

temporarily suspended. We do not currently believe that an exemption is necessary (since the cost of compliance is low) or appropriate (since Congress did not indicate that there should be different treatment for small businesses). While we solicited comment as to whether small business issuers should be excluded from the proposed rules, we did not receive any comments in response to our request. We also sought comment on the scope of the proposed disclosure, the cost of preparing it and whether the obligation can be simplified or clarified. We did not receive any comments in response to our request.

VI. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act ¹⁸¹ requires us to consider the impact that any rule that we adopt will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The new rules clarify the application and prevent evasion of Section 306(a) of the Act. Section 306(a) prohibits the 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 issuer 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, under Section 306(a) an issuer is required to provide timely notice to its directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The new rules further the Section 306(a)'s purpose of mitigating the differential opportunities between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. The statute may have a slight impact on competition by placing restrictions on the ability of directors and executive officers of some issuers with pension plans to trade that are not placed on other issuers, although we believe it to be necessary and

appropriate in furtherance of the purposes of the Act. Issuers will incur some costs in complying with the new rules. These costs will include preparing the required notice with the information specified in the new rules and providing notice to the Commission on a current report on Form 8-K or, in the case of a foreign private issuer, on Form 20-F or 40-F. We requested comment on whether the proposed rules, if adopted, would impose a burden on competition. We did not receive any comments in response to our request.

VII. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act ¹⁸² requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The new rules clarify the application and prevent evasion of Section 306(a) of the Act. Section 306(a) 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 issuer equity security transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, Section 306(a) requires issuers to provide timely notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The new rules further Section 306(a)'s purpose of mitigating the differential opportunities between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. The statute may have a slight impact on competition, including some burden on the efficiency of the market on an issuer's equity securities during a pension plan blackout period, although we believe it to be necessary and appropriate in furtherance of the purposes of the Act. The statute imposes this burden. We are not aware of any impact on capital formation that will result from the new

rules. Issuers will incur some costs in complying with the new rules. These costs will include preparing the required notice to include the information specified in the new rules and providing notice to the Commission on a current report on Form 8-K or, in the case of a foreign private issuer, on Form 20-F or 40-F. We requested comment on whether the proposed rules, if adopted, would impose a burden on competition. We did not receive any comments in response to our request.

VIII. Effective Date

The new rules are effective on January 26, 2003. The Administrative Procedure Act, or APA, generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.¹⁸³ This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.¹⁸⁴ The Commission believes that it is appropriate to waive advance publication of new Regulation BTR and the related rule and form amendments. Section 306(a) of the Act becomes effective on January 26, 2003. Congress has directed the Commission to clarify the operation of Section 306(a) by rule.¹⁸⁵ Our rules were coordinated with, and are dependent upon rules issued by the Department of Labor before January 26, 2003. It is impracticable to satisfy the advance publication requirement of the APA within the statutory deadline. It would be unnecessary and against the public interest to delay effectiveness of the new rules to satisfy this administrative requirement. Accordingly, the Commission finds good cause to make the new Regulation BTR, and the amendments to related rules and forms, effective on January 26, 2003.

IX. Statutory Authority

The rules contained in this release are being adopted under the authority set forth in Sections 3, 13, 23(a) and 36 of the Exchange Act, Sections 30 and 38 of the Investment Company Act and Sections 3(a) and 306(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 240, 245 and 249

Reporting and recordkeeping requirements, Securities.

Text of Final Rules and Forms

In accordance with the foregoing, Title 17, Chapter II, of the Code of

¹⁸¹ 15 U.S.C. 78w(a)(2).

¹⁸² 15 U.S.C. 78c(f).

¹⁸³ See 5 U.S.C. 553(d).

¹⁸⁴ *Id.*

¹⁸⁵ See Section 306(a)(3) of the Act.