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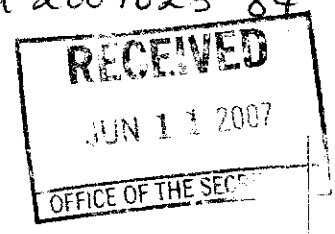

June 11, 2007

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Dear Ms. Morris:

We submit this short letter on behalf of our clients, Benchmark Financial Services, Inc. and Standard Investment Chartered, Inc., in response to a single aspect of the letter that Patrice Gliniecki, Senior Vice President and Deputy General Counsel of the NASD submitted to the Commission on May 29, 2007 – its abbreviated and inadequate, but nonetheless, startling and revealing discussion of the $35,000 payment to NASD members upon the closing of the regulatory consolidation (the "Transaction").[1]

The relevant facts are as follows:

1. Neither the NASD submission to the SEC or the SEC Federal Register notice, either mentioned or invited comment from the public or NASD members about the $35,000 payment or the NASD's December 14, 2006 Proxy Statement's ("Proxy Statement") content concerning that proposed payment which most NASD members regard as woefully inadequate.[2] As you will recall, the NASD sought and obtained member approval of the Transaction by means of votes solicited through, among other things, the Proxy Statement. From the NASD members' perspective, the focus of the Proxy Statement was the fundamental change in members' voting rights and the $35,000 that each member is to receive in exchange for "surrendering" members' equity valued at as much as $300,000, or more, per NASD member.

2. Because the NASD is not a filing entity, it did not, as far as we are aware, submit the Proxy Statement to the SEC prior to its use in the voting upon the Transaction. These facts concerning filing and notice raise substantial legal questions about the SEC's authority to make adverse rulemaking findings on this issue. *See Nat'l Welfare Rights Org. v. Mathews*, 533 F.2d 637 (D.C. Cir. 1976) (Court held decision regarding a financial limitation invalid where "[i]n considering... selection of a $1200 figure as the proper exemption for a necessary automobile or the $2250 limitation placed upon family resources, we find ourselves unable to evaluate the reasonableness of these figures. Neither the notice of proposed rulemaking nor the Secretary's responses to comments in March and July of 1975

[1] Benchmark and Standard do not waive previous objections, especially with respect to previous statements about the likelihood of SEC intervention.
[2] 72 Fed. Reg. 14149 (March 26, 2007).

give any insight into the bases for these determinations."); *accord AFL-CIO v. Donovan*, 757 F.2d 330 (D.C. Cir. 1985); *Small Refiners Lead Phase-Down Task Force v. EPA*, 705 F.2d 06 (D.C. Cir. 1983). The SEC should disapprove the rule change, re-notice the issue properly or limit its findings to the issues it noticed.

3. Despite the lack of notice, at least 22 of the 82 comments mentioned or raised issues concerning the $35,000 payment.[3] A fair reader of all the comments would likely conclude that the adequacy of the $35,000 payment was perhaps the single most important issue to those who submitted comments. The NASD seeks to bury – and therefore minimize – this substantial concern among its membership, addressing it only cryptically and briefly in the last one-half page of its ten page comment. Actually, it devotes more space to responding to a single comment than it does to addressing the issue raised by the greatest number of it members. The unsolicited membership response, as well as an understanding of the dynamics of the members' vote, clearly demonstrate the materiality of the representations about the $35,000 payment. *See TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

4. Please take the time to compare the Proxy Statement (at p.7) with the NASD's May 29 submission to the Commission. The Proxy Statement unequivocally states that a payment larger than $35,000 "is not possible;" that it will be "funded by – and therefore limited by – the expected value of the incremental cash flows that will be produced by the consolidation transaction" and that if the "payment was higher, it could seriously jeopardize NASD's status as a tax-exempt organization." Proxy Statement at 7.[4] Conversely, NASD's May 29, 2007 letter states that the "payments would fall within public IRS guidance, and the proxy statement made clear that the payments would be made by NASD." NASD May 29 Letter to SEC at 9.[5] [6] These statements are remarkably different. "Within . . .

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[3] At least some of these comments regarding the member payment predated the notice, so it is reasonable to infer that the SEC's failure to include these issues in the notice represent a conscious agency decision not to invite public comment on the issue, or even to take any position with respect to it.

[4] "***Q: Can NASD increase the amount of the $35,000 one-time special member payment?***

A: A larger payment is not possible. NASD is a tax-exempt organization and therefore is limited by tax laws regarding size and source of payments it can make to its members. The special member payment of $35,000 per NASD member, or approximately $175.0 million in the aggregate, will be funded by – and therefore limited by – the expected value of the incremental cash flows that will be produced by the consolidation transaction. If the special member payment was higher, it could seriously jeopardize NASD's status as a tax-exempt organization, which would result in significantly higher fees for firms."

Proxy Statement at 7.

[5] "Some commenters additionally questioned either the propriety or derivation of the $35,000 payment to be made to members upon close of the transaction. These concerns are similarly misplaced. As the proxy statement clearly explained, NASD would pay each member $35,000 based on expected future incremental cash flows that would result from the regulatory consolidation. The payments would fall within public IRS guidance, and the proxy statement made clear that the payments would be made by NASD. Thus, there is no basis for questioning the propriety or derivation of the payments." NASD May 29 Letter to SEC at 9.

[6] NASD's May 29 letter makes passing reference to "public IRS guidance," yet neither that letter nor the Proxy Statement specifically reference any such guidance. Additionally, neither document points out that the money to be paid to NASD members is to come from their own equity in the NASD.

guidance" does not mean, say, suggest, indicate or even hint that a "larger payment is not possible." If a larger payment is possible within "IRS guidance," then the Proxy Statement is fraudulent – materially so – and the consent of the members was procured through a material misstatement of central importance. The SEC cannot approve the $35,000 payment without determining whether the statements with respect to it in the Proxy Statement were truthful and complete.

5. Prior correspondence from the undersigned, dated May 4, 2007, a copy of which is attached hereto as Exhibit 1, urged the Commission to require the NASD to submit to it the documents it had produced in discovery in *Standard Investment Chartered v, NASD, et al.*, 07 CV 2014 (S.D.N.Y.). We are not free to provide these documents to the SEC or to otherwise divulge their contents because of the confidentiality restrictions that defendants have insisted upon. We reiterate this suggestion. Plaintiff has alleged since the initiation of this lawsuit that the $35,000 member payment was unexplained and that by many accounts the payments to members could have and should have been significantly higher. The SEC has given no indication on the rulemaking record that it followed up in any way on Plaintiff's request that it examine the limited number of documents the NASD has produced in the *Standard* case. On May 17, 2007 Plaintiff filed a Motion for reconsideration, attaching documents under seal that in Counsel's view bear centrally upon the allegations in this suit. Please indicate in any final record whether the SEC ever obtained and reviewed the documents filed with the court in the *Standard* case.

6. Please also indicate whether, contrary to the SEC's regular practice, it has taken jurisdiction over, and resolved, issues of Delaware law concerning the NASD's fiduciary responsibilities to its members, and the NASD's liability in monetary damages relating thereto, in connection to its proxy solicitation.

7. In the *Standard* case, defendants have made much of the confidentiality of their relationship with the SEC. If there have been *ex parte* contacts with the NASD or the NYSE during the course of the rulemaking process, please place them on the public record, as soon as possible, so that the record will be complete and the public, the Congress and any reviewing court can understand the basis of the SEC's decision-making.

Respectfully Submitted,

Jonathan W. Cuneo

Richard D. Greenfield

cc: Mr. Lynn Sarko, Counsel for Benchmark Financial Services, Inc.

EXHIBIT 1

nasd 2007023

May 4, 2007

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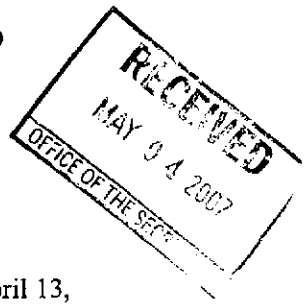

Dear Securities and Exchange Commission Members:

We represent Benchmark Financial Services, Inc. ("Benchmark"). On April 13, 2007, Benchmark submitted a letter comment to the Commission regarding the proposed consolidation of the regulatory arms of the NASD and NYSE. That letter is attached hereto as Attachment "A."

Since sending that letter, there have been additional developments in litigation relating to the consolidation (*Standard Investment Chartered, Inc. v. National Association of Securities Dealers, Inc., et al.*) pending in the United States District Court for the Southern District of New York before the Hon. Shirley Wohl Kram. The principal development is Judge Kram's decision yesterday to dismiss the Amended Complaint on the ground that Plaintiff had not exhausted its remedies before the Commission. Her opinion is attached as Attachment "B."

We have been retained by Benchmark and, together with Standard Investment Chartered, Inc. ("Standard") hereby amend Benchmark's letter comment of April 13, 2007, to add Standard as an additional objector and to bring the following pertinent information to the Commission's attention before any decision is made with respect to the proposed rulemaking. We make this submission without prejudice to our clients' position that the issues in Standard's Amended Complaint (attached hereto as Attachment "C") should be adjudicated by a court of competent jurisdiction, since they ultimately ought to be considered under applicable state law.

We call the Commission's attention to the following statement at page 19 of Judge Kram's opinion:

> The Court is incredulous that the SEC would endorse proposed SRO rule changes that [as alleged in the Amended Complaint] were approved by the membership pursuant to a 'proxy statement that could not possibly pass [muster] under the nation's securities laws and the disclosure requirements of the SEC's own rules (see, e.g., § 14(a) of the Securities Exchange Act of 1934 and Rule 14(a)-9 promulgated thereunder by the SEC and applicable Supreme Court precedent).' (Am. Compl. ¶)

In that regard, Counsel would direct the Commission's attention to highly relevant documents that bear upon Judge Kram's statement and the decision faced by this Commission. Some of these documents were attached to Plaintiff's consolidated opposition to Defendants' motions to dismiss in the above-referenced litigation, but cannot be disclosed because they were filed under seal. *See* Exhibits 7-10 to Plaintiff's Opposition. Attached hereto as Attachment "D" the Commission will find a redacted version of this opposition. We urge the Commission to request from the NASD and NYSE a copy of the unredacted version of this opposition so that it can review them. These documents are by no means exhaustive of the relevant documents produced in the litigation. There are other documents produced in discovery that are highly relevant to the decision being considered by the Commission. Indeed, the Commission should request all the relatively few documents produced in the litigation.

Respectfully Submitted,

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Jonathan W. Cuneo, Esq

Richard D. Greenfield /@/
Richard D. Greenfield, Esq.

cc: Mr. Lynn Sarko, Counsel for Benchmark Financial Services, Inc.