



Office of the General Counsel

B-276290

March 11, 1997

The Honorable Alfonse M. D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Securities and Exchange Commission: Revision of Holding Period
Requirements in Rules 144 and 145

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled "Revision of Holding Period Requirements in Rules 144 and 145" (RIN: 3235-AG53). We received the rule on February 21, 1997. It was published in the Federal Register as a final rule on February 28, 1997. 62 Fed. Reg. 9242.

The final rule amends the holding period requirements contained in Rule 144 to permit the resale of limited amounts of restricted securities by any person after a 1-year, rather than a 2-year, holding period. Also, the amendments permit unlimited resales of restricted securities held by non-affiliates of the issuer after a holding period of 2 years, rather than 3 years. The Commission believes that these changes should reduce the cost of capital, particularly for small business issuers. Parallel changes to the holding period provisions of Rule 145, which governs the resale of securities received in connection with reclassifications, mergers, consolidations and asset transfers, are also being made.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is Jean Gleason Stromberg, Director, Financial Institutions and Markets Issues. Ms. Stromberg can be reached at (202) 512-8678.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz
Secretary
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"REVISION OF HOLDING PERIOD REQUIREMENTS IN RULES 144 AND 145"
(RIN: 3235-AG53)

(i) Cost-benefit analysis

While not required to prepare a cost-benefit analysis, the Commission reports that the comments it received support the Commission's belief that the final rule will reduce compliance burdens and costs without a significant impact on investor protection. In addition, the Commission believes the final rule will promote market efficiency, investment and capital formation by reducing the liquidity costs of holding restricted securities and reducing issuers' cost of raising capital through the sale of restricted securities.

The actual amount by which the volume of restricted shares privately placed and resales of restricted securities will increase cannot be reliably predicted but will depend on the response of investors and issuers to the shortened holding period requirements. However, if the annual volume of resales reported increase by as little as 1 percent per year, the dollar increase would exceed \$100,000,000.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

The Commission prepared an initial regulatory flexibility analysis, which was summarized in the preamble to the proposed rule, and a final regulatory flexibility analysis, which is printed in its entirety in the preamble to the final rule.

Both analyses contain the information required by the act including the classes of small entities subject to the rule and alternatives considered to reduce the burden on small entities.

The final analysis concludes that the final rule will have a significant effect on a substantial number of small entities and that the effect will be beneficial for small entities which often sell securities in private placements by reducing the costs of capital formation. The Commission is aware of 1,019 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 157.

The Commission points out that the final rule was recommended by participants in the annual SEC Government-Business Forum on Small Business Capital Formation.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule, promulgated by an independent regulatory agency, is not subject to title II of the act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published in the Federal Register on July 10, 1995. 60 Fed. Reg. 35645. The Commission received comments in response to the proposed rulemaking which are discussed in the preamble to the final rule. At the suggestion of certain commenters, the Commission made parallel changes in Rule 145.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not impose information collection requirements subject to the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority of sections 2(11), 4(1), and 19(a) of the Securities Act, 15 U.S.C. §§ 77b(11), 77d(1), and 77s(a).

Executive Order No. 12866

As an independent regulatory agency, the Securities and Exchange Commission is not subject to the review provisions of Executive Order No. 12866.