

circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing; or

(C) The blackout period applies only to one or more participants or beneficiaries solely in connection with their becoming, or ceasing to be, participants or beneficiaries of the plan as a result of a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(iii) In any case in which paragraph (b)(2)(ii) of this section applies, the administrator shall furnish the notice described in paragraph (a) of this section to all affected participants and beneficiaries as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable.

(iv) Determinations under paragraph (b)(2)(ii)(A) and (B) of this section must be dated and signed by the fiduciary.

(3) *Form and manner of furnishing notice.* The notice required by paragraph (a) of this section shall be in writing and furnished to affected participants and beneficiaries in any manner consistent with the requirements of § 2520.104b-1 of this chapter, including paragraph (c) of that section relating to the use of electronic media.

(4) *Changes in length of blackout period.* If, following the furnishing of a notice pursuant to this section, there is a change in the length of the blackout period (specified in such notice pursuant to paragraph (b)(1)(iii) of this section), the administrator shall furnish all affected participants and beneficiaries an updated notice explaining the reasons for the change and identifying all material changes in the information contained in the prior notice. Such notice shall be furnished to all affected participants and beneficiaries as soon as reasonably possible, unless such notice in advance of the termination of the blackout period is impracticable.

(c) *Notice to issuer of employer securities.* (1) The notice required by paragraph (a) of this section shall be furnished to the issuer of any employer securities held by the plan and subject to the blackout period. Such notice shall contain the information described in paragraph (b)(1)(i), (ii), (iii) and (vi) of this section and shall be furnished in accordance with the time frames prescribed in paragraph (b)(2) of this section. In the event of a change in the length of the blackout period specified in such notice, the plan administrator shall furnish an updated notice to the issuer in accordance with the

requirements of paragraph (b)(4) of this section.

(2) For purposes of this section, notice to the agent for service of legal process for the issuer shall constitute notice to the issuer, unless the issuer has provided the plan administrator with the name of another person for service of notice, in which case the plan administrator shall furnish notice to such person. Such notice shall be in writing, except that the notice may be in electronic or other form to the extent the person to whom notice must be furnished consents to receive the notice in such form.

(3) If the issuer designates the plan administrator as the person for service of notice pursuant to paragraph (c)(2) of this section, the issuer shall be deemed to have been furnished notice on the same date as notice is furnished to affected participants and beneficiaries pursuant to paragraph (b) of this section.

(d) *Definitions.* For purposes of this section—

(1) *Blackout period*—

(i) *General.* The term “blackout period” means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than three consecutive business days.

(ii) *Exclusions.* The term “blackout period” does not include a suspension, limitation, or restriction—

(A) Which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934);

(B) Which is a regularly scheduled suspension, limitation, or restriction under the plan (or change thereto), provided that such suspension, limitation or restriction (or change) has been disclosed to affected plan participants and beneficiaries through the summary plan description, a summary of material modifications, materials describing specific investment alternatives under the plan and limits thereon or any changes thereto, participation or enrollment forms, or any other documents and instruments pursuant to which the plan is established or operated that have been furnished to such participants and beneficiaries;

(C) Which occurs by reason of a qualified domestic relations order or by

reason of a pending determination (by the plan administrator, by a court of competent jurisdiction or otherwise) whether a domestic relations order filed (or reasonably anticipated to be filed) with the plan is a qualified order within the meaning of section 206(d)(3)(B)(i) of the Act; or

(D) Which occurs by reason of an act or a failure to act on the part of an individual participant or by reason of an action or claim by a party unrelated to the plan involving the account of an individual participant.

(2) *Individual account plan.* The term “individual account plan” shall have the meaning provided such term in section 3(34) of the Act, except that such term shall not include a “one-participant retirement plan” within the meaning of paragraph (d)(3) of this section.

(3) *One-participant retirement plan.* The term “one-participant retirement plan” means a one-participant retirement plan as defined in section 101(i)(8)(B) of the Act.

(4) *Issuer.* The term “issuer” means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(5) *Calendar week.* For purposes of paragraph (b)(1)(iii)(B), the term “calendar week” means a seven day period beginning on Sunday and ending on Saturday.

(e) *Model notice*—(1) *General.* The model notice set forth in paragraph (e)(2) of this section is intended to assist plan administrators in discharging their notice obligations under this section. Use of the model notice is not mandatory. However, a notice that uses the statements provided in paragraphs 4. and 5.(A) of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) and (b)(1)(v)(A), respectively, of this section. With regard to all other information required by paragraph (b)(1) of this section, compliance with the notice content requirements will depend on the facts and circumstances pertaining to the particular blackout period and plan.

(2) *Form and content of model notice.*