THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy

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By E-mail (rule-comments@sec.gov)

November 18, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-31-10

Dear Ms. Murphy:

The Financial Services Roundtable appreciates the opportunity to provide comments on the proposal by the U.S. Securities and Exchange Commission (the "Commission") proposal to adopt amendments to its rules to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") requiring companies to conduct separate shareholder advisory votes to approve executive compensation and to determine how often an issuer will conduct such advisory votes.

The Roundtable is a trade association composed of large, integrated financial services companies that finance most of the nation's economy and are critical to its sustained growth. The Roundtable strives to be the premier executive forum for the leaders of the financial services industry, to lead in industry best practices, and to provide a positive industry perspective on legislative and regulatory policy. We believe that the competitive marketplace should largely govern the delivery of products and services, and that regulation should enhance safety and soundness and provide for consumer protections.

The Roundtable commends the Commission for its efforts in expeditiously implementing the mandates called for in the Act and for doing so in a manner that we hope works well for both issuers and investors. The Roundtable supports language requiring a shareholder advisory vote, as well as the principles of clear disclosure to investors and corporate accountability.

Shareholder Vote on Executive Compensation; Frequency of Vote

We do not believe the Commission should include more specific requirements regarding the manner in which issuers present the shareholder vote on (i) executive compensation or (ii) the frequency of shareholder votes on executive compensation. Rather, the Commission should let best practices evolve as they have in other areas of executive compensation disclosure. The Commission's rules should allow each issuer to tailor its presentation of these votes on executive compensation to the issuer's individual circumstances. We note that issuers have long experience

with advisory shareholder votes and believe that a prescriptive approach would unduly limit the flexibility of issuers in responding to different circumstances.

For the same reasons, we do not believe that the Commission should designate the specific language to be used or require issuers to frame the shareholder vote on executive compensation or the frequency of such vote in the form of a prescribed resolution.

We also do not believe that the Commission should be more specific regarding which shares of an issuer are entitled to vote in the shareholder say-on-pay vote or on the frequency of such vote. Instead, the Commission's rules should recognize that different state laws apply to different corporations, and the federal rule should not override applicable state laws on this issue. To provide guidance applicable in the vast majority of cases, we do believe that the Commission's rules, or the instructions thereto, should state that in the ordinary case the shares entitled to vote for the election of directors are the shares entitled to vote on say-on-pay and on the frequency of the say-on-pay vote.

Required Disclosure

- **CD&A and Other Proxy Statement Disclosure**

We believe that the Commission should include the issuer's consideration of the results of the shareholder advisory vote on executive compensation in Item 402(b)(2) as a *non-exclusive example* of information that issuers should address, depending upon materiality under the individual facts and circumstances, rather than as a mandatory principles-based topic. Whether or not the results of previous shareholder advisory votes on executive compensation are material to an understanding of executive compensation decisions and policies will vary from issuer to issuer and from year to year.

If the Commission determines to mandate disclosure of the issuer's consideration of the results of the shareholder advisory vote on executive compensation, we believe that the Commission should require such disclosure only in respect of the most recent shareholder advisory vote on executive compensation, and with respect to the results of previous shareholder advisory votes only if material in a particular year.

Schedule 14A already requires an issuer to provide disclosure in the proxy statement on each shareholder advisory vote and explain the general effect of the vote. We do not believe the Commission should require any additional disclosure or explanation in the proxy statement.

- **Disclosure in Form 8-K, 10-K or 10-Q**

We believe that the Commission should not require disclosure in a Form 10-Q, Form 10-K or 8-K regarding the issuer's future plans with respect to the frequency of its shareholder votes to approve executive compensation. This requirement would be burdensome to issuers and could force them to make a determination prematurely. Additionally, this disclosure would not be useful

for investors because they need not decide how they will vote on future proposals until they are presented in the proxy statement.

It would be impractical and unrealistic to require issuers to disclose their determination regarding the frequency of future say-on-pay votes in the Form 8-K, which must be filed within four business days after the shareholder meeting. The proposed amendments to Form 10-Q and 10-K likewise would not allow an issuer sufficient time to analyze the results of the shareholder vote on frequency and to reach a well-considered conclusion as to how it should respond. The Compensation Committee of an issuer will need time after the shareholder votes are tabulated to consider the issue of the frequency of future say-on-pay votes. This decision requires careful consideration of multiple factors involving executive compensation and corporate governance. Thereafter, most Compensation Committees will make a recommendation to the issuer's full Board of Directors, which itself will need time to consider the issue. Also, issuers should be afforded time to take into account events subsequent to the shareholder vote, such as changes in compensation plans and arrangements and consultations with investors.

Finally, this early disclosure requirement may mislead investors. Publishing a "decision" in an 8-K, 10-K or 10-Q implies that the issuer's decision is irrevocable. We believe it is most appropriate for investors to be informed of the issuer's determination regarding the frequency of the say-on-pay vote through its proxy statement (or preliminary proxy statement). Investors are accustomed to having shareholder issues addressed in the proxy statement rather than in a Form 8-K, Form 10-K or Form 10-Q. Disclosure through the proxy statement has afforded ample time for shareholder consideration of a variety of shareholder issues, and there is nothing special about an advisory say-on-pay vote that warrants a full year's advance notice. Moreover, such disclosure is inappropriate for a purely advisory vote.

Exclusion of Similar Shareholder Proposals

We believe that the proposed amendment to Rule 14a-8(i)(10), which allows an issuer to exclude shareholder proposals concerning executive compensation if the issuer has already conducted an advisory say-on-pay vote, is essential. Having conducted the say-on-pay vote contemplated by the Act, issuers should not also be required to include in their proxy statements subsequent shareholder proposals on the same subject. We believe that any different rule would be needlessly burdensome, and likely to engender confusion.

For the same reasons, we believe that the Commission should permit the exclusion of shareholder proposals addressing the frequency of the say-on-pay vote. We also believe that the Commission's rule should not be different if the issuer has materially changed its compensation program in the time period since the most recent say-on-pay vote or the most recent frequency vote. We note in this regard that such program changes could in fact have been made in response to the previous say-on-pay vote contemplated by the Act.

Inasmuch as Section 951 of the Act unambiguously provides that the shareholder vote on frequency shall not be binding, we believe that the Commission should not prescribe a standard, such as a plurality, for resolving whether issuers have substantially implemented the shareholders'

vote on the frequency of the vote on executive compensation for purposes of Rule 14a-8. An issuer will be required to disclose the results of the shareholder vote and its response upon consideration of such results. The Commission should permit each issuer to draw its own conclusions from the shareholder vote and determine its own response. Additional shareholder proposals would only serve to burden the issuer and its shareholders unnecessarily.

Further, we believe that the Commission's final rules should state that issuers are permitted to exclude shareholder proposals that seek a separate shareholder advisory vote on one or more elements of executive compensation or executive compensation policy. Additionally, the Commission's final rules should state that issuers are not required to file a no-action letter request with the Commission in order to be able to exclude say-on-pay proposals as substantially implemented.

Preliminary Proxy Statement Filing

For the reasons set forth in the proposed rules, we strongly agree with the Commission's proposal to amend Rule 14a-6(a) to add the shareholder votes on executive compensation and the frequency of shareholder votes on executive compensation to the list of items that do not trigger a preliminary filing.

Shareholder Votes on Executive Compensation for TARP Companies

We agree with the Commission that it should adopt an exemption for issuers with outstanding indebtedness under the TARP program from the requirement to conduct shareholder advisory votes on executive compensation and on the frequency of such votes. This exception should continue for so long as the issuer is indebted under the TARP program.

Golden Parachute Arrangements

- **Transactions and Individuals Covered**

We do not believe that the Commission should require Item 402(t) disclosure in transactions not specifically referenced in the Act. We strongly encourage the Commission to limit S-K Item 402 to extraordinary transactions only, as provided in the statute, and not make it an annual disclosure requirement. This disclosure of contingent, theoretical compensation on an annual basis will confuse shareholders, and there is already substantial disclosure of many of these items on an annual basis under 402(j).

Additionally, we believe that it would be very confusing and not useful to investors to require disclosure under Item 402(t) that relates to golden parachute compensation of a broader group of individuals than required by Section 14A(b)(1). Specifically, we agree with the Commission that issuers should not have to provide Item 402(t) information with respect to individuals who would have been among the most highly compensated executive officers but for the fact that they were not serving as an executive officer at the end of the last completed fiscal year. Such disclosure would serve no useful purpose. It most likely would only confuse shareholders.

Similarly, we support the Commission's proposal to exclude from disclosure employment agreements that named executive officers of the target issuer enter into with the acquiring issuer for services to be performed in the future.

- **Other Disclosures**

We do not believe the Commission should include more specific requirements regarding the narrative and footnote disclosures for golden parachute compensation. Rather, the Commission should let best practices evolve as they have in other areas of executive compensation disclosure. The Commission's rules should allow each issuer to tailor its narrative and footnote disclosures for golden parachute compensation to its individual circumstances. We again note that issuers have had years of experience in drafting golden parachute payment disclosure in proxy statements and believe that a prescriptive approach would unduly limit the flexibility of issuers in responding to different circumstances.

We do not believe that the Commission should require tabular disclosure of previously vested equity and pension benefits and require the total amount to include those amounts. This would confuse shareholders and not serve the purpose of the Act. For the same reasons, the Commission should not require issuers to present the value of previously vested restricted stock and the in-the-money value of previously vested options. Inclusion of these amounts in the total clearly would overstate the amount of compensation payable as a result of the transaction.

We believe that the proposed footnote identification of amounts of single-trigger and double-trigger compensation elements in the table effectively will highlight amounts payable on each basis. A requirement that these elements be highlighted by disclosing them in separate columns, or by some other means, would be more likely to confuse investors.

Similarly, we believe that the Commission should not require issuers to present separately, or in a different manner, any elements in the "Other" column. The elements of "Other" compensation vary greatly from issuer to issuer and a prescriptive approach would unduly limit the flexibility of issuers in describing such elements.

Finally, we believe that the Commission's final rules should state that a shareholder vote on golden parachute compensation is not required for subsequent grants of additional awards made in the issuers' ordinary course and on the same acceleration terms as those subject to the previous shareholder vote. Otherwise, the proposed exception for golden parachute compensation that was subject to a prior advisory vote of shareholders would be meaningless.

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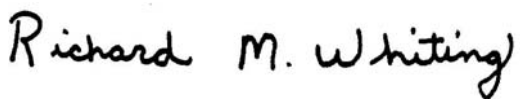
Thank you for considering our comments. Please do not hesitate to contact me or Brad Ipema of the Financial Services Roundtable at (202) 589-2424 if we can provide you with any further information.

Sincerely,



Richard M. Whiting

Executive Director & General Counsel

cc: Hon. Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Robert W. Cook, Director, Division of Trading and Markets
Henry Hu, Director, Division of Risk, Strategy, and Financial Innovation