

# THE FINANCIAL SERVICES ROUNDTABLE



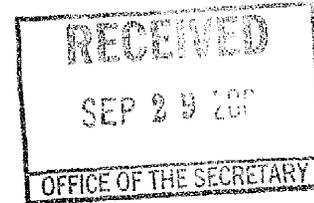
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**RICHARD M. WHITING**  
EXECUTIVE DIRECTOR  
AND GENERAL COUNSEL

September 15, 2003

Mr. Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609  
Attention: File No. S7-14-03



Re: Proposed Rule: Disclosure Regarding Nominating Committee Functions and Communications between Security Holders and Boards of Directors (Release Nos. 34-48301)

Dear Mr. Katz:

The Financial Services Roundtable (“the Roundtable”) is a national association that represents 100 of the largest integrated financial services companies providing banking, insurance, investment products, and other financial **services**. The member companies of the Roundtable appreciate the opportunity to comment on the proposed rule of the Securities and Exchange Commission (“SEC”) entitled, “Disclosure Regarding Nominating Committee Functions and Communications between Security Holders and Boards of Directors”.

The goal of the proposed rule is to enhance transparency of the operation of boards of **directors**. The proposed **rule** has two major components: (1) **proposed** enhancements to existing disclosure requirements regarding the operation of board nominating committees, and (2) a new disclosure requirement concerning the means by which security holders may communicate with members of the boards of directors. While the Roundtable believes **that** transparency and accountability to shareholders **are** important concepts, **we oppose** the proposed **rule** because we believe the burdens imposed on reporting companies far outweigh any potential benefits to shareholders.

I. Disclosure Regarding Nominating Committee Functions - The **proposed** rule requires enhanced disclosures in relation to: (a) **policies** regarding shareholder nominated directors; (b) minimum qualifications for recommended directors, and;

(c) specific standards for the overall structure and composition of the board of directors.

The Roundtable *opposes* these proposed enhancements for the following reasons:

1. The shareholders **are** already given detailed information on the background of each nominee;
2. Creating specific policies and qualifications for director nominations will lead to a rigid, formalistic set of standards that will not be flexible enough to accommodate changes in technology, the economy, the available director pool or the needs of a particular company;
3. Individual members of nominating committees in exercising their independent judgment may use differing standards in voting for candidates;
4. The industry has not recognized or agreed upon the traits or skills of an "ideal" director (*i.e.*, some commentators still assert that "independence" may not be a good trait because a director would act more zealously if they had connections to the company; and
5. Directors with differing skills and qualifications may be more ideal for a board of directors.

If the SEC proceeds with the proposed rule despite these objections, the Roundtable *recommends* that the number and **types** of disclosure requirements for board nominating committees be limited to the following:

- Describe the material terms of the nominating committee charter and where copies of these terms and conditions may be found (*e.g.*, by ordering from the company on a request basis, formal publication, company websites, *etc.*);
- Disclose **any** instance where nominating committee members did not meet independence requirements;
- Have a formal policy regarding consideration of director candidates recommended by shareholders;
- Describe procedures for shareholders to submit board of director candidates;
- **Specify** minimum qualifications for nominating committee recommended directors, including the skills necessary and specific standards for overall structure and composition of the company's board of directors;
- Outline the nominating committee's process for identifying and evaluating nominees and any differences between how the nominating committee

evaluates nominating committee recommended and shareholder recommended candidates;

- State the source of each nominee (other than nominees who are executive officers or directors standing for reelection) approved by the nominating committee for inclusion on **proxy** cards;
- Disclose functions performed by outside employment agencies (*i.e.*, headhunters, *etc.*); and
- State the reason for not nominating a candidate if the nominating committee fails to nominate a candidate recommended by a large shareholder percentage.

II. Communications between Security Holders and Boards of Directors - The proposed rule includes a **new** disclosure requirement allowing communications between shareholders and boards of directors. **As** it stands, Exchange Act Rule 14a-8 is the only possible mechanism for security holders to seek further access to communicate with boards of directors.

The Roundtable **opposes** the need for a new rule since existing governance processes seem to adequately cover shareholder communications with the board of directors, including the shareholder proposal process and the existing process for receiving audit and accounting complaints. Moreover, the Roundtable believes that the proposal would require companies to consider implementing a management filter for shareholder communications to boards of directors. This requirement would unnecessarily overlap with existing practices such as shareholder proposals, and to generate organizational costs that are likely not worth the value of the increased communication received by a company's board. Finally if it is determined that a new rule is necessary, the Roundtable *recommends* that it be more precisely drafted so as to provide guidance in the following areas:

- A detailed description about the manner and method by which shareholders can send communications to the board of directors;
- An identification of suitable content that may be addressed to the board of directors;
- An identification to whom shareholders may send communications and whether they may send them individually to each director or to the board of directors **as a group**;
- A description of the determination process regarding what communications are suitable to be sent to the board of directors, describing which department or group **is** responsible for making such a determination; and
- A list and description of any material action taken by the board of directors during the preceding **fiscal** year as a result of communications from shareholders.

**If** you have any further questions or **comments** on this matter, please do not hesitate to contact me *or* John Beccia at (202) 289-4322.

Sincerely,

A handwritten signature in cursive script that reads "Richard M. Whiting".

Richard M. Whiting  
Executive Director and **General** Counsel