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THE FINANCIAL SERVICES ROUNDTABLE

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The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
Station Place
100 F Street, N.E.
Washington, DC 20549-9303

RE: Reproposed Provisions of the Executive Compensation and Related Party Disclosures Rules Regarding "Up to Three Additional Employees"

Dear Chairman Cox:

Thank you for your positive responses to the Financial Services Roundtable's[1] ("the Roundtable") April 10, 2006 comment letter on the SEC's Proposed Rule on Executive Compensation and Related Party Disclosure ("Proposed rule"). The Roundtable is providing this informal response to the SEC's July 26, 2006 release ("SEC July Release" or "Release") adopting certain changes to these disclosure requirements. We will also provide a more formal response to the reproposed rules that are published in the Federal Register.

The Roundtable and its member companies strongly support the Commission's goal to improve disclosure of the elements of executive compensation; however, we remain concerned that the requirements of the reproposed rules regarding the "up to three additional employees" do not further the goal of disclosing the compensation of a firm's policy makers and its unintended consequence is to **increase the costs to attract and retain key** employees over time to say nothing of the **costs to collect and analyze data not previously required**.

Moreover, the reproposed provisions could have the additional unintended consequence of **creating a competitive imbalance in the market place**. The

[1] The Financial Services Roundtable ("the Roundtable") represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $50.5 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

new disclosure could make it more difficult for public investment companies to seek and retain key employees when private equity and private companies do not have to make the same proposed disclosure filings. Most financial services firms are competing for the same non-policy making, but highly compensated, key personnel. It is hard to conceive how shareholders and investors of public companies could benefit from the competitive disadvantage inherent in requiring that this information be disclosed.

In its July 26th Release, the SEC states, in pertinent part:

> *"[o]ur intention is to provide investors with information regarding the most highly compensated employees who exert* ***significant*** *policy influence by having responsibility for significant policy decisions."*
> SEC July Release, p. 92.

In successful companies, highly compensated employees "exert policy influence" or they would not be paid high salaries. But where does a public company draw the line at "'significant" policy influence?

Disclosing the compensation of three individuals who are non-executive officers gives anecdotal information to investors, but does not inform them in any analytically meaningful way. These individuals are not "policymakers" in the sense that they direct payment of their own salaries, so self-dealing is not at issue. The compensation of these individuals: depends on market forces; is usually short term focused (*e.g.* percentage of earnings or some other indices); and can fluctuate dramatically from year-to-year. This absence of continuous and comparable disclosure further dilutes the relevance of such information. What is the corporate governance rationale for requiring disclosure of the compensation of this varying list of individuals?

The highly variable and questionably valuable information required of the three unnamed employees is in marked contrast to **executive** compensation, which is more meaningful as it is more long-term, more strategically focused and depends on the profitability of the company as a whole. Since these non-executive individuals are not part of policy management, they are more comparable to vendors or raw material contractors that are simply part of providing operational capital and/or short-term, highly variable resources to the business.

Disclosure of the salaries of certain highly compensated individuals will be of little or no use to investors but is likely to cause real competitive harm. Compensation is market-based and highly competitive. Under the current proposal, the identity of the three unnamed individuals would not be disclosed in the proxy statement, but it is highly likely that other employees within the firm and competitors will be able to "pick off" key employees. This is apt to increase demands for higher compensation within the firm by similarly-situated employees who are not as highly compensated. It also will provide an open opportunity for competitors to bid highly productive employees away from the company, leading to an overall higher compensation cost. Moreover, many key employees maintain strong, personal relationships with their clients based on the clients' trust in the employee, and the departure of these key employees could cause the loss of clients, which could have an adverse effect on the company.

By way of analogy, the compensation of a top restaurant manager in a publicly held chain of restaurants could fit all the stated rationale that this proposed rule intends to address. The successful, highly-compensated restaurant manager is "responsible for the exercise of strategic or managerial policy decisions" at a specific restaurant. The disclosure of this manager's salary would be valuable to public shareholders by placing this compensation "in context" or permitting a "better understanding of the compensation structure" of the publicly traded restaurant chain, but it would also be valuable to competitors who would be armed with the same information to "poach" key employees.

This requirement would create a competitive imbalance between public companies and private equity and venture capital firms to attract and retain key employees. Within certain public companies, the salaries of many key, but non-policy-making, employees are "confidential" as a condition of employment and as a matter of contract. To force disclosure of these compensation agreements would violate previously agreed upon privacy rights and contractual provisions. This could force many portfolio or fund managers to desert public companies and their shareholders for more lightly regulated hedge funds or private equity firms. In sum, this provision would create a competitive imbalance in the markets by putting public companies at a disadvantage with regard to their private sector peers.

Finally, the collection and analysis of this previously non-required and uncollected information would be costly. While there is an established collection framework and most public firms have executive compensation committees, these mechanisms and infrastructure do not exist for collecting and analyzing the salaries of three other non-executive employees. Public firms would have to construct a new analytical framework to collect and evaluate these salaries. Even then, this information would not necessarily provide shareholders with the comparative, long-term information normally reported and which is so necessary to align executive salaries with corporate performance.

Roundtable Proposed Solutions:

As discussed above, the Roundtable urges the Commission to consider amending and narrowing the proposed rules. Specifically, we propose that the amended provisions:

1. Include only those persons who are **policy makers** with authority to effect corporate, entity-wide decision making.

2. Apply disclosure requirements to **encompass employees of the parent company** but not operating subsidiaries as they do not exercise policy decisions on an entity-wide basis.

3. Apply newly required provisions prospectively following the provision's adoption by the Commission for the corporations' next complete fiscal year's report but in no event earlier than 2007 fiscal year end filings

4. Allow for exemptive relief for those firms that have contractual privacy agreements with key employees.

CONCLUSION

The Roundtable looks forward to working with the Commission on these important matters to improve shareholder disclosure. If you have any questions concerning these comments, or would like to discuss these issues further, please contact me at steve@fsround.org or 202-589-2410 or Mitzi Moore at mitzi@fsround.org or 202-589-2424.

Sincerely,

Steve Bartlett
President and CEO

cc: Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
Commissioner Kathleen L. Casey
Director of Corporation Finance, John W. White