



B-286143

September 7, 2000

The Honorable Phil Gramm
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Securities and Exchange Commission: Selective Disclosure and Insider Trading

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled "Selective Disclosure and Insider Trading" (RIN: 3235-AH82). We received the rule on August 15, 2000. It was published in the Federal Register as a final rule on August 24, 2000. 65 Fed. Reg. 51716.

The final rule addresses three issues: (1) the selective disclosure by various issuers of material nonpublic information; (2) when insider trading liability arises in connection with a trader's "use" or "knowing possession" of material nonpublic information; and (3) when the breach of a family or other nonbusiness relationship may give rise to liability under the misappropriation theory of insider trading.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"SELECTIVE DISCLOSURE AND INSIDER TRADING"
(RIN: 3235-AH82)

(i) Cost-benefit analysis

While no statute mandates that the SEC perform a cost-benefit analysis, the SEC did do one. Also, the SEC considered the impact of the final rule on competition, pursuant to section 23(a) of the Exchange Act and whether the rule would promote efficiency, competition, and capital formation in accordance with section 2(b) of the Securities Act, section 3(f) of the Exchange Act, and section 2(e) of the Investment Company Act.

SEC estimates that compliance with the rule will result in a cost increase of \$34,937,500 to \$49,562,500 per year. These figures are based on approximately 13,000 public companies making an average of five public disclosures per year.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The SEC prepared an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis. The analyses comply with the requirements of the Act.

The analyses discuss the number and size of the small entities effected by the rule and any steps that were taken to minimize the burden on small entities that did not interfere with achieving the primary goal of protecting investors.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The rule, promulgated by an independent regulatory agency, is not subject to title II of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553.

On December 28, 1999, the SEC published in the Federal Register a Notice of Proposed Rulemaking. 64 Fed. Reg. 72590. A total of almost 6,000 comments were received in response to the notice, and the comments are responded to in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that have been reviewed and approved by the Office of Management and Budget (OMB). They have been assigned OMB Control Nos. 3235-0060, 3235-0536, and 3235-0016.

Statutory authorization for the rule

The final rule is adopted under the authority set forth in sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act; section 30 of the Investment Company Act; and sections 10, 19(a), and 28 of the Securities Act.

Executive Order No. 12866

As an independent regulatory agency, rules promulgated by the SEC are not subject to review under the order.