



B-284106

November 19, 1999

The Honorable Phil Gramm
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: Regulation of Takeovers and Security Holder Communications

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, entitled "Regulation of Takeovers and Security Holder Communications" (RIN: 3235-AG84). We received the rule on October 26, 1999. It was published in the Federal Register as a final rule on November 10, 1999. 64 Fed. Reg. 61408.

The final rule revises the regulations applicable to takeover transactions (including tender offers, mergers, acquisitions, and similar extraordinary transactions) to permit significantly more communications before the time a mandated disclosure document must be publicly filed with the SEC. In addition, the rule balances the treatment of cash and stock tender offers, simplifies and centralizes current disclosure requirements, and eliminates existing regulatory inconsistencies in merger and tender offers.

Enclosed is our assessment of the SEC'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 SEC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Margaret H. McFarland
Deputy 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
"REGULATION OF TAKEOVERS AND
SECURITY HOLDER COMMUNICATIONS"
(RIN: 3235-AG84)

(i) Cost-benefit analysis

Although the SEC is not required to prepare a formal cost-benefit analysis, it is required to consider the effects of the rule on competition under Section 23(a) of the Exchange Act and whether the rule will promote efficiency, competition, and capital formation under the National Securities Markets Improvement Act of 1996.

The SEC expects that the cost of compliance with the applicable rules and regulations will decrease as a result of these amendments since the revisions update and simplify the rules applicable to these types of transactions and mergers.

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

The Notice of Proposed Rulemaking contained the Initial Regulatory Flexibility Analysis and the preamble to the final rule contains the Final Regulatory Flexibility Analysis. Both analyses comply with the requirements of the Act by describing the reasons for the action, the description and number of small entities affected, and the reporting and recordkeeping requirements.

In discussing the alternatives considered, the SEC notes that since the rule is deregulatory in nature, if it had waived or eased the rule's application to small entities, the burden would have been greater than by applying the final rule to all entities, regardless of size.

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

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(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 issued using the notice and comment procedures contained in 5 U.S.C. 553.

On November 3, 1998, the SEC published in the Federal Register a Notice of Proposed Rulemaking. 63 Fed. Reg. 67331. In the preamble to the final rule, the SEC responds to the comments it received.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The preamble contains the information required by the Act including the reasons for the collections and estimates of the annual burden hours imposed. The preamble contains a chart showing these burden hours which, for the eight collections, total 237,717 hours. The collections have been approved by OMB and the OMB control numbers are listed in the preamble.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 2(3), 5, 7, 8, 10, 12, 19, and 28 of the Securities Act of 1933, as amended, and sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24, and 36 of the Securities Act of 1934, as amended.

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of Executive Order No. 12866.