

April 16, 2007

Securities and Exchange Commission
Washington, DC

Re: SR-NASD-2007-023
Regulatory Consolidation

Ladies & Gentlemen:

This letter is submitted in opposition to the merger, as currently proposed, between NASDR and the regulatory division of the NYSE. More specifically, we support the merger but oppose the proposed change of by-laws that would overturn member control of the NASD.

By way of background, the undersigned is a principal of a small full service, self-clearing broker-dealer. Our business consists of two principals, one employee and a handful of part-time reps. The firm is forty-five years old, has a fine regulatory history, is well capitalized and has no client problems.

Our concerns are directed to the long-term trajectory of regulation in the securities industry. These concerns are both substantive and procedural. As a substantive matter, we believe the structure of the NASD Board, as proposed after the merger, would (1) represent poor corporate governance; and (2) result in dilution of the needs of small firms, which in turn will accelerate the current trend toward industry consolidation and reduction in choices available to investor consumers. In addition, as a procedural matter, we believe certain aspects of the recent referendum were unfortunate and raise questions regarding that vote. Elaboration of our views is presented below.

(1) The new Board structure represents poor corporate governance. Several experts have commented that a Board with no direct accountability to the persons and entities it serves is a weak and undesirable structure. It would be somewhat equivalent to a corporate Board not subject to shareholder approval. Having served on seven public boards myself, I know the power of collegiality in directing group behavior. This Board has the potential to devolve into a self-perpetuating gentlemen's club, including members with attenuated connection to both industry and client concerns. This is far inferior to the current accountable structure of industry control. Ultimately-- to survive--the industry must represent their clients. That is not true of a self-perpetuating public consortium.

(2) The new Board structure will undesirably dilute small firms and cause further industry consolidation. As a practical matter, small firms in this industry--the vast majority of NASD members--want large firms to take the lead in regulatory matters. The small firms don't have the resources to devote to this effort, and respect the economic dominance of industry leaders. This attitude is appropriately challenged, however, with a recognition that "one size fits all" regulation doesn't work. In recent years, the avalanche of new regulations have caused many of us to wonder if it is cost-effective to remain in business at all. I'm referring to the skyrocketing cost of regulation. Not client problems. Not capital problems. Not competition. Just regulation that seems to be expanding at an ever-increasing rate.

The voting control currently afforded to small broker-dealers is worthless unless that vote is organized. Such organization won't be attempted—and can't be successful—unless extremely substantial concerns have arisen in a majority of members. The current Board structure, or something like it, is the best means for the SEC and NASD to calibrate the degree of burden imposed on the small firms. It is far more useful than comment letters because these firms don't write letters. The bottom line is that this structure allows the small firms to send a message should they view that message as necessary under great provocation. This is useful and appropriate, as in any political system. Particularly so since the small firms are by far the best representatives of their own investors' concerns.

As noted, we also have questions about the some of messages transmitted in the recent referendum. These consist of the following:

1. \$35,000 Payment. It is our understanding that the payment largely consists of funds derived from the sale of Nasdaq. We do not fully understand why this payment was tied to the by-law change. This payment would certainly have influenced the voting.
2. SEC Veto. We question the suggestion that if the proposal were not adopted, the SEC would impose a structure with even less industry representation. If the SEC approves a referendum of this nature, it should live with the result. Failing to make this clear could have influenced votes.
3. NYSE Influence. We were told that the NYSE had required the change in by-laws. But surely neither the NYSE nor Nasdaq, in their current public posture, should be controlling regulation. I have no doubt that NYSE members—large firms—prefer the new structure. They are in a far better position to exert influence over the public Board members than any small firm. Industry consolidation is also in their interest. However, the large firms operate under the current voting structure as members of the NASD, and have done so for years. I fail to see that they have had any problem in exerting their influence or presenting their views.

Let me emphasize that our concerns are in no way directed at the current leadership of the NASD. We have great respect for Ms. Shapiro and the rest of the staff. In addition, we have no complaint about the treatment of our firm by any regulator in any respect.

We are not aligned with any other firm that has opposed the change in by-laws. Our views are our own. We appreciate the complexity of securities regulation, and the good motives of all the regulators and other individuals involved in this effort.

Thank you for your consideration.

Sincerely yours,

Bonnie K. Wachtel