

THE FINANCIAL SERVICES ROUNDTABLE   
Impacting Policy. Impacting People.

## 2005 Legislative and Regulatory Year in Review Outlook for 2006



# TABLE OF CONTENTS

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2005 Legislative year in Review.....	4
<b>2006</b>	
Outlook.....	5
Roundtable Priority Issues.....	6
2005 Regulatory Year in Review .....	8
Roundtable Government Affairs and Regulatory Staff Contacts.....	10



*This document demonstrates the progress and success that the financial services industry achieved this year.*

**2005 was a hugely successful legislative and regulatory year.** Working closely with our partner trade associations, long-awaited class action and bankruptcy reforms were among the many successes. This document demonstrates the progress and success that the financial services industry achieved this year.

We look forward to 2006 and working with all our member companies and partner trade associations to achieve public policy reforms.

With best regards,

**The staff of The Financial Services Roundtable**

## 2005 LEGISLATIVE YEAR IN REVIEW

### 2005 Legislative Successes



*With the passage of class action and bankruptcy reform – two long-term goals of the Roundtable – 2005 was a year in which significant progress was made in a variety of areas of concern to our member companies.*

**Class Action Reform** A tremendous success for The Financial Services Roundtable and our partners, President Bush signed the Roundtable's top legislative priority into law. This bipartisan reform allows federal courts to hear large, multi-state class action lawsuits, while also strengthening important protections for consumers.

**Bankruptcy Reform** Congress approved reforms to end the abuse of the bankruptcy system and the President signed it into law on April 20th. However, the Roundtable is not resting on its success and is continuing to work with credit counselors and the Department of Justice to ensure that the law is implemented in a way to best assist consumers in financial crisis.

**DR-CAFTA** The Central American Free Trade Agreement provides increased market access for U.S.-based financial services firms doing business in Central America and the Dominican Republic.

**Flood Insurance** In order to enable the federal government to pay claims from policyholders victimized by Hurricane Katrina, the President signed legislation providing \$18.5 billion in borrowing authority for the National Flood Insurance Program. Because additional borrowing authority (estimated to be in the \$5 billion range) will be needed in 2006, the Roundtable is leading a coalition of trade associations in putting together a package of reforms to secure it.

**Katrina Personal Tax Relief** Congress passed a series of tax cuts aimed at minimizing the devastating impact of the 2005 hurricanes on the victims, as well as helping to ease the tremendous burden of rebuilding. These targeted tax cuts, when combined with the \$93 million in contributions and the significant relief provided by important customer concessions from Roundtable member companies, will greatly assist those in distress.

**Katrina Corporate Tax Relief** Congress passed an additional tax bill aimed at providing incentives to businesses to return, reinvest, and rebuild in the area that will play an important role in helping to restore the economic vibrancy of the area.

**Terrorism Risk Insurance** The President signed into law a two-year extension of the Terrorism Risk Insurance Act. This reauthorization included significant program changes, most notably increased retention levels and trigger thresholds. The bill also provided for the establishment of a Presidential Working

Group to determine possible long-term solutions to a variety of issues, including the impact of terrorism on the group life industry.

**Government Purchase Cards** The Roundtable has long been critical of the use of employee credit checks as a way to curb the misuse of government-paid purchase cards. In 2005 the Roundtable successfully worked to eliminate a credit check requirement before the issuance of a government purchase credit card.

**USA PATRIOT Act** In the final days of 2005, Congress approved a five-week extension of the USA Patriot Act that will keep the legislation in force until February 3, 2006. The Financial Services Roundtable successfully lobbied for reforms to Sections 215 and 505 of the Patriot Act

that allowed the federal government, without judicial or other meaningful oversight, to demand a large volume of sensitive records from American businesses.

**Deposit Insurance Reform** In 2005, Congress approved technical and conforming changes to clear the way for reform of the insurance system in 2006. A long-time advocate of reform of the Federal Deposit Insurance Corporation (FDIC), the Roundtable worked with both the FDIC and the Congress to win support for a provision ensuring that large financial institutions are not barred from the safest-risk premium assessment category solely because of size.

## OUTLOOK FOR 2006

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*Likely Action on Roundtable Priority Issues in 2006:*

In the waning days of 2005, both the Senate and the House passed their own versions of three bills: retirement security, tax reconciliation, and budget cuts. When Congress returns in 2006, conference committees will convene to begin working on reconciling the differences.



**Retirement Security** Both bodies approved a pension reform bill and a conference committee is expected to begin work in early 2006. The comprehensive reforms suggested by the Roundtable's Blue Ribbon Commission

on Retirement Security – including automatic enrollment, making the IRA and 401(k) increases permanent, replacing the 30-year Treasury, and fortifying annuities and long-term care – will strengthen the future security of millions of Americans and help alleviate the coming retirement security crisis.

**Tax Reconciliation** The House approved a bill that includes a two-year extension of the expiring capital gains and dividend tax rate cuts supported by the Roundtable. The Senate version does not extend these rates and also includes various revenue-raisers, including retroactive tax treatment of SILOs and codification of the economic substance doctrine, opposed by the Roundtable. Both offensive and defensive roles on this issue will be played by the Roundtable in early 2006.

**Budget Reconciliation Act** Both the House and Senate passed a conference report to the \$39.7 billion budget bill set to be approved in early 2006. This bill includes the broader deposit insurance reforms.



Though much progress was made in 2005 on the following issues, much work remains to be done. The Roundtable Government Affairs team will continue to work throughout 2006 to achieve success on these critical issues.

**Asbestos** The effort to provide a legislative answer to the asbestos problem stalled in 2005. Senate Majority Leader Frist (R-TN) has stated that asbestos will be the first issue up in 2006.

**Bankruptcy** Though the reform bill is now effective, vigorous efforts will be required on an ongoing basis to defend the law in the courts and the media. The Roundtable is working with other trade associations and with credit counselors to provide education and guidance to debtors.

**Data Breach Notification** Several bills have been reported that do not meet the needs of Roundtable member companies for an appropriate uniform national standard for data protection and breach notification. There are several other bills still in development – most notably H.R. 3997 in the House Financial Services Committee – that the Roundtable will push to see enacted. The Roundtable's key goal for 2006 in this area remains defining the trigger to send notices, creating functional regulation, and federal preemption.

**GSE Reform** The Housing Policy Council (HPC) will continue to urge Senate action on Government-sponsored Enterprise (GSE) reform in 2006 following the bipartisan passage of a bill in the House in 2005.

**HMDA** The 2005 Federal Reserve Report on Home Mortgage Disclosure Act (HMDA) data was generally well received. The HPC will work with member companies to ensure that the industry is working to provide all borrowers with the appropriate rate based on legitimate credit factors.

### **Katrina Recovery & Gulf**

**Reconstruction** The Housing Policy Council and its members will continue to work with borrowers in the affected region to provide relief to those in need. The HPC is also working with others in the industry to ensure that proposed legislation meets the intended goal of assisting with the recovery. Additionally, the HPC will work to ensure that the Louisiana Recovery Corporation, as well as similar ideas and proposals, will assist homeowners and treat lenders fairly in the resolution of damaged and destroyed properties. The HPC will host its annual meeting in New Orleans on May 17-19, 2006.

### **Modernization of Insurance Regulation/Optional Federal Charter**

The Roundtable is working to ensure the introduction of an Optional Federal Charter bill in 2006 and expects legislation to be introduced by Senators Sununu (R-NH) and Johnson (D-SD) as early as February 1st. The Roundtable continues to partner with Agents for Change, a trade association of 850 agents and brokers in 48 states, in support of these efforts.

**Non-Prime Lending** The Housing Policy Council will continue to work for a uniform national standard on non-prime lending.

**Patents** The Roundtable was unable to reach an agreement with pharmaceutical companies on patent reform. We will continue to work with interested Members of Congress, including Chairman Smith (R-TX) and Chairman Hatch (R-

UT), for a bill that improves both patent quality and the litigation landscape.

**Postal Reform** The House overwhelmingly passed H.R. 22 providing for significant reforms in June. In the Senate, Chairman Collins (R-ME) moved S.662 out of the Homeland Security and Government Affairs Committee with broad bipartisan support. However, in an effort to protect an important constituent interest regarding the ratemaking portion of the bill, Senator Bond (R-MO) stalled the legislation. Notwithstanding this dispute between Senators Bond and Collins, the former has said that he will remove his hold from the bill in late January or early February of 2006 and accept an up or down vote on amendments.

**RESPA Reform** With the goal of encouraging the Department of Housing and Urban Development (HUD) to produce meaningful RESPA (Real Estate Settlement Procedures Act) reforms, the Housing Policy Council will seek to build on momentum arising from the 2005 HUD roundtable meetings.



**Spyware** The Roundtable supports an overall approach to spyware legislation geared to the regulation of behavior, not technology. Roundtable member companies do not use spyware, but continue to be concerned that legitimate business practices could be caught up in a bill that is overly broad – especially since many activities involving spyware are already illegal. To date only one of the three

bills that have been reported is acceptable to the Roundtable. The Roundtable will continue to educate Members and staff about the dangers of defining particular technologies through statute.

**Tax Reform** The recommendations of the President's Advisory Panel for tax simplification focused on both corporate and individual reforms. The Roundtable can offer our technical assistance and help in crafting reforms in the corporate tax arena.

**Regulatory Relief Legislation** The Roundtable and its member companies remain concerned about the burdens imposed on financial institutions by today's environment of excessive regulation. Progress was made on this issue in 2005, including:

- Amending the U.S. Attorneys Manual by the Department of Justice requiring "Main Justice" approval before any U.S. Attorney Office charges a financial institution with a violation of the Bank Secrecy Act
- Exempting financial institutions from filing Currency Transaction Reports for their seasoned customers through the revision by the House Financial Services Committee of the BSA/AML section of H.R.3505, the Regulatory Relief Act of 2005
- Ensuring that registrants are free to communicate freely with the Securities Exchange Commission without fear of retribution through the introduction by Congressman Fossella (R-NY) of H.R. 4618, the Compliance, Examination, and Inspections Restructuring Act of 2005
- Hosting a Capitol Hill Sarbanes-Oxley forum by Congressman Kirk (R-IL) and Congressman Feeney (R-FL) for over 40 representatives from the financial services and accounting industries to hear compliance and cost concerns arising from Section 404 of the Sarbanes-Oxley Act

# 2005 Regulatory Year in Review

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This past year was one characterized by many challenges, including an unfortunately exuberant federal regulatory climate. In addition to addressing several items arising during the course of normal regulatory business, the Roundtable was directed by the CEOs of its member companies to focus its resources on regulatory activities in four specific areas: Suspicious Activity Report (SARS) filing requirements, Securities Exchange Commission (SEC) enforcement actions, Sarbanes-Oxley developments, and addressing the actions of activist state attorney generals.

**Regulatory Oversight Meetings** The Roundtable's staff held over 65 meetings in 2005 with the chairman and/or senior officials of all federal agencies responsible for the four regulatory areas of most concern to member companies. These meetings were held in order to alert these officials to the concerns and observations of Roundtable member companies and to suggest revisions to the agency's regulatory and enforcement practices.

**CRA Proposal** The Roundtable filed comments regarding an Office of Thrift Supervision Community Reinvestment Act (CRA) proposal that would reduce regulatory burdens for savings associations. In particular, the Roundtable supports providing flexibility to institutions in determining the weight assigned to the lending, investment, and service tests, as well as amending the definition of community development to include geographic areas not previously included in an institution's CRA rating.

**Regulation NMS** The Roundtable filed comments with the Securities and Exchange Commission on its re-published Regulation NMS. The Roundtable's primary concern with the re-proposal concerns the trade-through rule, which the Roundtable requested apply only to automated quotes with no human intervention.

**PCAOB Meetings** Roundtable staff met with officials at the Public Company Accounting Oversight Board (PCAOB) to discuss implementation issues surrounding Section 404 of the Sarbanes-Oxley Act. Matters of discussion were: conflicting guidance from auditors, interpretation of the term "material weakness", the scope and costs of auditor, and the lack of clear guidance. Additionally, the Roundtable submitted comments to the SEC in conjunction with its public forum on Section 404 issues.

**Basel II Opt-in** The Roundtable's Basel II Opt-in Working Group met in March with regulators to discuss implementation issues surrounding the Basel II Capital Accord. Among the topics discussed were implementation dates, proposed changes to Basel I capital standards, and the challenges associated with the operational risk capital charge.

**Attorney Client Privilege** The Roundtable testified at the American Bar Association's Task Force on the Attorney-Client Privilege hearing on April 21st in New York. The Roundtable offered recommendations to support legislative reform, changes to the U.S. Sentencing Guidelines, and amendments to the Thompson memorandum.

**Anti-money Laundering Issues** The Roundtable filed comments on all anti-money laundering regulations, safety and soundness, and securities rules under the FDIC's regulatory burden reduction project. The Roundtable recommended that the agencies: develop clear, simple guidance on Suspicious Activity Reports;

draft regulations and/or guidance focusing on anti-money laundering programs instead of the individual transactions of institutions; coordinate with each other on all examination procedures; provide consistent interpretations of the Bank Secrecy Act; raise the current Currency Transaction Report threshold of \$10,000; and provide additional guidance on Customer Identification Programs.

### **Rulemaking on Suspicious Activity**

**Reports** The Roundtable filed a letter with the Financial Crimes Enforcement Network (FinCEN) and other federal financial regulators requesting additional guidance on anti-money laundering regulations, especially in relation to Suspicious Activity Reports. The letter asks FinCEN to draft rules that: provide additional guidance on SARs, including “safe harbor” language; place additional emphasis on the Bank Secrecy Act/ Anti-money Laundering programs of institutions; and revise the current procedures for determining civil money penalties.

**Redemption Fees** The Roundtable filed comments on the SEC’s final rule on mutual fund redemption fees. The Roundtable supports the Commission’s efforts to reduce market timing and deter short-term trading practices

### **Role of State Attorneys General**

Roundtable President and CEO Steve Bartlett addressed the Institute for Legal Reform of the U.S. Chamber of Commerce. Mr. Bartlett discussed the changing role and increasingly activist stance of state attorneys general and recommended important reforms.

**CRA Proposal** The Roundtable filed comments on an interagency proposal to amend regulations promulgated under the Community Reinvestment Act. The Roundtable’s letter focused on the amendment of the regulations in order to explicitly provide that an institution’s CRA evaluation will be adversely affected by evidence of specified discriminatory, illegal, or abusive practices by the institution or by an

affiliate whose loans were considered in the evaluation as part of the institution’s own CRA record.

**Definition of Eligible Portfolio** The Roundtable believes that the Securities Exchange Commission proposal to change the definition of “eligible portfolio company” for purposes of eligible investments for business development companies is overly restrictive. In comments filed with the SEC, the Roundtable offered an alternative.

### **Justice Department Changes on Anti-money Laundering Cases**

In response to a Roundtable request, the Justice Department implemented a significant change in its internal policy restricting U.S. Attorneys from bringing an action against a financial institution for violations of the Bank Secrecy Act or other anti-money laundering requirements without the approval of the Criminal Division in Washington.

### **Rulemaking to Preempt Certain**

**State Laws** On July 19th the FDIC board considered a petition by Roundtable member companies to adopt rules concerning the interstate activities of insured state banks in order to provide parity with national banks. The Board voted at that time to have staff prepare a rule to implement sections 24 (j) and 27 of the Federal Deposit Insurance Act.

**Basel II** In July 2005, representatives of Roundtable member companies, together with other banking organizations, met in the Board Room of the Federal Reserve Bank in Washington to discuss possible revision of Basel I capital standards. The group had a wide-ranging conversation covering general concerns about competitive inequities inherent in the current bifurcated regulatory structure, risk weighting categories, use of external credit ratings, an expanded range of eligible collateral and guarantors, credit assessments, and other risk measures.

**Spitzer Brief** The Roundtable, along with other associations, filed an amicus brief in a suit against New York Attorney General Eliot Spitzer supporting the claim that Spitzer does not have jurisdiction over national banks and their subsidiaries. The case relates to the attempt by the Attorney General of New York to obtain loan information from national banks based on the release of preliminary HMDA data showing disparities in mortgage pricing between minority and non-minority borrowers.

**Study on SEC Responsibilities** The Roundtable unveiled its new publication, *The Responsibility of the SEC for Efficiency, Competition, and Capital Formation: Reforms for the First 1000*

*Days*. The paper argues that the SEC has largely ignored its statutory obligation to promote efficiency, competition, and capital formation, focusing instead almost entirely on investor protection. The publication makes ten specific recommendations for improvements that will enhance the robustness of the U.S. securities markets.

**Complex Financial Transactions** The Roundtable requested that federal financial institution regulatory agencies and the SEC republish for comment their revised guidance on this issue and take into consideration comments previously submitted by the Roundtable.

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