

# **EXHIBIT D**

**Alinder, Zachary J.**

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**From:** Rachel L. Rawson [rlrawson@JonesDay.com]  
**Sent:** Thursday, March 24, 2011 9:32 AM  
**To:** Alinder, Zachary J.  
**Cc:** Nelson, Daniel A.; 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; 'Kenneth J. Krupsky'; Schnall, Matthew D.; 'Nicole Massey'; Brundage, Robert A.  
**Subject:** RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement  
**Attachments:** NYI\_4357505\_1\_Change-Pro Redline - NYI-4349222-10 and NYI-4357400-2.DOC; NYI\_4357400\_2\_Proposed SAP Escrow Agreement.DOC

Zac,

After further consideration and reflection and given the requirement to file today, SAP has decided that it cannot accept Oracle's proposed indemnity language and that it must proceed with a motion requesting that the Court approve Defendants' proposed escrow agreement as security for the judgment. The form of escrow agreement we will propose contains the same QSF language that we sent you last week, providing for the tax treatment of the escrow fund as a QSF, with no grantor trust election and no tax indemnity. We believe this is the most appropriate form of security for both parties under all of the circumstances and wanted to give Oracle a last opportunity to agree to it. Further, the proposed escrow agreement retains the proposed language in Section 8, pursuant to which Oracle would indemnify JP Morgan for specific losses solely resulting from Oracle's conduct. Even if we do not reach agreement today, we will be pleased to continue our discussions later. Attached is the form of escrow agreement that we plan to propose, together with a copy marked to show changes from the version I sent last night.

Regards

Rachel

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Cleveland, OH | 44114 | 216-586-7276 (ofc) | 216-406-3472 (cell)  
rlrawson@jonesday.com

From: "Alinder, Zachary J." <zachary.alinder@bingham.com>  
To: ""Rachel L. Rawson"" <rlrawson@JonesDay.com>  
Cc: "Nelson, Daniel A." <daniel.nelson@bingham.com>, "Gregory Castanias" <gcastanias@JonesDay.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Jacqueline K. S. Lee" <jkslee@JonesDay.com>, "Kenneth J. Krupsky" <kjkrupsky@JonesDay.com>, "Schnall, Matthew D." <m.schnall@bingham.com>, "Nicole Massey" <nmassey@JonesDay.com>, "Brundage, Robert A." <robert.brundage@bingham.com>  
Date: 03/24/2011 11:50 AM  
Subject: RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

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Rachel,

I intend to respond to your email from last night as well. But, in the interim, can you let me know what specific topics you'd like to discuss on the call, so I can figure out who needs to be on the call and availabilities later this morning or early afternoon?

Thank you,

4/13/2011

Zac

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**From:** Rachel L. Rawson [<mailto:rllawson@JonesDay.com>]  
**Sent:** Thursday, March 24, 2011 8:41 AM  
**To:** Rachel L. Rawson  
**Cc:** Nelson, Daniel A.; 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; 'Kenneth J. Krupsky'; Schnall, Matthew D.; 'Nicole Massey'; Brundage, Robert A.; Alinder, Zachary J.  
**Subject:** RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

Zac,

As a follow up to last night's email, we'd like to propose a further meet and confer with you this morning (pacific time). Please let us know what time you might be available.

Best Regards  
Rachel

- \* - \*

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