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Chairman Christopher Cox
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

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Dear Commissioner Cox,

I am writing to voice my displeasure regarding the NASD By-Law changes now pending before the SEC. I am the owner of Benchmark Financial Services, Inc., a NASD member firm, as well as a former attorney with the Division of Investment Management of the Securities and Exchange Commission. I am a nationally recognized expert in securities and investment management matters. I appreciate the opportunity to share my perspective and comments.

Respectfully, I consider these By-Law changes a significant injustice to all NASD members, but particularly smaller member firms. The By-Law changes seeking approval before the SEC, unnecessarily and unjustifiably limit the power of voting members (particularly small firms such as mine), they ratify an underpayment to members, and they are the product of a tainted and deceitful proxy statement and voting process.

In my view, the NASD Board and its friends at the NYSE have pulled the proverbial wool over the eyes of the NASD membership, particularly those firms which are not also members of NYSE. There is no rational connection between the traditional long-standing NASD "one firm, one vote" policy and the consolidation of regulatory rules and procedures. It seems that the NASD Board has used this regulatory consolidation – which I do not dispute has some merit – as a means of consolidating its power and, in turn, limiting the power of an institution that has wholly democratic origins.

The essential nature of the regulatory consolidation and the hoped-for operational and supervisory efficiencies, the rationale put forward by the transaction's proponents, must be set forth to the Commission's satisfaction as they are properly within its area of concern and responsibility. In my reading of NASD's submission to the Commission, the justification for the consolidation is not set forth except in the most general terms. You

must be satisfied ultimately that, as proposed, the consolidation is in the public's and members' best interests from a regulatory point of view.

Outside the Commission's area of concern, however, is the manifest unfairness of the proposed transaction to the NASD members who are not also NYSE members and the manner in which NASD, NYSE and their senior officers have carried out the sham member vote on the consolidation using a deceptive proxy statement, coercive tactics and otherwise making a mockery of the process of voting on the transaction and By-law changes. It is my understanding that these latter issues, together with the economic unfairness of the proposed transaction, are being addressed separately by class action litigation pending in federal court in New York City. I refer to these issues so that you may have a clearer understanding of what NASD and NYSE are attempting to pull off which, if "blessed" in any material way by the Commission, will ultimately be a source of embarrassment to the Commissioners and generate further unnecessary Congressional oversight.

It appears that the NASD and NYSE Boards solicited the consolidation in its present form following comments by Commissioners to the effect that having a single broker-dealer regulatory body would be a sensible alternative to the two SROs that presently function. While the approximately 5,000 NASD members have over \$1.5 billion in "Members' Equity" as the term is used in NASD's financial statements, the per firm payout is only \$35,000. The NASD Board threatens, without any qualification or explanation, that the NASD will lose its tax-exempt status if the payment exceeds \$35,000. The \$35,000 payment is supposed to represent the cost savings that will be realized by the consolidated SRO over a period of five years. How does the NASD know how much they will save over five years? How did they determine that they could pay five years of savings? Why not four? Six? I have never been pointed to an IRS code section that mandates their seemingly arbitrary limit or provided with an opinion of tax counsel on the matter. I feel entitled as a member to an explanation, to alternatives. The bald assertion that "a larger payment is not possible" made by NASD in its proxy statement is manifestly insufficient. Indeed, the entire proxy statement, which is an almost laughable disclosure document, I believe, as a former SEC attorney, would generate enforcement action by the Commission if it had been generated by a registered company.

The proxy statement does not address the concerns voiced herein. The proxy statement does not help me understand why I need to lose my vote, so that the NYSE and NASD can streamline their regulatory affairs; one has nothing to do with the other. The proxy statement does not explain why \$35,000 is the limit of the payment to NASD members; as I read the 2005 Annual Report the "Members' Equity" exceeds \$1.5 billion, meaning each member has equity of almost ten times as much as this payment. I suppose I was under the mistaken impression that "Member's Equity" meant that the *equity* belonged to us – the NASD *members*.

I read with great interest that the lawsuit referred to above that is pending against the NASD and the NYSE challenging the proxy solicitation and the proposal's economic

terms. Presumably, all Commissioners have read the operative Complaint in that case. I say kudos to the plaintiff and attorneys in that case for standing up for those whose voice is being silenced. While the SEC may rightfully be the entity to decide whether the transaction may move forward, as I understand it the courts, are the final arbiters with respect to state law issues of NASD's corporate governance and the economic fairness of the proposed consolidation.

It is my understanding that this litigation is proceeding on an expedited schedule. For that reason, if for no others, I request that the Commission defer any decision as to the proposed consolidation until after the absence of *bona fides* of the senior officers of NYSE and NYSE is exposed and the non-regulatory aspects of the consolidation resolved by the Court and/or negotiation by the parties. Once these non-regulatory issues are resolved, one way or another, it would then be appropriate for the Commission to address the remaining issues; i.e. those within its regulatory/supervisory area of responsibility.

Thank you for your attention to this matter. Please call me at (561) 202-0919 if you have any questions or comments.

Very Truly Yours,

Edward A. H. Siedle, Esq.