

and timing of this notice. Compliance with the new rules will be mandatory. The information required by the new rules will not be kept confidential.

#### IV. Cost-Benefit Analysis

Section 306(a) of the Act prohibits directors and executive officers of an issuer from 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 security transactions, if the equity security was acquired by the director or executive officer in connection with his or her service or employment as a director or executive officer. In addition, Section 306(a) requires an issuer to provide timely notice to its directors and executive officers, and to the Commission, of the imposition of a pension plan blackout period. The statute is intended to restrict the ability of corporate insiders to trade in the equity securities of an issuer at a time when a substantial portion of the issuer's employees are unable to engage in transactions involving equity securities of the issuer through their individual pension plan accounts.

The new rules clarify the application of Section 306(a) and prevent evasion of its statutory trading prohibition. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of the new rules that specify the content and timing of the notice that issuers are required to provide to their directors and executive officers and that mandate the required notice to the Commission to be provided on a Form 8-K or, in the case of foreign private issuers, in their annual reports on Form 20-F or 40-F. We discuss these costs and benefits below.

##### A. Benefits

Section 306(a) and the new rules have several important benefits. By restricting the ability of directors and executive officers to trade in an issuer's equity securities when plan participants are unable to do so, the new rules mitigate the differential opportunities between plan participants and beneficiaries and the directors and executive officers of the issuer with respect to such securities.

The content requirements for the notice contemplated by Section 306(a) will help ensure that directors and executive officers of an issuer have all relevant information about an impending blackout period. This will facilitate their compliance with the

statutory trading prohibition. In addition, requiring that notice to the Commission be provided on Form 8-K or, in the case of a foreign private issuer, on Form 20-F or 40-F, will help ensure that an issuer's security holders have notice of an impending blackout period. In turn, this will enable security holders to monitor compliance with the statutory trading prohibition of Section 306(a). These benefits are difficult to quantify.

##### B. Costs

The costs associated with the new rules are attributable primarily to the statutory requirement to prepare and distribute advance notice of the imposition of a blackout period to directors and executive officers and to the Commission. For purposes of the Paperwork Reduction Act, we estimated the aggregate costs for issuers required to provide this notice to be approximately \$625,000 per year and the related burden to be approximately 5,125 hours.<sup>174</sup>

While compliance with Section 306(a)'s trading prohibition is the personal obligation of an issuer's directors and executive officers, it is likely that issuers will incur costs in assisting these individuals in observing the statutory trading prohibition. Accordingly, issuers may incur costs associated with assisting their directors and executive officers in determining whether transactions in equity securities of the issuer are exempt from the statutory trading prohibition and in identifying and tracking the equity securities that are subject to the trading prohibition. These costs are difficult to quantify, but are all imposed by the statute.

We believe that many U.S. issuers already maintain internal procedures for assisting their directors' and officers' compliance with the provisions of Section 16 of the Exchange Act and preventing violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. It is likely that these issuers will enhance these internal procedures to address the trading prohibition of Section 306(a) and new Regulation BTR. Some issuers may need to institute

<sup>174</sup> We estimate that these burden hours will result in an aggregate cost of approximately \$692,000 per year. This estimate is based on an estimated hourly rate of \$100.00 to determine the estimated cost to issuers of having their employees handle the notice and filing requirements imposed by Section 306(a) of the Act and Regulation BTR. We arrived at this hourly rate estimate after consulting with several issuers and persons who assist issuers in filing reports with the Commission. We then multiplied this hourly rate by a factor of 1.35 to reflect appropriate overhead charges. 5,125 hours x \$135.00 per hour = \$691,875.

appropriate internal procedures. Other issuers may need to modify existing procedures. Because the scope and sophistication of these internal procedures are likely to vary among issuers, it is difficult to provide an accurate estimate of the incremental cost of enhancing existing systems. Because we did not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal insider trading procedures, we sought comments and supporting data on these costs. We did not receive any comments in response to our request.

Section 306(a) also imposes costs on directors and executive officers that are subject to Section 306(a)'s trading prohibition. Restrictions on trading activities increase the financial exposure to directors and executive officers during blackout periods and reduce their financial flexibility. This may result in losses in their portfolios or reduced profits. To some extent, these restrictions may tend to discourage some individuals from serving as directors or executive officers. They also could discourage some directors and executive officers from investing in the equity securities of the companies they serve or discourage some issuers from requiring minimum equity security ownership requirements (which could, in turn, disconnect the interests of directors and executive officers from those of security holders).

In addition, because many directors and executive officers of issuers that are subject to the reporting requirements of the Exchange Act are already subject to restrictions on their trading activities, such as the "short-swing" profits recovery provision of Section 16(b) of the Exchange Act, the introduction of an additional trading restriction to this existing framework may, in some instances, limit the ability of a director or executive officer to trade for significant periods. This also may result in losses in their portfolios or reduced profits. These costs are difficult to quantify, but may be mitigated somewhat by the timely notice required by Section 306(a).

#### V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.<sup>175</sup> The FRFA pertains to new rules that we are adopting to clarify the application of Section 306(a) of the Act and to prevent evasion of its statutory trading prohibition. The new rules also specify the content and timing of notice that issuers are required to

<sup>175</sup> 5 U.S.C. 603.