

# NSCP

NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS INC.



April 26, 2007

## HAND DELIVERY

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: File No. SR-NASD-2007-023**

Dear Ms. Morris,

This letter is submitted on behalf of the National Society of Compliance Professionals Inc. ("NSCP") in response to the Securities and Exchange Commission's ("SEC") solicitation of comments with respect to a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend its By-Laws and make related governance changes to accommodate the consolidation of the regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). The purpose of this letter is to appraise the SEC of NSCP's strong support for the consolidation and to suggest ways in which NSCP believes the consolidation can benefit NASD and NYSE member firms in the future.<sup>1</sup>

### **NSCP and Its Mission**

NSCP was formed in 1987 for the purpose of representing the interests of securities industry compliance professionals. NSCP is a non-profit membership association with more than 1700 members. Its members are drawn from the broker-dealer, investment adviser, and investment management communities, and from all sizes of firms. Its members include large wire houses, capital market firms, insurance and bank-affiliated firms and specialty firms. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

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<sup>1</sup> NSCP understands that the comment period for this rule filing officially closed on April 16, 2007. In view of the relatively short comment period, however, NSCP respectfully asks the SEC to accord this letter the same consideration and effect as accorded comments received on or prior to April 16<sup>th</sup>.

NSCP serves its members in very specific ways. First, it sponsors an annual national meeting, and annual regional meetings, at which the NSCP membership comes together for the purpose of training and exchanging ideas and information regarding regulatory experiences and developments. These meetings are extremely well attended and provide NSCP members with an ability to hear directly from SEC staff and Commissioners, and from self-regulatory organization ("SRO") officials.

Second, NSCP supports its members by providing them with practical solutions to compliance issues. This service is made possible by the interchange of ideas and information that flow among the members at our meetings, through the work of established committees, and through various Board initiatives. Given the complexity of the federal securities laws and SRO rules and the fact that NSCP members are on the front lines of ensuring the correct administration of these regulations, our members are keenly interested in developing practical "best practices" for the compliance industry.

Third, NSCP alerts its members to important regulatory developments and comments on behalf of the membership when appropriate on certain of those developments. In sum, the organization's mission to support the professionalism of all securities industry compliance professionals is advanced on a day-to-day basis through the individual efforts of each NSCP member and through the collective efforts of the organization.

### **NSCP's Support for Consolidation**

NSCP strongly supports the proposed consolidation of NASD and NYSE regulatory functions and staff. NASD and NYSE member firms have long borne the cost of duplicative and in some instances conflicting regulation. The cost, in both dollars and lost opportunities, cannot be justified in markets that are truly international in scope, and in an environment where technology and expertise can and should be deployed to maximum effect.

NSCP believes that the benefits of consolidation, which include harmonization, elimination of duplication, and the rational use of technology, are substantial and should be pursued as quickly as possible.

### **Harmonization**

One of the principal benefits of consolidation is harmonization of the regulatory programs and rules of the NASD and NYSE. All member firms, regardless of whether they are members of both SROs or a single SRO, experience the negative impact caused by different rules, different interpretations, and the different agendas and priorities that flow from the two leading SROs. As the SEC is keenly aware, the complexity of the U.S. federal securities laws, and the rules of the NASD and NYSE, requires member firms to devote significant resources to compliance. Obtaining these resources, and maintaining them through constant education and training, is a difficult task made more difficult by the fact that many compliance professionals have to be trained to comply with two different regulatory regimes.

We are aware of and applaud the significant efforts made in the last several years at harmonizing certain NASD and NYSE rules. Member firms have benefited, for example, from the certainty created by uniform margin and options sales practice and position limit rules and from the SROs, SEC, and the states' efforts to re-design CRD. True harmonization will require the development of a single rule book and will undoubtedly take time – but harmonization will be achieved more quickly if the NASD and NYSE regulatory arms are consolidated into a single SRO, with one unified mission, one agenda, and one rulebook.

We understand that harmonization may raise difficult issues, among them, whether firms of different sizes and/or having a limited product line, should be subject to the same regulation as larger firms and/or firms with multiple product lines. In the past, these kinds of differences have been addressed by the NASD and NYSE as each SRO saw best, with the result that to date there has been very little formal recognition of the differences among firms. One benefit of consolidation is that a single SRO for the first time should be in a position to formally recognize where appropriate the different size, purpose, and resources of all of the SRO's members. While we believe it is premature to comment on whether a "tiering of regulation" will ultimately be in the best interest of investors, we nonetheless believe that a single SRO that represents the interests of all sizes and types of member firms is in the best position to give formal consideration to the idea that regulation need not be "one size fits all."

### **Eliminate Duplication**

NSCP believes that one of the ways in which consolidation will most directly benefit member firms is by significantly reducing the costs firms incur because different regulators make similar (but not identical) requests at the same time, for seemingly similar purposes. Countless firms have been subject in the last several years to regulatory exams, investigations and "sweeps" that have not been coordinated by the regulators and, as a result, have cost member firms millions of dollars unnecessarily. Although the NASD and NYSE have increasingly made efforts to coordinate their exam programs, the fact that coordination is necessary speaks for itself in terms of identifying a cost that should be eliminated.

The savings that should result from eliminating duplicative programs and agendas should be re-directed toward making the consolidated exam program more efficient. This efficiency can come from a number of sources, e.g., using technology to decrease the amount of time SRO staff needs to be on-site at a member firm, developing exams tailored to specific business lines, and training examiners so that all examiners have a minimum threshold of expertise. With respect to training, NSCP believes that combining the expertise of NYSE examiners with that of NASD examiners should be a particular goal of the consolidated SRO. To the extent that any group of examiners is particularly well versed in an area of regulation (e.g., NYSE examiners in the area of financial operations), all member firms would benefit from having this expertise shared with other examiners.

Another benefit of consolidation that we have not heard publicly discussed but that we would support is the aligning of the NASD member firm "Liaison Program" with the NYSE member firm "Coordinator Program." Both programs seem to have a similar purpose – to

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provide a single, initial point of contact for a member firm to access regulatory assistance. Again, to the extent that either the NYSE or the NASD has developed specific program agendas and processes, we would urge the unified SRO to adopt the "best practices" of each program so that all member firms can have similar experiences when they seek to tap into the expertise of the unified SRO.

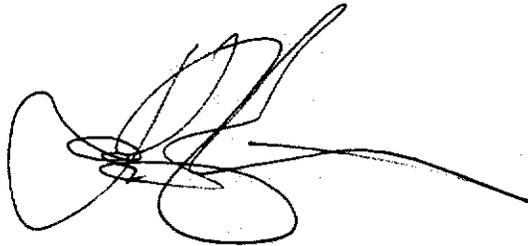
### **The Way Forward**

The leadership of both the NYSE and NASD have spoken eloquently about the need for a combined SRO. To make the revolution all that it can be will take an enormous amount of energy from the industry, the SEC, and the new SRO. On behalf of its members, NSCP urges the SEC, the NYSE and the NASD to invite compliance professionals that represent the broad spectrum of the combined SRO's members to actively participate in the consolidation process. The tremendous benefits afforded by consolidation can best be achieved through the active participation of the compliance industry.

NSCP would be pleased to assist in this endeavor in any way that it can. As noted at the outset of this letter, NSCP represents both small and large firms and has established structures in place through which NSCP member firm ideas and sentiments can be expressed. The NSCP membership would welcome the opportunity to serve on committees or advisory groups that are formed for the purpose of ensuring a successful transition to a unified SRO.

On behalf of NSCP's members and the NSCP Board, I thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joan Hinchman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joan Hinchman  
Executive Director, President and CEO

cc: James E. Ballowe, Jr., E\*TRADE Brokerage Services, Inc.  
David Canter, Charles Schwab & Co., Inc.  
Richard T. Chase, RBC Capital Markets Corporation  
Kerry E. Cunningham, ING Advisors Network  
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