SIFMA
Securities Industry and Financial Markets Association

January 22, 2007

The Honorable Harry Reid
United States Senate
528 Hart Senate Office Building
Washington, DC 20510-2803

Dear Senator Reid:

On behalf of the Securities Industry and Financial Markets Association (SIFMA),[1] we are writing to express our concern with several provisions that we understand will be included in H.R. 2, the *Fair Minimum Wage Act of 2007*, which the Senate is scheduled to begin debating today. SIFMA strongly objects to four tax increases included in a tax package that recently passed the Senate Finance Committee. We oppose these tax increases because of the disproportionate burdens they would place on the business community and the financial services industry.

Many of the revenue raisers proposed by the Senate Finance over the last five years have been signed into law. Importantly, the following two proposals have not been enacted because they are extremely controversial and would have significant negative unintended consequences. SIFMA strongly opposes these provisions.

Settlement Deductibility

- The proposal to eliminate the ability to deduct most settlement payments would increase taxes on a broad range of industries and taxpayers. For several years we, along with the entire business community, have been united in our opposition to this provision because it violates a fundamental principle of tax policy that employers should be taxed on their *net* business income. In effect, the proposal penalizes employers who choose to settle civil disputes out of court. Finally, the provision's extensive application would have far-reaching ill-effects on broader public policy.

Contingent Payment Convertible Bond Deductibility

- The second proposed tax increase would reduce interest deductions on "contingent payment convertible" bonds. As a result, bond issuers would be prevented from deducting the full economic cost of borrowing. Contingent convertible bonds are different from traditional bonds because they may be converted into stock under certain circumstances. The Senate proposal undervalues the true borrowing costs associated with these debt instruments by ignoring the economic value of this conversion feature. This

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, D.C. and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

proposal would effectively increase the cost of raising capital for companies that use this effective management tool.

SIFMA is also extremely concerned about two new proposed tax increases relating to deferred and executive compensation. We are dismayed that these proposals have never been introduced in legislation, nor have they been the subject of Senate hearings or full Senate consideration. Both of these proposals raise serious concerns without addressing perceived abuses or disparities.

Nonqualified Deferred Compensation Plans

- The first proposal would arbitrarily cap the amount of compensation that can be deferred in a nonqualified deferred compensation (NQDC) plan. Contrary to popular belief, NQDC plans are not executive compensation plans. They are retirement savings plans and employee retention programs that benefit a wide range of employees, including many non-managerial employees. The Finance Committee provision affects *all* employees who participate in these plans. Moreover, the proposal would cap the ability to save in these plans to the *lesser* of $1 million or the average compensation paid to the employee during the past five years. This proposal does nothing to create parity between executive pay and rank-and-file wages because it only affects the timing of taxation.

Deductibility of Executive Compensation

- The second proposal would expand the current-law limit on the deduction of executive compensation. This provision has significant retroactive consequences that would not affect an executive's compensation or tax benefits in any way. Instead, the provision would increase the *employer's* tax liability by prohibiting the employer from deducting compensation that the employer is already contractually obligated to pay. Changing the rules on an "after the fact" basis is simply unfair and does not address excessive executive compensation packages in any way.

SIFMA strongly opposes these tax increases and urges the Senate to drop them from final legislation. Any proposal to address perceived executive compensation abuses should go through the normal legislative process and be subject to a thorough examination of the policy implications.

We urge you and your colleagues to drop these four controversial provisions from H.R. 2. Please feel free to contact me if you would like to discuss this further or need additional information.

Sincerely,

Richard Hunt
Senior Managing Director
Government Relations