The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

April 18, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Securities and Exchange Commission Release No. 34-55495
File No SR-NASD-2007-023 -- Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.

Dear Ms. Morris:

The Massachusetts Securities Division ("Securities Division") appreciates this opportunity to comment on proposed rule changes filed with the U.S. Securities and Exchange Commission (the "Commission") to amend the by-laws of the NASD to implement governance and related changes to accommodate the consolidation of member firm regulatory functions of NASD and NYSE Regulation, Inc. (the "Rule Proposal"). Both the NASD and the NYSE are self-regulatory organizations (SROs) that have securities firms as members, and that have regulatory responsibility to oversee their member firms.

The Securities Division is a department within the Office of the Secretary of the Commonwealth of Massachusetts. The Securities Division is charged with the responsibility to implement and enforce the Massachusetts securities laws. As such, the Secretary of the Commonwealth is the chief securities regulator for Massachusetts.

I. Merging the Member Regulation Functions of the NASD and New York Stock Exchange Will Result in Less Investor Protection

The Securities Division views the merger of the member regulation functions of the NASD and the New York Stock Exchange differently from the NASD. The merger will result in one less regulator overseeing securities firms that deal with the public. In view of the past delays by self-regulatory organizations in protecting retail investors against problems like mutual fund market timing and abusive practices in annuity sales, merging these SRO regulators is imprudent at this time.

Large numbers of ordinary citizens, many of them savers rather than investors, must participate in the "risk market" for financial products. This trend has accelerated with the elimination of defined benefit pensions and growing uncertainty about the future of Social Security. It is a truism that a majority of U.S. households now own mutual funds or stocks, either individually or through pooled programs, like 401(k) plans.

Small investors are often poorly equipped to deal with abusive sales tactics by broker-dealer firms and their personnel. Too often, small investors become victims of such abusive practices. In view of the vulnerability of retail investors and the demonstrated problems that regulators have seen, the Commission and the self-regulatory organizations it oversees should take steps to enhance the protection of retail investors and assure that any new regulatory structures will protect them.

The NASD and NYSE are independent of each other; this creates advantages from a regulatory point of view. Because these SRO regulators are independent of each other, they are able to bring distinct perspectives to the work of regulating their member firms. Such independence is vitally important way to prevent SROs and other regulators from becoming myopic about certain regulatory issues. We strongly advocate that having a diversity of regulators is an effective way to combat this tendency.

II. The Merger of NASD and NYSE Regulation Must Give First Priority to Investor Protection

Pursuant to Section 15A of the Securities Exchange Act of 1934, particularly Subsection 15A(b)(6), any rules of a national securities association must be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . and, in general, to protect investors and the public interest."

Investor protection is a fundamental mandate of the state and federal securities laws. We urge the Commission to require the NASD and NYSE Regulation to demonstrate that any proposed rule changes in the proposed amendments will protect investors and the public interest, promote just and equitable principles of trade, and prevent fraudulent and manipulative acts and practices. While "streamlining" current rules and regulatory structures may create some savings and efficiencies, the needs of investors must come first. Again, we believe that a diversity of SRO regulators will serve as an antidote to the problem of a regulator becoming accustomed to, and even tolerating, certain bad industry practices.

III. The Makeup Board of Any New SRO Must Include True Representatives of Investors

The makeup of the New SRO board will consist of 23 governors, with eleven Public Governors, ten Industry Governors, and two governors from the current SROs, one from the NYSE (Richard G. Ketchum, CEO of NYSE regulation) and one from the NASD (Mary L. Schapiro, CEO of the NASD). Mr. Ketchum will serve as Non-Executive Chairman of the New SRO for a term of three years, and Ms. Schapiro will serve as CEO of the New SRO.

Because the board of the New SRO will include ten Industry Governors and will also include representatives of the NASD and NYSE on an *ex officio* basis, Governors who are tied to the industry and to current SROs will outnumber the Public Governors on the New SRO's board. This will create the appearance of a board whose policies might be driven by the securities business.

The Securities Division urges that Public Governors should make up a majority of the members of any New SRO board both at the time of any merger and after any New SRO is established. The Securities Division also urges that investors and representatives of investors should appoint the Public Governors on any New SRO Board.

IV. Public Governors of the New SRO Should Be Selected by Persons and Organizations Outside the Securities Industry

It is crucial that the Public Governors of any New SRO board be effective advocates who will speak up for the interests of investors. Any New SRO will be fundamentally flawed if the representatives of investors are chosen directly or indirectly by the securities industry or the current SROs.

The Securities Division urges that members of the investing public and their representatives appoint the Public Governors of any New SRO. Under the Rule Proposal, the Public Governors and the Non-Industry Advisors will be selected by the NASD and the NYSE (five Public Governors will be appointed by the NYSE Group Board, and five Public Governors will be elected by the NASD Board). After a transition period, Public Governors will be appointed by the New SRO Board. Even though the number of Public Governors must exceed the number of Industry Governors on the Board, members of the then-existing New SRO Board will appoint the Public Governors. The selection of new Public governors by the existing board of the New SRO creates an unnecessary appearance of an unlevel playing field for the investing public.

The Securities Division recommends that investors and their representatives must select the Public Governors on the board of any new SRO. This sort of independent selection is the best assurance that the views of investors will be heard and their interests will be protected. We specifically recommend that bodies like the North American Securities Administrators Association, the American Association of Retired Persons, and

the Consumer Federation of America be among the investor advocates who select the Public Governors for any new SRO.

V. Serious Issues of Investor Protection Are at Stake in the Creation of Any New SRO.

The Securities Division shares the concerns expressed in the January 12, 2007 letter from the Public Members of the Securities Industry Conference on Arbitration ("SICA") to Commission Chairman Christopher Cox about the proposed merger of the arbitration departments of the NYSE and the NASD. The Public Members of SICA urge that the consolidation of the NASD and NYSE will effectively create only one arbitration forum for the resolution of disputes between public customers and the securities industry. In their letter, the Public Members of SICA raise serious concerns about the fairness, and perceived fairness, to retail investor of the current NASD arbitration system. We agree with the Public Member of SICA that a merging NYSE arbitration into NASD arbitration is not desirable, and the arbitration system should be overhauled to make it fairer to investors.

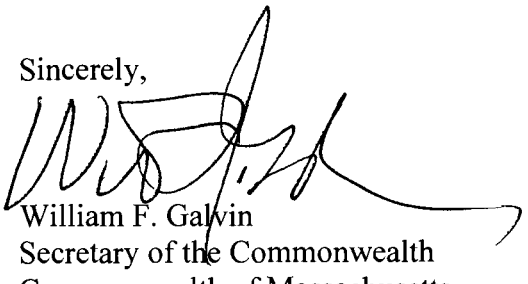
The arbitration forum of a New SRO must operate fairly and must also present the clear appearance of independence and fairness to investors. As long as arbitration panels include a mandatory industry representative of the securities industry and include public arbitrators who maintain significant ties to the industry, the arbitration process will be fundamentally unfair to investors. The creation of a New SRO is an opportunity for the Commission to address this issue, which is essentially one of fairness. The Securities Division urges the Commission to remove mandatory industry arbitrators from the arbitration process. This change will bring greater fairness to securities arbitration and will instill greater confidence in retail investors that their complaints will be heard in a fair and unbiased forum.

The Securities Division also notes that NASD arbitration may be evolving in a direction that makes it increasingly unfriendly to public investors. NASD arbitrators have in some cases permitted securities firms to make substantive dispositive motions, such as motions to dismiss, in arbitration hearings. Such dispositive motions are troubling for several reasons: first, the NASD's rules do not specifically allow for such motions; second, such motions may increase the legal costs and complexity of an arbitration for customers who often can ill afford high legal bills on top of investment losses; third, when such motions to dismiss are agreed to by arbitrators, the customers lose their cases before they even had a chance to present evidence of what happened to their accounts.

NYSE arbitration does not allow for the filing of such dispositive motions. This is a proper approach in view of the stated goals of arbitration to provide a less expensive and less legalistic forum for the resolution of disputes. We strongly advocate for the NYSE rule on dispositive motions to be incorporated into the NASD's and the New SRO's code of arbitration.

Please contact me, or Bryan J. Lantagne, Director of the Massachusetts Securities Division, at (617) 727-3548 if you have questions about these comments or if I can assist in any way.

Sincerely,



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