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Ms. Nancy M. Morris
Securities and Exchange Commission

VIA E-Mail rule-comments@sec.gov
File Number SR-NASD-2007-023

Dear Ms. Morris,

We are responding to the Commission's solicitation of comments contained in Release No. 34-55495. Essentially, this release contains a notice of filing of amendments to NASD's bylaws that would implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (hereinafter referred to as "NYSE").

Over the past few months, we have read and heard many of the comments of others in SEC files as well as in public forums such as conferences and contained in blogs of various internet websites. We agree with much of what has been said while we also disagree with many of the comments of others.

Because, the end result of the proposal to amend NASD's bylaws is a quantum change in the way that the securities industry would ultimately be regulated, we feel compelled to give you our viewpoints.

By way of background, our firm performs financial, operational and regulatory services for about 2% of NASD's membership. While most of our clients are small to medium sized members, some are large firms. Some of them are also member organizations regulated by NYSE.

First of all, we applaud one major purpose of NASD and NYSE merging. The elimination of duplicative and conflicting rules, and multiple inspection regimes is certainly laudable. On the other hand, NASD's own statistics recognize that there are only approximately 170 broker-dealers that are subject to these inefficiencies. Since most of the securities industry activity is carried or cleared by New York Stock Exchange member organizations who also carry the lion's share of margin and other customer accounts and who have been regulated successfully up until now by NYSE regulatory staff, it seems quite strange that there is a compelling need for the NYSE processes to be subsumed by a merger with NASD, mainly for the purpose of eliminating duplication or inefficiency.

It is probably much easier for those firms that are currently regulated by NYSE to simply not be regulated by NASD at all and to instead be regulated by NYSE staff using current SEC and NYSE rules which could be supplemented by NYSE adopting many of the current NASD rules to which the large New York Stock Exchange member organizations must currently comply, since they are also NASD members. Instead, the NASD proposed bylaw changes represent what appears to be a sardine devouring a whale, and in the process provides no regulatory benefit to the 5,000 or so current NASD members that are not New York Stock

Exchange member organizations. Most of the non-NYSE regulated NASD members are subject only to two rulebooks, the SEC's and NASD's.

To induce NASD members to vote for the by-law changes, NASD proposed to pay each firm \$35,000 in the event that the merger would be consummated. (For the sake of full disclosure, I should add that one of our firm's affiliates is a member). In spite of that and while our affiliate would like to collect \$35,000, we find that the process of cash for votes reminds us of practices that most people we know believe is morally repugnant and would fall into the category of not being consistent with just and equitable principles of trade, a standard that broker-dealers must adhere to constantly. We are reminded how concerned the Commission is with ensuring fairness in the various processes under its regulatory aegis. In the instant case, we wonder whether an NASD disclosure document that was sent to its members, which according to the comments of many was missing adequate disclosures, and which probably would have been criticized by Commission staff had NASD been a publicly-held registrant, could have influenced members improperly to approve NASD by-law changes that might very well have been contrary to the long-term objectives of many of the members.

In short, on this subject, it appears that some of the people who were promoting the members' approval of the by-law changes were doing so in a manner similar to the role of Max Bialystok in the show and movie "The Producers" who without caring about the propriety of his actions convinces investors to just sign on the dotted line thus masking his true intentions. We doubt that those people who were soliciting votes really meant to mislead the members, but at times it does appear that way to us. We believe that the Commission would clearly not endorse behavior that would have misled any of the members. At this juncture, it is time for the Commission to review the proposed by-laws but we believe that the Commission should not dwell upon the behavior of any of the people who fought so hard to have the prospect of a NASD-NYSE merger approved. Nor do we believe that the Commission should review the proposed by-law changes in a vacuum, without considering whether solutions other than those proposed by NASD would be even more desirable.

The Commission itself has proven that it knows how to eliminate duplicative and conflicting rules and doing so is a much better and fairer way to deal with the issues that NASD claims exist. For example, while we used to have many different rules of many of the self-regulatory organizations regarding short sales, the Commission adopted Regulation SHO which supplanted the rules of the self-regulators. Similarly, in 1975, the Commission created the Uniform Net Capital Rule, which for the most part did away with multiple and conflicting net capital rules that were then extant. Aside from the Uniform Net Capital Rule (Rule 15c3-1), the Commission has other rules which to a great extent standardize what broker-dealers are responsible for, such as Rule 10b-10, Rule 15c3-3 and Rules 17a-3, 17a-4 and 17a-5. Thus we know that the Commission itself is quite capable of making the rules uniform and consistent.

The Commission can inspire the self-regulatory organizations to do the right thing. That might include revamping all of the rules so that they do not apply on a one-size-fits-all basis. The Commission should recognize that the same rules that apply to some of the largest broker-dealers in the world that happen to be regulated by NYSE should not apply to tiny broker-dealers who are ultra-specialized in their activities. Many of these tiny broker-dealers never hold customer cash or securities. Some of them are broker-dealers who are registered as such only because they receive transaction-based compensation but not because the broker-dealers are actually even aware of transactions on which they are compensated, as they occur. SEC and self-regulatory rules should be examined in light of why these tiny broker-dealers need to be subjected to many of the rules in the first place in light of how costly the compliance functions are. The Commission should even consider whether many of the broker-dealers should even be subject to the net capital rule or to the requirement for an annual audit

conducted by independent auditors. In many cases, the audited financial statements are not even shown to anyone but regulatory authorities.

We believe that to eliminate regulatory inefficiency and duplication requires a major fresh look, not a hodge-podge of quick fixes that are inefficient. In the long run, well thought out solutions will eliminate unnecessary costs, will benefit the broker-dealer community and the general public, and will promote the United States as being a place where the regulatory scheme is not too harsh, not lenient at all, but fair and consistent.

The NASD-NYSE merger is at best a step in the right direction but on an overall basis is not a good long-term solution unless the entire regulatory scheme is totally revamped. Indeed, it seems much simpler for NYSE to continue its good work by eliminating the requirement for NASD membership for NYSE firms and instead having NYSE be considered a national securities association with rules similar to those of NASD.

We hope that instead of NASD overtaking NYSE, that an intensive evaluation be made by the Commission of the current scheme with the end result being better regulation for all.

Lastly, with respect to some of the firms, the Commission should consider the recommendations posited in <http://sec.gov/rules/other/265-23/gvniesar091205.pdf>. This report, which is too long to reproduce here but which is available on the Commission's website, makes very good and serious recommendations that we believe are a major step in the right direction.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard Spindel", written in a cursive style.

Howard Spindel
Senior Managing Director

HS:ab

Comment letter re NASD by-law changes re NASD-NYSE consolidation