~~6~~
013

Fidelity Investments®

Douglas O. Kant
Senior Vice President and
Deputy General Counsel

November 20, 2002

Office of Regulations and Interpretations
Pension and Welfare Benefits Administration
Room N-5669
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Blackout Notice Regulation

Re: Sarbanes-Oxley Act Guidance - Written Comments

The US Department of Labor (the "Department") recently issued interim guidance (the "Regulation") to address the blackout notice requirement of Section 306(b) of the Sarbanes-Oxley Act of 2002 (the "Act"). The Federal Register notice of the Regulation solicited public comment regarding the need for additional guidance on the new blackout notice requirements of the Act.

This submission is made on behalf of the controlled group of companies generally known as "Fidelity Investments", members of which provide trustee, investment management and recordkeeping services to defined contribution retirement plans subject to the Employee Retirement Income Security Act of 1974. Fidelity Investments already submitted comments with respect to several aspects of the Regulation in a submission to the Department dated November 14, 2002. The comments provided below all address issues which differ from those presented in the earlier submission.

Written comments on behalf of Fidelity Investments are provided as follows:

(1) Mailing

The Regulation provides that the 30-day period may be measured from the date that the blackout notices are mailed if sent by first class mail, or from the date that notices are sent electronically. We note that some plan administrators may desire to use third-class (or "standard") mail to save on the expense of the required mailings.

We ask that the Department provide a timing rule in the Regulation with respect to the use of third-class mail. Recent information obtained from the US Postal Service suggests that third-class mail may take a few more days to arrive, on average, than first-class mail. Accordingly, the Department may consider whether the Regulation should state that a blackout notice provided by third-class

FMR Corp.
367644v6 Legal Department
82 Devonshire Street
Boston, MA 02109-3614
Phone: 617 563-6645
Fax: 617 476-7217
doug.kant@fmr.com

mail must be sent a few days earlier than the mailing date that would be required for first-class mail.

(2) Blackout Dates

The Regulation appears to require that the blackout notice disclose the specific date (rather than week) that the blackout is scheduled to begin and to end. At least in part because a blackout prompted by a change in record keepers would involve two service providers, it is often difficult to accurately predict the precise beginning and end dates of the blackout period in such situations. This assessment is complicated by the fact that different types of transactions may be blacked out during different timeframes. The need to send additional notices to participants or to make written determinations that advance notice is not reasonably possible in such cases may only confuse participants and increase the chances for administrative problems.

We believe that the current wording of the Regulation may encourage plan administrators to implement somewhat longer blackout periods. That is, the administrator may select a blackout end date a few days later than the administration's best estimate to increase the likelihood that a supplemental notice would not be required. That result would be quite contrary to the purpose of the Act provision.

We strongly recommend that the Department permit a plan to use a "the week of" approach – that is, the notice would inform participants that the blackout period would begin and end in a designated week. Participants would still know that the blackout will end within a reasonably short span of time, but there is a much greater likelihood of certainty that the estimated dates given to participants will in fact prove to be accurate.

(3) Notification of Date Changes

The Regulation states that participants must be notified if the blackout start or end date is changed from the date originally communicated to them. This notification requirement supplements the 30-day notice requirement. The Regulation also states that the plan administrator is excused from providing the supplemental notice of the revised blackout start or end date if there is insufficient time to provide such notice.

We would appreciate clarification whether the supplemental notice of a change in date(s) is required on an "all-or-nothing" basis, or whether each participant must

be notified as quickly as administratively feasible on an individual basis. That is, the plan administrator must decide whether to send the supplemental notice regardless of whether some participants will not receive the notice in a timely fashion.

This may be particularly important, for example, if a plan procedure has been established to send information to active employees electronically, but inactive participants are provided with the information by mail. We note that the Department regulation on electronic delivery requires a different protocol for participants who don't have electronic access at their place of employment. In any event, it may take longer to prepare and send the supplemental blackout notice by mail. The question is whether the administrator should provide the e-mail notice to active employees even though mailed notices would not reach the remaining participants in time to be meaningful.

(4) Regularly Scheduled Blackouts

We are aware that certain employers impose a blackout on a quarterly basis with respect to trades involving the employer stock investment option under their qualified plan. The procedure is designed to avoid potential problems with employees trading in violation of Federal securities laws. The employer may impose the blackout on a plan-wide basis to avoid any questions about who within the organization may not be an "insider" but nevertheless may have sensitive information about the quarterly earnings report prior to its public release.

In such cases, the blackout period may not begin on exactly the same date each quarter. This raises the question of whether such a process may be treated as a blackout subject to the notice requirements of the Act, notwithstanding that the process is periodic, is properly documented and is communicated to participants beforehand. We ask the Department to confirm that this situation would not be treated as a blackout for purposes of the Act.

Finally, we would be pleased to respond to any request from the Department for additional information, whether in connection with the comments provided herein or in the November 14, 2002 submission, or with respect to any other aspect of the Regulation.

Sincerely,

Douglas O. Kant

Douglas O. Kant

DOK:ras

cc: John M. Kimpel, Esq.