

THE FINANCIAL SERVICES ROUNDTABLE



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I Impacting Policy. Impacting People.

July 15, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Amendments to Section 303A of the NYSE Listed Company Manual
Relating to Corporate Governance, File Number SR-NYSE-2004-41, 69
Federal Register 65006 (November 9, 2004).

Dear Mr. Katz:

The Financial Services Roundtable¹ appreciates the opportunity to provide comments on the above-captioned amendments offered by the Securities and Exchange Commission (the “Commission” or the “SEC”).

Roundtable Comments

The Roundtable recommends that Section 303A.02 of the NYSE Listed Company Manual be amended to provide that loans to a director or to directors’ companies that are permissible under Federal Reserve Board Regulation O will not affect a director’s independence.

The Roundtable is concerned with the definition of independence under Section 303 A.02(b)(v). This section excludes “a director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million, or 2% of such company’s consolidated gross revenues.”

We request clarification that “payments” under this definition does not include interest payments or other fees paid on extensions of credit to a director or to director-affiliated companies that are in accordance with the non-preferential lending requirements in the Federal Reserve Board’s Regulation O.

¹ The Financial Services Roundtable unifies the leadership of large integrated financial services companies. Its membership includes nearly 100 firms from the banking, securities, investment and insurance sectors. In addition to communicating the benefits of integrated financial services to the American public, the Roundtable is a forum in which financial services industry leaders address critical public policy issues.

The Roundtable requests a safe harbor under Section 303A.02 of the NYSE's Listing Standards for Regulation O Loans. A Regulation O safe harbor would be consistent with the treatment of Regulation O loans under the federal securities laws. In general, publicly held companies may not make personal loans to any director or executive officer under Section 402 of the Sarbanes-Oxley Act. However, an insured depository institution may make a loan to these individuals if the loan is subject to the insider lending restrictions of Regulation O. Practically speaking, the omission of a safe harbor for Regulation O loans adversely affects banking institutions. Without a safe harbor, non-management directors and their affiliated businesses may be required to seek financial services from competitor banks.

The requirements in Regulation O ensure that a lending relationship between a director or a director's company and the listed issuer will not impair a director's independent judgment. Regulation O assures that loans to non-management board members or businesses owned by non-management board members are made on the same terms (including interest rate and collateral) and follow prevailing credit underwriting procedures for comparable transactions. Interest rates, collateral requirements, credit underwriting standards and repayment terms cannot be more favorable for insider borrowers. These loans are subject to strict supervision by the Federal Reserve Board. Violations of Regulation O can result in severe sanctions, including large civil penalties.

Regulation O loans will not impair a director's independent judgment. Therefore, the Roundtable believes a safe harbor is appropriate and there is no need to enforce Section 303A.02 against Regulation O compliant loans.

Conclusion

The Roundtable appreciates the Commission's efforts on this proposal. We would welcome the opportunity to discuss our concerns with the Commissioners and staff. If you have any questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel