

July 26, 2007

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**GREENFIELD & GOODMAN LLC**

7426 Tour Drive  
Easton, MD 21601  
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Dear Ms. Morris:

We submit this short letter in a renewed effort to draw the SEC's attention to the issues concerning the veracity of NASD's proxy solicitation that underlies the NASD-NYSE regulatory consolidation presently being considered by the Commission in a rulemaking proceeding.

On behalf of our client, we commenced a lawsuit alleging that NASD obtained the consent of its Members only through a fraudulent proxy statement earlier this year. The Court dismissed our case, *Standard Investment Chartered, Inc. v. NASD, et al.*, Civil Action No. 07-cv-2014 (SDNY), ruling, among other things, that the propriety of the consolidation is, in the first instance, properly before the SEC. To date, the SEC has announced no public proceedings.

We have previously advised the SEC that documents produced in this litigation and filed in Court are highly relevant to the truthfulness *vel non* of the proxy statement that the NASD used. For example, NASD solicited a private letter ruling from the Internal Revenue Service ("IRS") regarding the Transaction, addressing, among other things, the tax implications of its proposed \$35,000 payment to its Members. This is significant because the NASD unequivocally told Members in its proxy statement that a payment larger than \$35,000 was not possible. This extremely important IRS correspondence has been kept secret from Members of NASD and the public.

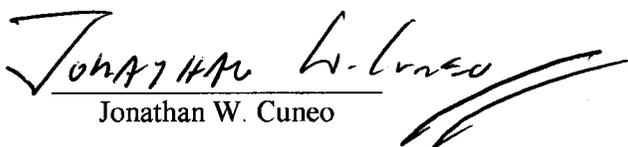
Yet, the SEC has taken no steps known to us to force NASD to produce these very same documents. We reiterate to you that the few documents produced in that litigation and filed in Court have profound implications for NASD by-law amendments now pending for consideration before the SEC, and for confidence in those running this Country's brokerage regulatory scheme.

We have asked the Court to make the documents public. In the meantime, we asked the Defendants for permission to share them with the SEC. *See* Attachments 1-2. Stunningly, they declined. *Id.* We implore you to obtain these documents from NASD without further delay, whether or not you indeed place them in the public record as we have requested.

The NASD's and NYSE's desire to hide information from NASD Members and the federal government agency passing on the fairness of the transaction raises the obvious question: what do the documents produced in the litigation say that Defendants are so afraid of sharing them with the Commission?

Please consider the gravity of these matters carefully, and do not permit NASD to complete this Transaction in a clandestine, back room manner. Please provide NASD Members, the Congress and the public with the sunlight that NASD and NYSE have denied them.

Respectfully Submitted,

  
Jonathan W. Cuneo

  
Richard D. Greenfield

cc: Honorable Christopher Cox, SEC Chairman  
Honorable Paul S. Atkins, SEC Commissioner  
Honorable Roel C. Campos, SEC Commissioner  
Honorable Annette L. Nazareth, SEC Commissioner  
Honorable Kathleen L. Casey, SEC Commissioner

# **ATTACHMENT 1**

**William Anderson**

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**From:** Warin, F. Joseph [FWarin@gibsondunn.com]  
**Sent:** Friday, July 20, 2007 4:50 PM  
**To:** Richard D. Greenfield; Jay, William M.; William Anderson; Rearden, Jennifer H.; Cox, Douglas R.; Hogan, Howard S.; Henkin, Douglas W.; Yanez, Manuel; Kreher, Peter J.  
**Cc:** Jon Cuneo; Brent Walton; Matthew Wiener; William Anderson; RDG Asst  
**Subject:** RE: NASD NYSE Merger Case:

Richard:

We cannot agree to your proposal.

In the letter that you submitted to the SEC on May 4, you admitted that the documents to which you refer "cannot be disclosed because they were filed under seal." Likewise in your June 11 letter to the SEC, you confirmed the applicability of these confidentiality protections. As you know, the documents were produced to you subject to an Attorneys' Eyes Only designation; Judge Freeman orally ordered all parties to respect that designation pending the entry of an appropriate protective order; and Judge Kram has repeatedly ordered, pursuant to your motions, that any discovery documents or references thereto be filed only under seal.

Pursuant to Judge Kram's May 16 order, the confidential status of those documents will now be determined by the Court's ruling on the pending motions for protective orders. If you disagree with the interim orders preserving Attorneys' Eyes Only status and maintaining papers under seal, your recourse is to seek relief from Judge Kram by filing in opposition to the formal motion for a protective order, which you have already done. Our basis for seeking a protective order is likewise set out in our moving papers. Once the sur-replies are filed, Judge Kram will make the determination.

F. Joseph Warin  
**Gibson, Dunn & Crutcher LLP**  
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Washington, DC 20036  
Ph: 202 887-3609  
Fax: 202 530-9608  
Cell: 703 447-4301  
email: fwarin@gibsondunn.com

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**From:** Richard D. Greenfield [mailto:whitehatrdg@earthlink.net]  
**Sent:** Thursday, July 19, 2007 4:57 PM  
**To:** Jay, William M.; William Anderson; Rearden, Jennifer H.; Warin, F. Joseph; Cox, Douglas R.; Hogan, Howard S.; Henkin, Douglas W.; Yanez, Manuel; Kreher, Peter J.  
**Cc:** Jon Cuneo; Brent Walton; Matthew Wiener; William Anderson; RDG Asst  
**Subject:** Re: NASD NYSE Merger Case:

As you know, we have been advocating before Judge Kram the position that there is no conceivable justification for keeping the documents produced in discovery in this litigation "confidential." Judge Kram will obviously address this issue in connection with her ruling on the motion presently before the Court.

Meanwhile, we assume that you will have no opposition to us providing to the SEC copies of the documents that we have filed of record in the litigation under seal. If you disagree with our doing so, please inform us by 5PM tomorrow, July 20, 2007 stating the reasons for your disagreement.

Richard

7/23/2007

"MMS <Gibsondunn.net>" made the following annotations.

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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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# **ATTACHMENT 2**

**William Anderson**

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**From:** Henkin, Douglas W. [DHenkin@milbank.com]  
**Sent:** Friday, July 20, 2007 4:51 PM  
**To:** Richard D. Greenfield; Jay, William M.; William Anderson; Rearden, Jennifer H.; Warin, F. Joseph; Cox, Douglas R.; Hogan, Howard S.; Yanez, Manuel; Kreher, Peter J.  
**Cc:** Jon Cuneo; Brent Walton; Matthew Wiener; William Anderson; RDG Asst  
**Subject:** RE: NASD NYSE Merger Case:

Richard:

You do not have permission to share with the SEC (or anyone else) any documents produced by NYSE in this litigation. First, the document produced by NYSE that Standard submitted to the Court in connection with the motion for reconsideration is not relevant to Standard's claims (as NYSE noted in its opposition to the motion for reconsideration). Second, Standard asked the Court to allow all NYSE-produced documents to be filed under seal and remain protected as confidential. See Docket # 94 at 18. Your email is inconsistent with that. Third, there is no basis for seeking to use before the SEC documents Standard received in discovery in litigation the Court has held should not have been brought in court in the first instance.

Doug

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**From:** Richard D. Greenfield [mailto:whitehatrdg@earthlink.net]  
**Sent:** Thursday, July 19, 2007 4:57 PM  
**To:** Jay, William M.; William Anderson; Rearden, Jennifer H.; Warin, F. Joseph; Cox, Douglas R.; Hogan, Howard S.; Henkin, Douglas W.; Yanez, Manuel; Kreher, Peter J.  
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Richard

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