹¹⁶ See Angel Letter II at 2.

The Commission finds that allowing the automatic portability of a symbol in the event that an issuer transfers its listing to another exchange will further the purposes of the Act and should reduce investor confusion by allowing the symbol already associated with the issuer to continue to be used by the issuer on the new exchange. The Commission also finds that allowing automatic symbol portability would remove a burden on competition among markets not necessary or appropriate in furtherance of the purposes of the Act by making it easier for listed issuers to transfer their listings to another exchange, thereby enhancing competition among exchanges in the business of providing a listing venue. Eliminating the costs and administrative efforts associated with acquiring a new symbol for transferred listings should allow listed issuers to make decisions about listing based on factors such as listing costs and the quality of markets. The Commission believes that automatic symbol portability is preferable to allowing an issuer's former listing exchange to retain the rights to a symbol once a listed issuer has transferred to another market, particularly as the former market likely would not reuse the symbol in the near term without causing undue investor confusion. Therefore, the Commission finds that the automatic symbol portability provision in the Five-Characters Plan is in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets, and assures fair competition among exchange markets, consistent with the Section 11A(a)(1)(C) of the Act.¹¹⁷

5. Allocation of Plan Costs

The two proposed plans also differ with respect to the allocation of the initial development costs and ongoing costs of the plan. The proposed Three-Characters Plan would have all initial and ongoing costs shared equally among all the parties.

¹¹⁷ 15 U.S.C. 78k-1(a)(1)(C).

The Five-Characters Plan provides that the parties would share the initial development costs pro-rata based on the number of symbols initially reserved by each party. Any new party that joins the plan would also be responsible for a pro-rata portion of the initial development costs based upon the number of symbols initially reserved by such new party during the first twelve months of the new party's membership in the plan.¹¹⁸ The Five-Characters Plan also provides that the continuing costs and expenses of ISRA would be shared among the parties pro-rata based on the number of additional symbols reserved in each calendar year, estimated quarterly.¹¹⁹ In addition, under the Five-Characters Plan, the Policy Committee¹²⁰ may develop alternative cost-allocation methodologies for special development projects outside the initial development period. One commenter expressed support for this provision in the Five-Characters Plan as it would require exchanges to bear the costs of the system only to the extent they reserve and use symbols.¹²¹

The Commission finds that the Five-Characters Plan's provision for the allocation of costs will further the purposes of the Act in that it establishes an equitable means of allocating costs among the plan parties.¹²² The SROs supportive of the Three-Characters Plan anticipate that certain SROs, such as NYSE and Amex, would likely use the reservation system more than

¹¹⁸ See Section V(a) of the Five-Characters Plan.

¹¹⁹ See Section V(b) of the Five-Characters Plan.

¹²⁰ See *infra* notes 125-137 and accompanying text.

¹²¹ See Adams Letter.

¹²² One commenter argued, based on its belief that the issuers have rights to the symbols, that issuers should pay for the plan in accordance with the Regulation NMS market data revenue formula. See Angel Letter II at 3. The Commission notes, however, that the listing markets charge initial and ongoing listing fees to issuers listed on their markets, and therefore issuers are likely to pay indirectly.

other SROs.¹²³ It is the proposed Five-Characters Plan, however, that recognized this likelihood by allocating costs based on an SRO's use of the reservation system. Moreover, the parties' usage of the system will likely vary as markets compete for listings. Under the Five-Characters Plan, the cost allocation will similarly vary with any changes in use of the reservations. Therefore, the Commission finds that the cost allocation provision of the Five-Characters Plan is in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets, and assures fair competition among exchange markets, consistent with Section 11A(a)(1)(C) of the Act.¹²⁴

B. Similar Provisions Among the Proposed Plans

Other than the areas of substantive differences between the proposed plans discussed above, the remaining provisions of the Five-Characters Plan are substantially similar or identical to parallel provisions in the proposed Three-Characters Plan. The Commission believes that such similarities evidence a broad consensus among the SROs as to the overall framework and most of the main provisions of the Five-Characters Plan, a result of the collaboration by and negotiations between the SROs following the issuance of the February 2005 Letters to discuss the terms of an appropriate national market system plan for the reservation and allocation of securities symbols. Therefore, the Commission believes that these aspects of the Five-Characters Plan represent a fair and workable symbol reservation system for the prospective parties to the plan.

The following section discusses the remaining provisions of the Five-Characters Plan, which are substantially similar or identical to provisions in the proposed Three-Characters Plan.

¹²³ This expectation is the basis for the proposed Three-Characters Plan providing more reservations to NYSE and Amex than the other SROs. See NYSE Letter at 6.

¹²⁴ 15 U.S.C. 78k-1(a)(1)(C).

1. Administration of ISRA

The Five-Characters Plan would establish a body composed of the signatory SROs called the Intermarket Symbols Reservation Authority.¹²⁵ A Policy Committee, consisting of representatives of each of the signatory SROs, would administer the ISRA and, unless expressly provided otherwise in the plan, would make all policy decisions on behalf of the ISRA in furtherance of the functions and objectives of the ISRA under the Act and the plan. Specifically, the Policy Committee would: (1) oversee the operation of the Symbol Reservation System; (2) make all determinations pertaining to contracts with parties to the plan and persons who provide goods or services to the ISRA; and (3) determine all other questions pertaining to the planning, developing, and operating of the ISRA, including those pertaining to budgetary or financial matters.¹²⁶

One voting member and one alternate voting member representing each party would compose the Policy Committee.¹²⁷ Each party would have one vote on all matters voted upon by the Policy Committee and actions of the ISRA under each plan would be authorized by a majority vote of the Policy Committee members, subject to Commission approval when required by applicable securities law.¹²⁸ Authorized actions under the plan would be binding upon all the parties. However, an aggrieved party may present contrary views to any regulatory body or in any other appropriate forum.¹²⁹ A meeting of the Policy Committee would be held at least

¹²⁵ See Section II(a) of the Five-Characters Plan.

¹²⁶ See Section II(b) of the Five-Characters Plan.

¹²⁷ See Section II(c) of the Five-Characters Plan.

¹²⁸ See Section II(d) of the Five-Characters Plan.

¹²⁹ Id.

annually and other meetings would be held as determined by the Policy Committee, subject to the notice provisions for regular and special meetings and the organization of the meetings.¹³⁰

The Commission finds that the provisions of the Five-Characters Plan relating to the establishment of the ISRA and the administration of the ISRA by the Policy Committee will further the purposes of the Act and should assure fair competition between exchange markets, consistent with Section 11A(a)(1)(C) of the Act.¹³¹ The Commission believes that, because the Policy Committee is composed of one voting member representing each party, the each party would be limited in its ability to act in an anti-competitive manner.¹³²

Two commenters have recommended the adoption of a formal dispute resolution mechanism for the plan.¹³³ The Commission notes that Section 11A of the Act and Rule 608 require national market system plans to describe, to the extent applicable, the method by which disputes in connection with the operation of the plan will be resolved.¹³⁴ The Five-Characters Plan specifies a dispute resolution mechanism with respect to the initial reservation of securities symbols, where disagreements are most likely to arise.¹³⁵ With regard to the operation of the plan following the initial reservation period, the Commission believes that the likelihood of disputes among the parties arising under the plan is minimal because the plan specifies the methods relating to submitting reservation requests, requesting releases of symbols, the operation of waiting lists, the reuse of symbols, and all other aspects of reserving and allocating

¹³⁰ See Section II(e) of the Five-Characters Plan.

¹³¹ 15 U.S.C. 78k-1(a)(1)(C).

¹³² See Section II(c) of the Five-Characters Plan.

¹³³ See Angel Letter I at 11. See also Issuer Advisory Letter at 3.

¹³⁴ See 17 CFR 242.608(a)(5)(iv).

¹³⁵ See Section IV(b)(2) of the Five-Characters Plan.

symbols.¹³⁶ To the extent that disputes nonetheless arise and the parties are not able to resolve them, the Commission notes that under Rule 608(d) under the Act, the Commission has broad discretion to review, either on its own motion or upon the application of any person aggrieved thereby, actions taken (or failures to act) by any person in connection with an effective national market system plan.¹³⁷ Therefore, the Commission finds that the Five-Characters Plan’s provision on dispute resolution is appropriate in the public interest.

2. The Processor for the Symbol Reservation System

Under the Five-Characters Plan, the ISRA would delegate the operation of the Symbol Reservation System to an independent third party (the “Processor”) and would enter into contracts with the Processor relating to the operation of the Symbol Reservation System.¹³⁸ The Processor would receive reservation requests from the parties and reserve and allocate symbols among the parties in accordance with the terms of the plan.¹³⁹ To this end, the Processor would create and maintain a symbol reservation database.¹⁴⁰ Parties to the Five-Characters Plan would determine the method and frequency of the evaluation of the Processor at a later time.

The Commission finds that provisions of the Five-Characters Plan relating to the Processor promote the maintenance of fair and orderly markets by ensuring that a symbol is used for only one security. The capacity and capability of the Processor to completely maintain

¹³⁶ See Sections IV(b)(6), IV(c), and IV(d), respectfully, of the Five-Characters Plan.

¹³⁷ See Rule 608(d)(1).

¹³⁸ See Section III of the Five-Characters Plan.

¹³⁹ One commenter suggested that the Commission could assign the rights to unused ticker symbols directly to issuers by auction. See Angel Letter III at 4-5. The Commission believes that the proposed allocation of symbol reservation rights using the Processor under the Five-Characters Plan is in furtherance of the purposes of the Act.

¹⁴⁰ See *infra* notes 175-178 and accompanying text for further discussion of the plan provisions on the database.

processes and systems for the reservation and allocation of symbols under the plan is integral to this plan's effective implementation. Accordingly, the Commission expects the parties to the Five-Characters Plan to regularly evaluate the Processor's performance.

3. Symbol Reservation System

The Five-Character Plan provides that, within 30 days of the Commission's approval of the Five-Characters Plan (unless such time is extended by the Policy Committee), a participant in the plan may submit to the Processor requests for the initial reservation of symbols.¹⁴¹ A party may reserve symbols for: (i) the listing of common stock or any other security, including options; (ii) with respect to four- and five-character symbols,¹⁴² the trading of any over-the-counter security; (iii) the dissemination of a securities index or other index information; or (iv) any other purpose authorized by a majority vote.

To provide sufficient time for SROs to join the plan and for the plan participants and the Processor to implement the Symbol Reservation System, the Commission is modifying Section IV(b)(1) of the plan to provide that the initial symbol reservation process will begin 60 days after the Commission's approval of the plan and will ensue for a 30-day period.¹⁴³

¹⁴¹ See Section IV(b)(1) of the Five-Characters Plan.

¹⁴² See discussion supra notes 85-89 and accompanying text relating to limiting the use of securities symbols by issuers traded other than on national securities exchanges to four- and five-character symbols.

¹⁴³ To conform to the Commission's modification of the initial reservation process, the Commission is also modifying Section IV(c)(1) of the Five-Characters Plan to clarify that the waiting list procedure applies during the initial reservation period rather than within 30 days of the effective date of the plan.

a. Perpetual and Limited-Time Reservations

As noted earlier, under the Five-Characters Plan, a party may reserve a limited number of symbols in perpetuity.¹⁴⁴ There would be two perpetual reservation lists for each party—one list for one-, two-, and three-character symbols and one list for four- and five-character symbols. Each party could reserve up to 20 one-, two-, or three-character symbols as perpetual reservations, and up to 20 four- or five-character symbols as perpetual reservations.

A party that requests perpetual reservations for more symbols than permitted would be required to place its symbols requests in priority ranking. A party could not add symbols to its perpetual reservation list after the initial reservation process, except when reserving a symbol for reuse.¹⁴⁵

Symbols could also be reserved for a limited-time period of 24 months.¹⁴⁶ Each party would have two limited-time reservation lists—one list for one-, two-, and three-character symbols and one list for four- and five-character symbols. Each party could reserve up to 1,500 symbols under the one-, two-, or three-character limited-time reservations list and up to 1,500 symbols under the four- or five-character limited-time reservations list. A party may not make a limited-time reservation with respect to a particular symbol unless the party has a reasonable basis to utilize the symbol within the next 24 months.

As with perpetual reservation requests, a party that requests limited-time reservations for more symbols than permitted would be required to place its symbols requests in priority ranking.

¹⁴⁴ See Section IV(b)(1)(A) of the Five-Characters Plan.

¹⁴⁵ See *infra* notes 166-174 and accompanying text for discussion of the plan provision on reusing a symbol.

¹⁴⁶ See Section IV(b)(1)(B) of the Five-Characters Plan.

b. Processing Reservation Requests

If there is only one party that claims a legacy reservation, such party would have priority over other SROs to retain its reservation of that symbol.¹⁴⁷ If more than one party lays claim to a single legacy reservation, the Five-Characters Plan provides a process for resolving such claims.¹⁴⁸ This process is as follows: First, the Processor would notify all such parties of the conflicting claims. Then the parties would have five business days to reach a mutually acceptable agreement as to which party would be permitted to reserve the symbol. In the absence of an agreement, the Policy Committee would resolve the issue by a majority vote of the parties not claiming the symbol. Where there is no agreement but the Policy Committee is able to determine which party has the earliest proper claim to such symbol, the plan would require it to resolve the disagreement in favor of such party. In the event of a tie vote, the Policy Committee would establish a random order of the parties to determine which party may reserve the symbol.¹⁴⁹ The Commission believes that the plan provisions with respect to resolving legacy reservation claims are consistent with Rule 608 under the Act which requires the plan be

¹⁴⁷ See supra notes 97-104 and accompanying text for a discussion of the legacy reservation process.

¹⁴⁸ See Section IV(b)(2)(B) of the Five-Characters Plan.

¹⁴⁹ See id. Because the “random order” process was not described in the proposed plans, the Commission requested comment about it in the Symbology Notice. No commenters specifically responded to this request. The Commission believes that it is necessary and appropriate in the public interest to have the Policy Committee determine the appropriate interpretation and application of the plan provisions relating to the “random order” process. However, the Commission believes that the Policy Committee must establish a random order process that will not be susceptible to gaming by parties to the plan. For example, the Policy Committee should not use a system which would allow SROs to know ahead of time if they are the party next in line to reserve a given symbol. To the extent that any of the parties to the plan are aggrieved by the determination of the Policy Committee in this regard, the Commission notes that it has the authority to hear appeals by such parties. See Rule 608(d), 17 CFR 242.608(d); see also supra notes 133-137 and accompanying text.

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.

For the reservation of symbols other than legacy reservations, if only one party seeks to reserve a symbol, then the Processor would reserve such symbol for that party.¹⁵⁰ If multiple parties seek to reserve a symbol, the Processor would reserve the symbol based on a random ordering established by the Policy Committee.¹⁵¹ If a symbol is not available for reservation, the Processor would place the requesting party on a wait list.¹⁵² The Processor would process a party's symbol reservation requests by first reserving symbols up to the party's limit for its perpetual reservations list and then reserving the remaining requested symbols up to the limit for its limited-time reservations.¹⁵³

After the initial reservation process, if a party submits to the Processor a request for a limited-time reservation and the symbol is available, the Processor would reserve such symbol, provided that the party has not already reached its maximum number of allowed limited-time reservations.¹⁵⁴ If a symbol requested is not available, the Processor would place the requesting party on the waiting list for such symbol.¹⁵⁵

¹⁵⁰ See Section IV(b)(2)(C) of the Five-Characters Plan.

¹⁵¹ See Section IV(b)(2)(D) of the Five-Characters Plan. See also supra note 149.

¹⁵² See Section IV(b)(2)(E) of the Five-Characters Plan. See also infra notes 162-165 and accompanying text for a discussion on the waiting list plan provision.

¹⁵³ See Section IV(b)(2)(F) of the Five-Characters Plan.

¹⁵⁴ See Section IV(b)(3)(A) of the Five-Characters Plan.

¹⁵⁵ See Section IV(b)(3)(B) of the Five-Characters Plan.

c. Non-Use or Release of Symbols Within Time Period

The Processor would release any limited-time reservation symbols not used within the 24-month time period.¹⁵⁶ A party could also voluntarily release a reserved symbol. In either case, upon the release of a symbol, the Processor would notify the parties on the waiting list, if any, of the symbol's availability. If there is no waiting list or if no party on the waiting list elects to reserve such symbol, the Processor would notify all parties to the plan of the availability of the symbol. Then, if more than one party requests the reservation of such symbol within two business days of the notice, the Processor would assign the symbol to one party and place the other parties on the waiting list pursuant to a random order of priority established by the Policy Committee.¹⁵⁷

d. Request for Release of a Symbol

If a party has an immediate need to use a symbol that another party has reserved, the requesting party would ask the party that reserved the symbol and any other parties on the waiting list whether such parties would be willing to release the reserved symbol.¹⁵⁸ If the parties do not agree to release the symbol, the requesting party would not obtain the reserved symbol. If the parties do agree to release the symbol, the requesting party could include such symbol as one of its limited-time reservations. If the requesting party does not use a released symbol within the 24-month period, absent the consent of all parties initially required to be

¹⁵⁶ See Section IV(b)(5) of the Five-Characters Plan.

¹⁵⁷ See supra note 149.

¹⁵⁸ See Section IV(b)(6) of the Five-Characters Plan.

contacted, the reservation and waiting list priority in effect when the requesting party first made its request for the release of the symbol would again be in effect.¹⁵⁹

e. Reserving Symbols after Reaching Maximum Number of Permitted Reservations

Paragraph (5) of Section IV(b) of the proposed plans states that a party may “re designate” a security in certain situations. Specifically, following the initial reservation process, if a party wishes to add a symbol to its limited-time reservations and such party already has the maximum number of reservations permitted, such party “must voluntarily release or redesignate a symbol, as described in subparagraph (3)(A) above, before it can reserve the assigned symbol.”¹⁶⁰

Similarly, if a party has an immediate need to use a symbol that another party has reserved, the requesting party would ask the party that reserved the symbol, and any other parties on the waiting list, whether such parties would be willing to release the reserved symbol.¹⁶¹ Then, under paragraph (6) of Section IV(b) of the Five-Characters Plan, if the requesting party is already at the maximum number of limited-time reservations, the party could either surrender or redesignate a symbol as described in subparagraph (3)(A) of the Plan, before it can reserve the assigned symbol.

The Commission requested comment as to the meaning of “re designating” a symbol when a party is at the maximum number of limited-time reservations, but did not receive any comments. Because subparagraph (3)(A) of Section IV(b) of either plan does not discuss redesignating symbols, the Commission finds it is necessary and appropriate in the public

¹⁵⁹ See infra notes 160-161 and accompanying text for a discussion of “re designation” relating to requests for release of symbols under Section IV(b)(6) of the Five-Characters Plan, which the Commission is modifying.

¹⁶⁰ See Section IV(b)(5) of the proposed plans.

¹⁶¹ See Section IV(b)(6) of the Five-Characters Plan.

interest to remove the reference to “redesignate” in paragraphs (5) and (6) of Section IV(b) of the Five-Characters Plan. Thus, if a requesting party is already at the maximum number of limited-time reservations when reserving a requested symbol, such party would have to surrender another symbol in order to reserve the requested symbol.

f. Waiting Lists

When one or more parties request to reserve a symbol that another party has reserved, the Processor would place such parties on the waiting list for that symbol.¹⁶² The waiting list would be based on time priority—that is, the earliest request would have precedence. However, as proposed, the Five-Characters Plans states that, if more than one party seeks to use a symbol already in use within either 30 days of the effective date of the plan or two business days of notice of a symbol’s availability, the Policy Committee would establish a random order of such parties to determine priority on the waiting list.¹⁶³

When a symbol becomes available, the Processor would notify the party with priority on the waiting list.¹⁶⁴ Such party would then have two business days to reserve that symbol; otherwise, the Processor would repeat the process as necessary with all parties on the waiting list, in order of priority. The maximum number of symbols for which a party may be on the waiting list at any time would be 100 symbols.¹⁶⁵

¹⁶² See Section IV(c)(1) of the Five-Characters Plan.

¹⁶³ To ensure consistency with the Commission’s modification of the initial reservation process timeline (see discussion supra notes 141-143 and accompanying text), the Commission is also modifying Section IV(c)(1) of the Five-Characters Plan to clarify that the waiting list procedure applies during the initial reservation process.

¹⁶⁴ See Section IV(c)(2) of the Five-Characters Plan.

¹⁶⁵ See Section IV(c)(3) of the Five-Characters Plan.

g. Reuse of a Symbol and Portability of Symbols in Use

If a party ceases to use a symbol, such party automatically reserves that symbol, notwithstanding any other limits on the number of reserved symbols under the plan.¹⁶⁶

However, there is an exception to this automatic reservation right when an issuer transfers its listing from one SRO to another. In this case, the SRO to which a listing is transferred would have the rights to that issuer's symbol.¹⁶⁷ One commenter, FINRA, noted that Section (IV)(f) of the Five-Characters Plan allows the portability of a symbol only when an issuer "lists" on a new SRO.¹⁶⁸ FINRA noted that this language may create some ambiguity in the case when a security delists from an exchange and is traded on an SRO's OTC equity market. A strict interpretation of the text of Section (IV)(f) of the Five-Characters, as proposed, could lead to the conclusion that an issuer that delists from an exchange and trades on an OTC market would lose its rights to its original symbol. FINRA asked that this provision of the Five-Characters Plan be amended to explicitly provide that the portability rights for an issuer transferring its listing to another exchange also be extended to issuers that delist from an exchange and trade on an OTC equity market.

NYSE, however, argued that securities have always lost their listed symbols after delisting for failure to meet continue listing standards, and that this practice is desirable because it alerts investors as to the failure of the issuer to meet those standards.¹⁶⁹ NYSE noted that, otherwise, investors might mistake the delisted security for a security that continues to meet exchange listing standards. The Commission agrees with NYSE's comments with respect to the

¹⁶⁶ See Section IV(d) of the Five-Characters Plan.

¹⁶⁷ See Section IV(f) of the Five-Characters Plan.

¹⁶⁸ See FINRA Letter at 2.

¹⁶⁹ See NYSE Letter at 7.

potential for investor confusion and hereby clarifies that issuers that delist from an exchange and trade on an OTC equity market shall not have portability rights for their original symbol.¹⁷⁰ In such cases, Section IV(d) of the Five-Characters Plan would apply and the SRO from which the issuer delisted would automatically have such symbol reserved. At the same time, the Commission believes that the near-term reuse of a delisted security's original symbol while the delisted security trades on an OTC equity market could cause investor confusion.¹⁷¹ A symbol could not be reused by a party to identify a new security unless the party reasonably determines that such use would not cause investor confusion.¹⁷²

A symbol being reused pursuant to this provision could be reserved as a perpetual reservation if the party has not yet reserved the full number of perpetual reservations available to

¹⁷⁰ As discussed above, see supra notes 85-89 and accompanying text, securities that trade solely over-the-counter, which are not subject to listing standards approved by the Commission, should be clearly distinguished from exchange-listed securities. The Commission believes that a change to an issuer's symbol following delisting is desirable to inform investors of the change in status of the issuer. Therefore, the Commission believes that it is appropriate to prohibit symbol portability rights for delisted issuers that trade on an OTC equity market with security symbols of any length, including symbols with four- or five-characters.

¹⁷¹ See Section IV(d) of the Five-Characters Plan (providing that a symbol may not be reused by a party to the plan to identify a new security, other than the security that has been trading under such symbol, unless the party reasonably determines that such use would not cause investor confusion).

¹⁷² See Section IV(d) of the Five-Characters Plan. One commenter stated that symbols should not be reassigned until six months after an issuer ceases to use such symbol in order to avoid customer confusion. See Angel Letter I at 9. The Commission notes that this plan provision, without providing a specific timeframe, prohibits an exchange from assigning a reused symbol at any time if doing so would cause investor confusion. The Commission does not believe that specifying a six-month timeframe to be appropriate as such a time period may, in some cases, be too short and the reuse of a security symbol in such cases may still cause investor confusion. Although the passage of time is one key factor, other factors may need to be considered as well. For example, whether the original issuer's securities are traded over-the-counter or have ceased trading altogether is another factor in evaluating the potential for confusion with regards to the original listing symbol.

it.¹⁷³ Otherwise, such symbol would be reserved as a limited-time reservation and the additional symbol could exceed the limit of the maximum number of limited-time reservations permitted to a party under the plan.

The Commission finds that the foregoing symbol reservation system provisions of the Five-Characters Plan will further the purposes of the Act and that, in particular, they should maintain fair and orderly markets to assure fair competition between exchange markets, consistent with Section 11A(a)(1)(C) of the Act.¹⁷⁴

4. Database

Under the Five-Characters Plan, the Processor would create and maintain a symbol reservation database.¹⁷⁵ The database would show all symbols currently in use and the party using such symbols.¹⁷⁶ A party would be required to notify the Processor when the party begins using a reserved symbol. In addition, the database would show all symbols reserved on the perpetual reservations and limited-time reservations lists, including the reserving party and the expiration date for limited-time reservations.¹⁷⁷ The database would also show the waiting list and the priority order of the waiting list for each symbol.¹⁷⁸

The Commission finds that the provisions of the Five-Characters Plan relating to the

¹⁷³ Section IV(d) of the Five-Characters Plan also provides that a party could move a symbol from its perpetual reservations list to its limited-time reservations list in order to place the symbol being reused on its perpetual reservations list.

¹⁷⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁷⁵ See Section IV(e) of the Five-Characters Plan. One commenter has expressed an interest in acting as the Processor for the adopted plan. See SFB Letter. Another commenter suggested that FINRA be the Processor. See Issuer Advisory Letter at 3.

¹⁷⁶ See Section IV(e)(1) of the Five-Characters Plan.

¹⁷⁷ See Section IV(e)(2) of the Five-Characters Plan.

¹⁷⁸ See Section IV(e)(3) of the Five-Characters Plan.

symbols database will further the purposes of the Act because the database of symbols is essential to ensure that a symbol is used to identify only one security and therefore will help in the maintenance of fair and orderly markets.

5. Confidentiality

The Processor would maintain all information received from the parties in strictest confidence and the only information that the Processor would make available to the parties is the symbol reservation database.¹⁷⁹ The Processor would not make the symbol reservation database available to any person except the Commission or the parties, unless otherwise required by applicable law.

One commenter questioned the need for confidentiality of the information in this database, arguing that issuers may want to know if a symbol is available to reserve it in advance.¹⁸⁰ The Commission does not believe that the Act imposes any requirement to make this information available publicly.¹⁸¹ Therefore, the Commission finds that the confidentiality provisions of the Five-Characters Plan are appropriate in the public interest.

6. Term of Plan Withdrawal – Non-transferability of Rights under the Plan

A party wishing to withdraw from the plan would be required to provide at least six months prior written notice to the other parties.¹⁸² The withdrawing party would remain liable for its proportionate share of costs and expenses during the time it was a party to the plan, but

¹⁷⁹ See Section VI of the Five-Characters Plan.

¹⁸⁰ See Angel Letter II at 5.

¹⁸¹ The Commission also notes that the confidentiality requirement under the plan applies only to the Processor, and that nothing under the plan requires confidentiality on the part of the parties. Therefore, to the extent an issuer wants to know if a symbol is available, it could request such information from one of the parties.

¹⁸² See Section VII of the Five-Characters Plan.

would have no further obligations after the withdrawal.

In addition, an SRO would cease to be a party to the plan when it ceases to maintain a facility for the quoting and trade reporting of securities transactions or ceases to use symbols subject to the plan, except upon the agreement of the remaining parties.¹⁸³ To be approved as a continuing party, the plan would require a majority vote of the remaining parties.

The right of a party to participate in the Symbol Reservation System under the plan is not transferable without the consent of the other parties.¹⁸⁴ However, if a party is subject to a merger, combination, or other reorganization or the sale of all or substantially all of its assets, including its registration as an SRO, the surviving entity would automatically become subject to the plan and could use the Symbol Reservation System.

The Commission finds that the provisions of the Five-Characters Plan relating to a party withdrawing from the plan will further the purposes of the Act because, by specifying a party's terms of withdrawal, the plan helps to ensure a fair and orderly market.

7. Amendments to the Plan

The plan may be amended from time to time when authorized by the affirmative vote of all the parties, subject to any required approval of the Commission.¹⁸⁵ One commenter questioned the efficacy of requiring unanimous approval for plan changes.¹⁸⁶ Although the Commission agrees that the plan's unanimity provision with respect to amendments may, in some cases, not be the most efficient method, the Commission notes that the signatory SROs to

¹⁸³ See Section I(d) of the Five-Characters Plan.

¹⁸⁴ See Section VII of the Five-Characters Plan.

¹⁸⁵ See Section VIII of the Five-Characters Plan.

¹⁸⁶ See Angel Letter II at 4. The Commission notes, however, that other national market system plans have similar provisions (see, e.g., the Options Linkage Plan at www.optionsclearing.com/initiatives/ola/ola.jsp).

both proposed plans agreed to this required voting methodology and the Commission is reluctant to require a different voting methodology for plan amendments at this time.

The Commission finds that the provision of the Five-Characters Plan relating to amendments to the plan is in furtherance of the purposes of the Act in that it specifies the method by which the plan may be amended. The Commission will monitor this process to determine whether the unanimity provision is used for anti-competitive purposes or for any other purpose not consistent with the Act. The Commission notes that SROs proposing an amendment to a national market system plan must file such amendment with the Commission pursuant to Rule 608 under the Act.¹⁸⁷ The Commission also notes that it has the authority to amend any effective national market system plan under Rule 608 under the Act.¹⁸⁸

8. Development and Implementation Phases of the Plan

The Five-Characters Plan states that it would be implemented upon the Commission's approval. Although the letters accompanying both proposed plans state that the parties will determine the development and implementation phase later or in accordance to a timetable to which the parties and the Processor will agree,¹⁸⁹ the plans as submitted to the Commission both provided that the parties would commence the initial reservation process upon Commission approval.¹⁹⁰ As discussed above, however, the Commission has modified the Five-Characters Plan to commence the initial reservation process 60 days from the Commission's approval of the plan.¹⁹¹ The Commission has made this modification in order to give the SROs that are not

¹⁸⁷ See 17 CFR 242.608(a).

¹⁸⁸ See 17 CFR 242.608(a)(2) and (b)(2).

¹⁸⁹ See Paragraph 4 of the letters accompanying each proposed plan.

¹⁹⁰ See Sections IV(b)(1) of both proposed plans.

¹⁹¹ See discussion supra notes 141-143 and accompanying text.

signatories to the Five-Characters Plan time to obtain the necessary approvals to join the approved plan. The Commission believes 60 days is a reasonable period of time to obtain such approval. The Commission notes that this approval order only requires SROs that choose to list securities or designate securities for quoting on a quotation medium to join the plan (and all such SROs were party to one of the two submitted plans); those SROs that do not intend to list or designate securities for quoting are not required to join the plan.¹⁹²

The Commission finds that the modified implementation provision of the Five-Characters Plan will further the purposes of the Act because it allots additional time for non-signatory SROs to join the approved plan.

9. Terms and Conditions of Access

Any SRO that meets the eligibility standards of the plan may become a party thereto by signing a current copy of the plan and paying to the other parties a share of the aggregate development costs previously paid by such parties to the Processor.

The Commission finds that this provision of the Five-Characters Plan will further the purposes of the Act in that it should assure fair competition among exchange markets, in particular new SROs, consistent with Section 11A(a)(1)(C)(ii) of the Act.¹⁹³

IV. Conclusion

IT IS HEREBY ORDERED, that pursuant to Section 11A(a)(3)(B) of the Act¹⁹⁴ and Rule 608,¹⁹⁵ that the Five-Characters Plan submitted by CHX, FINRA, Nasdaq, NSX, and Phlx, as

¹⁹² See supra notes 68-70 and accompanying text.

¹⁹³ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹⁹⁴ 15 U.S.C. 78k-1(a)(3)(B).

¹⁹⁵ 17 CFR 242.608.

modified herein, is approved and declared effective,¹⁹⁶ and that CHX, FINRA, Nasdaq, NSX, and Phlx are authorized to act jointly to implement the Five-Characters Plan as a means of facilitating a national market system.

IT IS HEREBY FURTHER ORDERED, that, within 60 days from the date of this approval order, any SRO that chooses to list securities on its market or to designate securities for quoting on a quotation medium must join the Five-Characters Plan, as modified herein,¹⁹⁷ and act jointly with other parties to the plan to implement the approved Five-Characters Plan.¹⁹⁸

By the Commission.

Secretary

¹⁹⁶ The approved plan is attached here as Appendix A.

¹⁹⁷ Id.

¹⁹⁸ See 17 CFR 242.608(b)(2).