

MEMORANDUM

TO: The Files

FROM: Office of General Counsel
Division of Trading and Markets

DATE: May 5, 2008

SUBJECT: SR-NASD-2007-023

On April 29, 2008, a conference call was initiated by counsel for FINRA to counsel for the Commission regarding the order of the Court of Appeals for the Ninth Circuit in *Standard Investment Chartered, Inc. v. SEC*, No. 07- 73405 (9th Cir.), which remanded to the Commission for clarification the Commission's July 26, 2007, order approving an NASD rule change to enable the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc., which resulted in the creation of FINRA (Release No. 34-56145). Representing FINRA in the call were Grant Callery, General Counsel for FINRA, and attorneys from FINRA's outside counsel, Gibson Dunn and Crutcher; representing the Commission were Jacob H. Stillman and Susan S. McDonald of Office of General Counsel and Nancy J. Burke-Sanow of the Division of Trading and Markets. Counsel for FINRA expressed concern that what the Commission would say in the clarification of the July 26, 2007, release (as proposed in the joint motion to remand filed by the Commission and petitioner Standard Investment Chartered, Inc.) could be harmful to FINRA and other SROs because of the adverse impact it would have on them in litigation brought under state law.