

THE FINANCIAL SERVICES ROUNDTABLE



The Financial Services Roundtable 2007 Legislative and Regulatory Year in Review and 2008 Preview

2007 Legislative Update

The first session of the 110th Congress just adjourned. The 110th Congress saw the Democrats in control of both bodies. When the session started, Democrats made their mark early by increasing the minimum wage and enacting an internal pay-go rule. 2007 was a challenging year. The Roundtable played both offense to achieve successful resolution of Roundtable priority issues, and defense to protect against erosion of those priorities. Listed below is a summary of the action on the Roundtable 2007 legislative and regulatory priority issues. We also include an outlook for 2008.

AMT: A measure to prevent the Alternative Minimum Tax from applying to 23 million middle-income Americans. Both bodies passed a temporary, one-year fix of AMT without a corresponding offset. The Roundtable supports AMT. The fight was over whether to offset the AMT fix or not. The Roundtable opposed using a pay-for to offset the AMT fix.

2008: The effort to oppose using tax increases to pay for tax decreases will spill over into 2008.

Attorney-Client Privilege: The House approved H.R. 3013 on suspension. This legislation would prohibit federal agencies, primarily the Department of Justice and the SEC, from forcing Roundtable companies to waive their attorney-client privilege and work product materials to receive “cooperation” credit from the government to avoid prosecution; provides both civil and criminal protections for communications protected by attorney-client and attorney work product; and walls the “inspection and examination” process from enforcement actions. A broad-based coalition supported the bill.

2008: Senator Specter (R-PA) will continue his leadership role in supporting this legislation. The Roundtable’s focus will be identifying Senate Democrats to support the Senate companion bill S.186. We have developed a grass-tops industry strategy to ask executives from major companies to contact potential supporters of the legislation. Our goal is to get wrap up this process in early 2008 before the legislative calendar is overtake by election year politics.

Bankruptcy Reform: A House committee reported out a bill to give bankruptcy judges the power to alter the terms (balance/rate/term) of a mortgage. Steve Bartlett testified in opposition to the bill. Two companion bills were introduced in the Senate. A Senate Judiciary Committee held a hearing and witnesses testified that the bills would force mortgage interest rates to increase. The Roundtable co-leads a coalition of financial services trades, including ABA, MBA, SIMFA, CBA, and the U.S. Chamber, in opposition to the bills.

2008: The next step in the House is a floor vote. The Bankruptcy Coalition will remain active in its opposition of the bill during 2008.

CFIUS Reform: On July 26, 2007, *the Foreign Investment and National Security Act of 2007* was signed into law. This legislation reformed the Committee on Foreign Investment in the United States (CFIUS) review process for evaluating potential direct foreign investment in the United States. The Roundtable supported this legislation and worked over a year and a half with other trades in support of a bill that would create greater certainty in the CFIUS process without discouraging foreign investment.

Farm Credit System (FCS) Expansion: Both bodies have approved separate Farm Bills without provisions to expand the mortgage and commercial lending authority of the taxpayer subsidized FCS. The Roundtable successfully worked with other financial services associations, like the ABA, in opposition to efforts to expand the FCS.

2008: The House and Senate Farm bills will be considered in conference, and the Roundtable will continue to oppose adding expansion of the FCS.

Deductibility of Mortgage Insurance Premiums. The President has indicated that he will sign into law a bill extending the deductibility of mortgage insurance premiums for three years. This bill will help strengthen the housing market. The Roundtable supported this effort.

Mortgage Insurance Premiums-Guidance- The Roundtable worked with MBA to help the IRS issue guidance to both lenders and homeowners related to the reporting of mortgage insurance premiums. Congress made MI premiums tax-deductible for 2007 and this raised a number of questions related to reporting.

Optional Federal Charter (OFC): For the first time since the elevation of OFC to a Roundtable priority, bipartisan legislation supported by The Roundtable was introduced in both the House of Representatives and the Senate. Senators Tim Johnson (D-SD) and John Sununu (R-NH) introduced the National Insurance Act of 2007 (S. 40) to create an optional federal charter on May 24, 2007. Representatives Melissa Bean (D-IL) and Ed Royce (R-CA) introduced companion legislation (H.R. 3200) given the same name on July 26, 2007 in the House of Representatives. The Roundtable works with its trade within a trade, Agents for Change, to help advance this legislation.

2008: Several hearings were held in the House Financial Services Committee during 2007 and we expect additional hearings in 2008. Al Iuppa of Zurich North America testified on behalf of the Roundtable in support of the bills. The Roundtable has also invested in academic research to bolster the need for the OFC. In the spring of 2008, we will release a report by noted economist Ray Perryman measuring the savings to consumers of efficient regulation as well as a study to outline the potential scope of the federal regulator. This second study is part of a joint trade effort with AIA and ACLI.

Agents for Change: Members of Agents for Change attended 59 meetings with Members of Congress and/or their staff to discuss the importance of modernizing insurance regulation and ask for their co-sponsorship of legislation (S. 40 & H.R. 3200) to create an optional federal charter (OFC). Nineteen of these were in-district meetings. Membership in Agents for Change increased 50 percent to over 4,500 members nationwide representing all lines of insurance. Member companies, which support Agents for Change financially and/or through recruitment, increased from 18 to 22. Member companies include insurers, banks, and securities firms.

2008: Agents for Change will continue to increase its membership and grassroots strength while urging members of Congress to co-sponsor the House and Senate bills.

Overdraft Fees: Chairman Barney Frank (D-MA) and Carolyn Maloney (D-NY) strongly supported legislation to severely restrict many fees for overdrafts. Industry opposition stalled the advancement of the bill. Representatives Maloney and Dennis Moore (D-KS) are working on a compromise bill that is expected to be more acceptable to the banking industry. We understand there is Congressional consensus on all major issues except whether to regulate overdraft fees under "Truth-In-Lending" or "Truth-In-Savings." Moreover, the focus of next year's hearing will be this regulatory/enforcement issue. Key areas of the legislation include: opt-in for overdraft protection, notice when ATM/debit transaction triggers an overdraft with notification and approval before the transaction can proceed, three free overdrafts per year, ATM disclosure, and payment order and APR calculations. There was no action in the Senate.

2008: This is likely to pass the House, but the final language is being debated. We expect the HFSC to hold a full committee hearing. The Federal Reserve Board could go after fees under TILA. There appears to be no interest in this bill in the Senate.

Patent Reform: This is a major priority for the Roundtable. The House of Representatives passed H.R. 1908 on Friday, September 7, 2007 by a vote of 220-175. Several changes were made to the bill to get it out of committee. Additional changes were made on the House floor. Several changes weakened the bill from our standpoint, but none should be considered "gutting."

Damages: The damages section remains the most contentious due to emphasis on apportionment. The Roundtable supports mandatory apportionment of damages. That language was not sustainable during committee and discretion for the judge was established in favor of a mandate. The manager's amendment makes further clarifications, all in favor of discretion.

Prior User Rights: Prior user rights as stuck to accommodate university concerns. The bill sponsors believe that this modification was essential, but committed to press for some restoration during conference. Prior user rights were on the FSR/ABA priority list but was, at best, a Tier 2 priority and not a defense often used by FSR members.

Venue: The venue section is critical to curb forum shopping. The manager's amendment altered the venue section to take into account several members' beliefs that the section had become too defendant friendly. The section was modified to create a carve-out for plaintiffs involved in substantial R&D or manufacturing (added to existing carve-outs for micro-entities and universities). Importantly, a transfer provision was added for pending cases where venue was improperly established.

Overall the current Senate bill carries in whole or in part a greater number of Roundtable priorities in a form that we support. The damages section, venue section, prior user rights section, second window (which was struck in the House bill in favor of enhances *inter partes*), interlocutory appeal, and the Sessions Amendment are all Roundtable priorities which we will fight to retain during the Senate process.

2008: Senate Majority Leader Reid (D-NV) has committed to Senators Leahy (D-VT) and Hatch (R-UT) that the patent bill will be on the Senate floor before the President's Day recess, making it one of the first orders of business for the Senate in 2008.

Subprime Mortgages: The House approved a bill to reform the mortgage market. Rep. Baucus (R-AL) supported the bill. Chairman Dodd (D-CT) has introduced a reform bill that is not preemptive. The Federal Reserve is codifying their HOEPA guidance into enforceable regulations. Industry has announced a voluntary five year freeze of impending interest rate resets for subprime borrowers in trouble. It is industry's position that these actions go a long way to address the issues in the subprime market.

2008: The industry will be working with Congress to strengthen the housing market and oppose reform efforts that hinder strengthening the housing market.

Tax-Free Mortgage Forgiveness. The President has indicated that he will sign into law a change in the tax treatment of mortgage debt that is forgiven as part of work-out between a borrower and a lender. For the next three years, any mortgage debt that is forgiven will be tax-free to the homeowner. This bill will help strengthen the housing market. The Roundtable supported this effort.

Student Loans: Legislation to cut the government assistance financial services companies use to provide federal student loans was signed into law during 2007, over the opposition of financial services trade associations. The Roundtable, working with CBA and ABA, was able to avoid the inclusion of provisions that would be harmful to private student loan marketplace.

2008: Congress could make further cuts to the program during 2008.

TRIA: The “Terrorism Risk Insurance Program Reauthorization Act of 2007” was sent to the President on December 19 enabling an extension of the program before it expires on December 31, 2007. The bill is a seven-year extension of the current TRIA program, with a \$100 million trigger. Unlike the House-passed bill, the new law measure does not include language that would require carriers to make available coverage for a nuclear, biological, chemical or radiological attack, nor does it include group life or the far lower deductibles of the House-passed bill. Highlights of the Senate bill include:

- Insurer deductible remains the same as the current year (20% of gross earned premium);
- Insurer co-share remains the same (15% of insured losses over the program trigger);
- No change in definition of act of terrorism;
- No change in lines of coverage;
- Clarifies that an insurer’s total liability is capped at the insurer’s applicable deductible and co-share;
- Requires Treasury Secretary to notify Congress within 15 days of a terrorist event if the Secretary expects the insured losses due to the event to exceed \$100 billion;
- Treasury Secretary required to issue regulations for the pro rata payment of insured losses when they exceed \$100 billion;
- Insurers are required to disclose to customers the \$100 billion cap on coverage; and
- The President’s Working Group on Financial Markets is required to report to Congress on the availability and affordability of terrorism insurance, including group life and nuclear, biological and radiological events by June 30, 2010 and 2013.

US-Peru Free Trade: The House approved the US-Peru Free Trade Agreement (FTA) implementing legislation on a vote of 285 to 132 with 109 Democrats voting for it. The Senate approved the implementing legislation on a vote of 77 to 18. The legislation was signed into law by President Bush on December 14, 2007. The Roundtable supports the agreement and is urging Congress to consider the other pending FTA's, South Korea, Columbia, and Panama.

2008 Legislative Outlook:

2008 is a Presidential election year. Historically, the level of activity in Congress tends to decrease as the year wears on. The Roundtable will continue working to advance our priority issues like patent reform and defend against bills to undermine the economy, like bankruptcy reform. In addition to the 2008 outlook for issues listed above, here is the 2008 outlook on key issues.

Anti-Arbitration Legislation: During 2007, there were House and Senate hearings on bills (H.R. 3010/S. 1782) that would nullify existing arbitration provision in all consumer, employment and franchise contracts. The Roundtable led the financial services industry's opposition to these bills in coordination with the U.S. Chamber of Commerce. We anticipate legislative action in 2008.

Anti-Money Laundering (AML): During 2007, the Roundtable worked very closely with Chairman Barney Frank (D-MA) and Congressman Mel Watt (D-NY) to reform the Bank Secrecy Act's AML reporting system. The Roundtable testified at a House oversight subcommittee hearing and called for a complete overhaul of the system. We submitted to Chairman Frank our AML recommendations from the Competitiveness Blueprint. We urged Chairman Frank to use these recommendations as a starting point in 2008 in his plan to reform and address the concerns of the current AML system and create a more effective and efficient system.

These 2008 recommendations are:

1. Propose a FinCEN oversight hearing to address, among other issues, whether or not it has the resources to serve as gatekeeper of AML compliance and examine why (if necessary) these resources do not exist;
2. Regulators should develop clear risk base guidelines for examiners and "best practices" examples to provide greater clarity on examination requirements related to risks measurements and;
3. FinCEN should promulgate more specific categories in box 35 of the SAR form, to reflect more granular use for ease of tracking and reporting information.
4. that Congress should to pass H.R. 323, the "Seasoned Customer CTR Exemption Act of 2007" and;
5. that Congress should pass H.R. 4049, the "Money Service Business Act of 2007".

Credit Card Restrictions: Reps. Carolyn Maloney (D-NY), Spencer Bachus (R-AL), and Chairman Barney Frank (D-MA) have stated their intention to pass legislation in 2008 to prohibit specific credit card practices such as double cycle billing and universal default. The devil will be in the details. 2007 hearings in the House and Senate financial services committees and other committees focused on credit card practices, disclosures, and pricing.

Competitiveness Blueprint – The Roundtable's Committee on Competitiveness issued a blueprint with 68 legislative and regulatory recommendations to improve or enhance the competitiveness of the U.S. During 2007 we stating laying the ground work for legislation and will continue in 2008.

401(k) Plan Disclosures: During 2007, there was activity in both the House and Senate on mandating new disclosures for 401(k) plans. The Roundtable is supportive of enhanced disclosure, but remains concerned with a number of proposals that would require impractical or excessive disclosures. The Roundtable continues to advocate that Congress wait until the U.S. Department of Labor completes its work in creating new plan sponsor and participant disclosures, sometime in early 2008.

Flood Insurance: the National Flood Insurance Program expires at the end of 2008. The Roundtable will continue to work to extend and reform it.

GSE Reforms: Congress will continue to work on GSE reform during 2008. During 2007, the House passed a bill, but it was held up in the Senate Banking Committee. Chairman Chris Dodd (D-CT) and Treasury Secretary Paulson will be working hard to pass GSE Reform. Senator Richard Shelby (R-AL) is crucial to enactment.

Subpart F- this international tax deferral provision expires at the end of 2008. In 2008 we will build on the work done during 2007 to get it extended.

2007 Regulatory Year in Review:

Accounting Convergence: The Roundtable commented to the Securities and Exchange Commission (“SEC”) on the convergence of accounting standards for both foreign and U.S. issuers. The Roundtable supported the SEC’s proposed rule permitting foreign private issuers to prepare their financial statements in accordance with the International Financial Reporting Standards (“IFRS”) without reconciliation to accounting principles generally accepted in the United States of America (“US GAAP”). The SEC unanimously voted to allow foreign companies to use international accounting standards instead of U.S. rules when filing data with the agency. The Roundtable views this initiative as a step towards the larger goal of accounting convergence, which would be expected to result in a single, high quality set of global accounting standards. Additionally, in the *Blueprint for U.S. Financial Competitiveness*, the Roundtable included this initiative as one of the recommendations to move towards a principles-based regulatory structure and enhance U.S. competitiveness.

The Roundtable also submitted comments to the SEC on its concept release of whether U.S. issuers should be permitted to prepare their financial statements according to the IFRS. In the comments, the Roundtable encouraged the SEC to offer this approach as an option for U.S. issuers and recommended allowing U.S. companies with foreign parent companies that file audited IFRS financial statements (either in the U.S. or in another country) to be in the first stage permitted to use the option. In December 2007, the SEC held two Roundtable discussions with industry participants to discuss the use of IFRS in the U.S. market. The discussions are the beginning of a review process by the SEC to evaluate this option for U.S. issuers. We anticipate that the SEC will reach a conclusion on this issue in 2008 or early 2009.

Accounting Issues: The Roundtable submitted comments to the Center for Audit Quality on its draft white papers focusing on accounting issues related to:

1. Measurements of Fair Value in Illiquid (or Less Liquid) Markets;
2. Evaluation of Commercial Paper Conduits; and
3. Accounting for Loan Commitments.

The Center for Audit Quality shared the papers with the SEC, FASB, PCAOB, and other federal banking regulators to illustrate the existing legal and regulatory requirements surrounding these issues.

Overall, the Roundtable's comments supported the issuance of these White Papers; however, the Roundtable recommended clarification of the guidance and suggested more discussion on certain issues within the White Papers.

Amicus Briefs: During 2007, the Roundtable filed during August, three "friend of the court" briefs on important issues affecting its members companies.

The Roundtable joined the American Bankers Association, the ABA Securities Association, and the NY Clearing House Association to file a brief in the case of *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola Inc.* before the U.S. Supreme Court. In *Stoneridge*, the Supreme Court must decide whether 3rd parties (including financial institutions, vendors, or law firms) are liable to investors in a shareholder lawsuit for "scheming" with companies accused of deceiving investors. In the Roundtable's brief, we stated that both Congress and the Supreme Court decided that a private right of action is not created by aiding and abetting securities fraud. Additionally, the brief states that third parties are not above the law since the Securities and Exchange Commission can bring enforcement actions against aiders and abettors.

In October, the Supreme Court heard oral arguments in the *Stoneridge* case. The Supreme Court is expected to make a decision in this case in Spring, 2008 and is predicted to be favorable to the Roundtable's position. Meanwhile, the Roundtable plans to advocate to Congress that the Supreme Court's decision should stand and that the underlying law in the case should not be repealed by Congress.

The Roundtable was also joined by other banking associations in filing briefs before federal appellate courts in Connecticut and Texas in the cases of *Diana G. Adams vs. Zenas Zelotes, Esq.* and *Susan B. Hersh, v. the U.S.* Both briefs argued that the First Amendment provisions in the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* apply to all bankruptcy attorneys and that the lower courts were incorrect in concluding that these provisions only applied in limited circumstances.

Basel II : The Federal Reserve, the Office of the Comptroller of the Currency ("OCC"), Office of Thrift Supervision ("OTS"), and the Federal Deposit Insurance Corporation ("FDIC"), approved the final rules implementing the *Advanced Approaches of the Basel II Capital Accord*. The rules establish regulatory and supervisory requirements for credit risk through the Internal Ratings based Approach and operational risk through the Advanced Measurement Approach.

The rules also include enhanced standards for the supervisory review of capital adequacy and public disclosures for national banks.

The federal banking agencies continue to work together on a proposed rule to give non-core banks the option of adopting a standardized approach under the Basel II framework.

The Roundtable's *Blueprint for U.S. Financial Competitiveness* lists recommendations for regulators during the Basel II implementation process. The Roundtable plans to work with the regulators on these recommendations.

FACTA Final Rules: The federal financial regulators issued two joint final rules that implement the Fair and Accurate Credit Transactions Act ("FACTA"). Both rules have taken into account comments previously submitted by the Roundtable and BITS on these issues and responded to our concerns in a positive way.

Red Flags Rule

The final rule regards identity theft "red flags" and address discrepancies. In particular, the rule:

- 1) Requires financial institutions to develop and implement written identity theft prevention programs that includes identification, detection, and resolution of "red flags" and periodic updates in the program to reflect changes in risk;
- 2) Requires credit and debit card issuers to assess the validity of a request for a change of address when they receive a change of address request followed by a request for a new or additional card; and
- 3) Lists certain procedures that a user of a consumer report must utilize upon receiving notice of the address discrepancy by the credit reporting agency.

The Red Flags rule will take effect January 1, 2008, with a compliance date of November 1, 2008.

Cross-Marketing Rule

The Agencies also approved a final rule in which financial institutions must provide customers with the notification of the information that may be transferred to affiliates for marketing purposes and with the ability to opt out of marketing by affiliated financial institutions. According to the rule, opt outs are valid for five years and once this 5 year period expires, the customer must be given an opportunity to renew the opt out prior to receiving marketing materials by affiliates. Marketing affiliates that have preexisting business relationships with the customer or that respond to a customer-initiated request are exempt from providing notice and opt outs.

This rule will take effect January 1, 2008, with a compliance date of October 1, 2008.

FDIC Assessment Dividends and Deposit Premiums: The Roundtable filed comments with the Federal Deposit Insurance Corporation ("FDIC") on its advanced notice of proposed rulemaking regarding assessment dividends. In the comments, the Roundtable recommended that the FDIC set the premium rate range for Category I banks to hold the deposit insurance

fund's (DIF) designated reserve ratio (DRR) to no more than 1.25% rather than levy premiums at rates which would steadily build the reserve ratio to 1.35%. The Roundtable calculated that such premium charges would cost the banking industry approximately \$4 billion.

Garnishment of Exempt Federal Benefit Funds: The Roundtable submitted comments on the inter-agency proposed guidance on the garnishment of exempt federal benefit funds. The comments discussed the current procedures used by financial institutions in the garnishment of such funds and highlighted that it is not feasible for financial institutions to follow the proposed guidance given current industry practices and operational limitations. Specifically, the Roundtable discussed how financial institutions immediately freeze the funds in the account and then must search the files to determine which funds are exempt.

The Roundtable recommended that the agencies offering this guidance further examine the current practices of the financial institutions prior to finalizing this guidance and offered to work with the regulators as they examined this issue. In evaluating this issue, the Roundtable offered some suggestions to the agencies, such as developing uniform federal rule to preempt the state law requirements related to exempt funds and improving the ACH system to easily determine which funds in the account are exempt federal benefit funds.

Principal trades with certain advisory clients: The Roundtable submitted comments in qualified support of the Securities and Exchange Commission's (SEC) temporary rule regarding principal trades with certain advisory clients. The temporary rule provides limited relief, in light of the Federal Court case that struck down SEC regulation that excluded broker-dealers from the term "investment adviser" under the Advisers Act and exempted broker-dealers from registering as investment advisers. In the comments, the Roundtable recommended that the SEC require firms to issue conflict disclosures and obtain consent from their clients for principal transactions only at the beginning of the non-discretionary advisory account relationship, rather than before each principal transaction. Additionally, the Roundtable recommended that the SEC clarify the definition of "investment-grade debt securities," in which two nationally recognized statistical rating organizations do not rate a specific debt security.

The Roundtable plans to continue to advocate for the regulatory parity of investment advisers and broker-dealers in 2008.

Reg R ("The Push-out Rule"): The SEC and the Federal Reserve Board (FRB) have jointly adopted Regulation R, which implements several of the exemptions for a bank from the definition of "broker" in the '34 Exchange Act. Regulation R defines the scope and limitations of the exemptions for banks included in the Gramm-Leach-Bliley Act and as required by the Financial Services Regulatory Relief Act of 2006 and is intended to accommodate the business practices of banks and protect investors.

The Roundtable strongly supports bank brokerage activities rules. The Roundtable also successfully lobbied for regulators to allow trustee-directed IRAs to be eligible under the custodial exception in Regulation R through a formal comment letter.

Reg Z: The Roundtable commented on the Federal Reserve’s proposed rule on Regulation Z related to Truth in Lending Act. In the comments, the Roundtable supported appropriate and meaningful disclosures to make consumers more informed. However, the Roundtable cautioned the Federal Reserve to weigh the financial costs to lenders and consumers when considering untested or ineffective disclosure requirements that may not benefit consumers.

Essentially, the Roundtable recommended, among other items, a:

- Clarification of the definition of “open-end credit”;
- Elimination of the requirement to disclose periodic rates on periodic statements for open-end plans;
- Clarification that by providing an email address, a customer is consenting to electronic delivery;
- Specification that current dispute resolution processes under Reg Z do not apply when there is a purchase through a third-party payment intermediary; and
- Exemption of issuers from the minimum payment disclosures mandated by the *Bankruptcy Abuse Prevention and Consumer Protection Act* if an issuer provides actual repayment periods for outstanding balances on periodic statements.

Rule 12b-1: The Roundtable commented to the Securities and Exchange Commission (“SEC”) in connection with a SEC roundtable discussion on issues presented by Rule 12b-1 under the Investment Company Act of 1940. The comments urged the SEC to recognize the important role this rule plays in providing a mechanism for compensating broker-dealers and other intermediaries for the sale of fund shares and for services to fund shareholders. The Roundtable stated that the elimination of Rule 12b-1 plans would impose substantial costs to the industry, as well as, would create a significant disadvantage to the investors. The Roundtable also urged the SEC to not prohibit the use of 12b-1 fees to pay for distribution or shareholder services.

Rules 144 and 145 of ’33 Act: The Roundtable submitted comments to the Securities and Exchange Commission (“SEC”) on its proposed regulation to amend Rules 144 and 145 of the Securities Act of 1933. The letter offers the Roundtable’s support of the proposed rule. In December, the SEC finalized the rule, which essentially:

- Shortens the holding period to six months under Rule 144 for “restricted securities” of companies subjected to reporting requirements under the ’34 Act.
- Reduces the restrictions on the resale of securities by non-affiliates.
- Eliminates the manner of sale restrictions with respect to debt securities.
- Increases the Form 144 filing thresholds.
- Codifies staff interpretative positions to Rule 144.
- Amends Rule 145 by eliminating presumptive underwriting position in Rule 145(c) except for transactions involving a shell company and revising the resale requirements in Rule 145(d).

Consent Based Social Security Number Verification Program: The Roundtable filed comments with the Social Security Administration (“SSA”) on its Consent Based Social Security Number Verification Program (“CBSV”). The comments focus on the CBSV requirement that consumer consent be gained through a written signature on Form SSA-89. Our comments

recommend that SSA allow individuals to provide consent electronically (including over the phone) and permit consent authorization to be incorporated into business (loan, credit card application, etc.) documents.

In December, the SSA announced an open enrollment period for their Consent Based Social Security Number Verification Program. The program allows for social security numbers to be verified one of three ways: through a website; by transfer of an electronic file (batch process); or by a company specific Internet connection. It cost \$5,000 to signup and 32 cents per verification. It requires that a company receive consent from an individual on Form SSA-89.

Use of SSNs: The Roundtable, including BITS and the Identity Theft Assistance Center submitted comments to the Federal Trade Commission in response to a request for information on the private sector's use of social security numbers ("SSNs").

The comment letter:

- outlined current laws and regulations relating to the required uses and protection of SSNs;
- emphasized financial services industry leadership in protecting SSNs and reducing their use, particularly in the authentication process; and
- discussed that SSNs continue to serve a vital business, consumer, compliance, and governmental function because they have a special status as the only unique, permanent, universal individual identifier.

Additionally, the Roundtable:

- urged government agencies to work closely with legitimate businesses to develop workable solutions to protect SSNs and avoid the unintended consequences associated with unreasonably restricting their use, particularly in customer and employee identification and verification; and
- recommended that current risk-based safeguard requirements in Gramm-Leach-Bliley Act for financial institutions should be applied to all other industries so that a uniform, national standard exists across all industries.

Unfair and Deceptive Practices: The Roundtable filed comments to the Office of Thrift Supervision ("OTS") on its Advanced Notice of Proposed Rulemaking regarding unfair and deceptive practices. In our comments, the Roundtable emphasizes that the OTS should move to a principles-based approach to regulation. The Roundtable urges the OTS not to extend any rulemaking on unfair or deceptive acts or practices to savings association holding companies and subsidiaries of such holding companies and savings associations that are not currently covered under existing laws. The comments also discuss the Roundtable's position on qualifying specific acts as unfair and deceptive such as: arbitration of credit card disputes, garnishment of federal benefit funds, payment hierarch in credit card lending, and discretionary pricing in residential mortgage lending.

Unlawful Internet Gambling: The Roundtable and BITS jointly filed comments to the Federal Reserve Board and the U.S. Treasury Department on their proposed rule regarding the prohibition on funding of unlawful internet gambling. In the comments, the Roundtable and

BITS believe the rule could impose significant compliance burdens on financial institutions by increasing their role in policing illegal activities, determining whether a transaction is illegal, or by imposing ambiguous compliance requirements that could be subject to wide variations in interpretation by regulators and law enforcement agencies, even if the Agencies were to adopt the Roundtable's and BITS's recommendations.

U.S. Financial Competitiveness: In November, the Roundtable's Committee on Enhancing Competitiveness released its *Blueprint on U.S. Financial Competitiveness*. In the *Blueprint*, the Roundtable recommended 68 legislative and regulatory initiatives to enhance competitiveness. Additionally, the Roundtable recommends a principles-based approach to regulatory oversight of the financial services industry which will improve regulatory oversight and coordination and promote more regular and open communication between firms and regulators through prudential supervision. More importantly, due to the litigation risks and concerns here in the U.S., the Roundtable contends that these recommendations cannot move forward without first addressing litigation reform. The Roundtable also encourages strong coordination among the federal and state regulatory agencies to further enhance U.S. competitiveness.

The Roundtable filed comments with the U.S. Treasury Department in response to questions presented on the U.S. financial industry's competitiveness. Many of the Roundtable's comments mirror the *Blueprint for U.S. Financial Competitiveness*. The U.S. Treasury Department plans to release its own Blueprint for Competitiveness in January or February 2008.