

only upon an issuer's receipt of notice from the pension plan administrator.¹⁶³ Otherwise, an issuer might learn of an impending blackout period, but not have the necessary information to satisfy the notice requirement. In addition, this commenter noted that requiring a Form 8-K to be filed before an issuer is prepared to communicate with plan participants and beneficiaries about an impending blackout period could result in significant confusion for the participants and beneficiaries and recommended that the issuer be permitted to give notice to the Commission only after it is prepared to give meaningful notice to plan participants and beneficiaries.

As previously discussed, we believe that, to the extent practicable, the required notice under Section 306(a)(6) should be coordinated with the required notice to plan participants and beneficiaries and the issuer under the DOL Rules. Consequently, the instructions to Form 8-K have been revised to provide that the notice to the Commission on Form 8-K must be filed on the same day notice is transmitted to directors and executive officers.¹⁶⁴ This requirement will ensure that, in most situations, an issuer will provide notice of an impending blackout period to its directors and executive officers and to the Commission within five days following receipt of notice of the blackout from the pension plan administrator required by the DOL Rules.

New Rule 104(b)(3)(ii) of Regulation BTR¹⁶⁵ provides that a foreign private issuer subject to Section 306(a) must file as an exhibit to its annual report on Form 20-F or 40-F a copy of each notice provided to directors and executive officers pursuant to Section 306(a)(6) and new Exchange Act Rule 104 during the most recently completed fiscal year, unless the notice previously was provided to the Commission in a report on Form 6-K.¹⁶⁶ A foreign private issuer may make the required disclosure sooner under cover of Form 6-K, and we encourage foreign private issuers to do so.

We proposed to subject registered investment companies to Form 8-K requirements for the sole purpose of meeting their filing obligations under Regulation BTR. Two commenters objected to that proposal, suggesting instead alternative means of providing disclosure about blackout periods.¹⁶⁷

However, because we believe that registered investment companies should be subject to the same filing obligations as other issuers in the infrequent instances where the Form 8-K filing requirement would be triggered,¹⁶⁸ we do not believe it is appropriate to create a filing requirement for registered investment companies that is different from that applicable to other issuers under Regulation BTR. Accordingly, we are adopting the Form 8-K requirement for registered investment companies as proposed.¹⁶⁹

(d) Transition Period.

Section 306(a) of the Act takes effect on January 26, 2003. Consequently, for purposes of Regulation BTR, the notice requirement of Section 306(a)(6) of the Act applies to blackout periods commencing on or after January 26, 2003.

For blackout periods commencing between January 26, 2003 and February 25, 2003 (the date 30 days after the effective date of Section 306(a)), issuers should furnish notice to directors and executive officers as soon as reasonably practicable. This approach is intended to ensure that the statutorily-required notice is provided with respect to blackout periods that commence before February 26, 2003. In no event, however, is notice required for a blackout period that commenced before January 26, 2003 and remains in effect on that date.

In the case of notice to the Commission, new Rules 104(b)(3)(i) and (iii) of Regulation BTR are effective 60 days after publication in the **Federal Register** to allow time for the addition of new Form 8-K Item 11 to the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In the interim, an issuer may provide the required notice to the Commission by disclosing the information described in Item 11 under Item 5 of Form 10-Q¹⁷⁰ or 10-QSB,¹⁷¹ "Other Information," in the first quarterly report filed by the issuer after commencement of the blackout period.

III. Paperwork Reduction Act

The new rules and rule and form amendments contain new and affect existing "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995

("PRA").¹⁷² The title for the new collection of information is "Regulation BTR." The titles for the collections of information affected by the amendments are "Form 20-F" (OMB Control No. 3235-0288), "Form 40-F" (OMB Control Number 3235-0381) and "Form 8-K" (OMB Control No. 3235-0060). We estimated that preparation and distribution of the notice to directors and executive officers under the new rules would require approximately 2,357 hours and cost approximately \$253,075 annually. We also estimated that preparation of current reports on Form 8-K to provide the required notice to the Commission would require approximately 2,490 hours and cost approximately \$336,000 annually. The inclusion of the required information in annual reports on Form 20-F was estimated to require approximately 249 hours and cost approximately \$33,625 annually, and the inclusion of the required information in annual reports on Form 40-F was estimated to require approximately 28 hours and cost approximately \$3,735 annually.

We published a notice requesting comments on the collection of information requirements and submitted requests to the Office of Management and Budget ("OMB") for approval of the new collection and changes to the existing collections in accordance with the PRA.¹⁷³ These requests are pending before the OMB. We did not receive any comments on the PRA analysis contained in the proposing release. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

New Regulation BTR clarifies the application and prevents evasion of Section 306(a) of the Sarbanes-Oxley Act. Section 306(a) prohibits the directors and executive officers of an issuer from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director's or executive officer's service or employment as a director or executive officer. Section 306(a) also requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the commencement of a blackout period. Regulation BTR specifies the content

¹⁶³ See the ACB Letter.

¹⁶⁴ See revised Instruction B.1 to Form 8-K.

¹⁶⁵ 17 CFR 245.104(b)(3)(iii).

¹⁶⁶ 17 CFR 249.306.

¹⁶⁷ See the ICI Letter and the PWC Letter.

¹⁶⁸ For a discussion of the application of Regulation BTR to registered investment companies, see the Proposing Release at Section II.B.1.d.

¹⁶⁹ See amended Exchange Act Rules 13a-11(b) and 15d-11(b) [17 CFR 240.13a-11(b) and 240.15d-11(b)].

¹⁷⁰ 17 CFR 249.308a.

¹⁷¹ 17 CFR 249.308b.

¹⁷² 44 U.S.C. 3501 *et seq.*

¹⁷³ 44 U.S.C. 3507(d) and 5 CFR 1320.11.