

GAO

Report to the Chairman, Subcommittee  
on Oversight and Investigations,  
Committee on Energy and Commerce,  
House of Representatives

August 1993

SECURITIES AND  
EXCHANGE  
COMMISSION

Delays in Processing  
Time-Sensitive Stock  
Filings



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United States  
General Accounting Office  
Washington, D.C. 20548

General Government Division

B-254128

August 18, 1993

The Honorable John D. Dingell  
Chairman, Subcommittee on Oversight  
and Investigations  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review the Securities and Exchange Commission's (SEC) processing of time-sensitive securities market information. Time-sensitive information is required by law<sup>1</sup> to be filed with SEC when individuals and firms make certain securities transactions, such as acquiring more than 5 percent of a company's stock or making an offer to acquire a controlling interest in a company. The information filed is time-sensitive because it can have immediate effects on the price of a company's stock. You expressed concern that delays in processing these time-sensitive filings could preclude investors and financial markets from receiving full, fair, and timely disclosure of securities market information. As a result, you asked that we determine if delays are occurring in the processing of these filings, particularly when they are processed through SEC's mail room.

To determine whether delays occurred in processing filings, we examined SEC's processing procedures for filings concerning stock ownership changes and potential takeovers. We reviewed all of those filings that were received by SEC during the first quarter of 1993. We also interviewed SEC staff responsible for processing time-sensitive filings and observed the operations of the mail room and the Document Control Unit, which is responsible for distributing filings to the public. Appendix I contains the details of our objectives, scope, and methodology.

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## Results in Brief

SEC's goal is to disclose time-sensitive securities market information to the public within 1 hour of receipt. During the first quarter of 1993, however, SEC took 2 business days or more to disclose 16 percent of the filings it received on changes in stock ownership. Nearly all of these delays, about 97 percent, occurred when documents were mailed to SEC and processed through SEC's mail room. SEC's mail room personnel had little understanding of the time-sensitive nature of these filings and generally

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<sup>1</sup>Williams Act, Pub. L. No. 90-439, 82 Stat. 454 (1968) (Codified as amended in 15 U.S.C. Sections 13-14)(amended 1970).

handled the filings in the same manner as all other mail. The guidance they received did not provide for timely delivery of the filings for release to the public. As a result, public investors did not always get timely access to the securities market information they may have needed to make informed investment decisions. In concordance with our suggestion, SEC has changed its mail room procedures to improve handling of time-sensitive information but may want to consider additional alternatives.

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## Background

The Securities Exchange Act of 1934 requires securities information disclosure to ensure that investors have access to complete and accurate information about issuers whose securities are publicly traded on organized secondary markets.<sup>2</sup> In 1968, Congress passed the Williams Act (amended in 1970), which amended the Exchange Act to require that investors who intend to acquire control of a public corporation disclose information to SEC and the corporation's stockholders regarding their background and intentions.

The Williams Act requires disclosure of transactions that may lead to a change in corporate control, including formal tender offers.<sup>3</sup> First, under section 13(d), any person who acquires ownership of more than 5 percent of outstanding equity securities of a public company must file a disclosure statement within 10 days after that acquisition fully describing the background of the purchaser, the purpose of the acquisition, and specified plans or proposals with respect to the issuer. Second, under section 14(d), any person making a tender offer must disclose similar information at the time the tender offer is made. Section 14(d) also requires the person making the offer to provide procedural protections to stockholders.

SEC's Division of Corporation Finance is responsible for reviewing the adequacy of information disclosure for the filings required by the two sections of the Exchange Act, which SEC calls schedule 13D and 14D filings. Officials from this division described these filings as "potentially the most market sensitive category of information that SEC receives" because of the filings' potential to change stock prices. Investors who are required to submit these time-sensitive filings to SEC, according to an SEC official, normally do so on the last day of the allotted filing period because

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<sup>2</sup>Securities Regulation: Background and Selected Statistics on the SEC's Full Disclosure Program (GAO/GGD-86-87FS, July 10, 1986).

<sup>3</sup>The Williams Act does not define the term "tender offer." The term is commonly used in the market to refer to a public solicitation or offer to acquire anywhere from 1- to 100-percent ownership of a registered stock.

they do not want public disclosure of any takeovers or attempts at takeovers to be known until the last possible moment.

SEC received time-sensitive filings in two ways: (1) by messenger or courier delivery directly to its Document Control Unit and (2) by mail through its mail room to the Document Control Unit. An SEC official said that SEC received over 8,100 13D and 14D filings in 1992.

## Delays in Mail Room's Processing of Time-Sensitive Filings

In response to statutory requirements for timely disclosure of market information, and public demand for information contained in 13D and 14D filings, SEC's Document Control Unit's goal is to make copies of these filings available to the public within 1 hour of receipt. Filings are not time stamped; they are only date stamped when they are received by the mail room or SEC's Document Control Unit. In addition, filings received by SEC 1 hour before the close of business or on nonbusiness days are processed the next business day. Therefore, we could not identify filings that were processed within 1 hour of receipt. We considered all filings processed the same day or the next day as being processed in 1 business day.

For the filings we reviewed, SEC almost always disclosed the information within 1 business day when messengers or couriers brought the filings directly to the Document Control Unit. This was not always the case when filings were mailed and processed through SEC's mail room. As shown in table 1, SEC took 2 business days or more to process about 16 percent (379 filings) of all 13D and 14D filings received during the first quarter of 1993. All of the filings that took 2 business days or more were 13D filings. SEC officials told us that, generally, about 85 percent of 13D filings are delivered directly to the Document Control Unit, while 15 percent are received through the mail room. SEC officials also said that messengers or couriers usually deliver 14D filings directly to the Document Control Unit, thereby avoiding mail room processing.

**Table 1: SEC's Processing of 13D and 14D Filings During the First Quarter of 1993**

Time it took SEC to make filings public (In business days)	Number of 13D and 14D filings received by SEC during the first quarter of 1993			
	13D	14D	Total	Percent
Same day	1,656	82	<b>1,738</b>	73
1 day <sup>a</sup>	269	2	<b>271</b>	11
2 days or more <sup>b</sup>	379 <sup>c</sup>	0	<b>379</b>	16
<b>Total</b>	<b>2,304</b>	<b>84</b>	<b>2,388</b>	<b>100</b>

<sup>a</sup>Filings received by SEC's Document Control Unit after 4 p.m. or on nonbusiness days are processed the next business day, according to SEC officials.

<sup>b</sup>Delays in making 13D filings available to the public generally ranged from 2 to 6 business days. One took 19 business days.

<sup>c</sup>One of the 13D filing documents included in our review contained 235 separate filings by one company. Although SEC received these filings on a single document, each individual filing had to be entered into SEC's reporting system and disclosed individually.

Source: GAO analysis of SEC data.

Of the 379 filings that took 2 business days or more, SEC's mail room received and processed about 97 percent (368 filings). The Document Control Unit directly received and processed the other 3 percent (11 filings). These 11 filings represented less than 1 percent of the total filings received during this period, and we did not attempt to determine the reasons for their processing delays.

Our visits to the mail room showed why filings sometimes take longer than 1 business day to process. During one visit, we observed that mail room personnel had not yet processed the mail that was received 2 business days before our visit. During other visits, we found that mail room personnel were delivering time-sensitive filings to the Document Control Unit between 2 and 3 business days after the date of receipt. SEC officials told us that they cannot control the volume of mail that comes each day to the mail room, and they sometimes can be overwhelmed when large volumes are delivered on the same day.

## Inadequate Guidance for Processing Time-Sensitive Filings Had Been Provided to SEC's Mail Room Employees

According to management officials in SEC's Document Control and mail room units, when 13D or 14D filings are identified by mail room personnel, the filings are to be (1) stamped with the date received by SEC, (2) separated from other mail, and (3) hand-carried frequently to the Document Control Unit. Although these procedures were in writing for the Document Control Unit personnel, at the time of our visits, SEC's mail room personnel had no written instructions or procedures for processing 13D, 14D, and other time-sensitive filings. SEC officials told us, however, that they often provided verbal guidance on procedures to mail room employees.

During our visits, five of the six mail clerks<sup>4</sup> responsible for processing 13D and 14D filings told us they had received verbal guidance to separate the filings from other mail. Three clerks said that 13D and 14D filings were to be delivered twice a day to the Document Control Unit, one said they were to be delivered three to five times a day, and the other clerk did not know when they were to be delivered. The four clerks who had received guidance on delivery said that deliveries were based on their judgment that a cart used to separate these filings from other mail was full enough to warrant a delivery. The five mail clerks said that they had not been made aware of the time-sensitive nature of these filings or that these filings were to be delivered separately and frequently to the Document Control Unit. We observed during four site inspections of the mail delivery to SEC's Document Control Unit that time-sensitive filings were being delivered intermingled with other mail going to the Document Control Unit twice a day.

## SEC Has Taken Action to Improve the Processing of Time-Sensitive Filings

As a result of our review and discussions with them, SEC officials told us they have taken action to improve the timeliness of the mail room's processing of time-sensitive filings. SEC has

- developed written procedures for processing time-sensitive filings, including providing specific guidance for separating the filings from other mail and delivering them frequently to SEC's Document Control Unit;
- provided mail room personnel with copies of the newly developed written procedures and posted the written guidance in the work areas of mail room employees as a constant reminder; and

<sup>4</sup>At the request of the mail room foreman, we did not interview the remaining mail clerk for personal reasons.

- assigned a new assistant branch chief, who trained current mail room employees and who will be responsible for promptly and properly training new mail room employees in the processing of time-sensitive filings.

SEC officials said that mail room personnel are now delivering time-sensitive filings to a special area in the Document Control Unit at least four or five times a day. Also, SEC officials said that starting October 1, 1993, the mail room will remain open until midnight, Monday through Friday. SEC officials said that the mail room will continue to be staffed from 7 a.m. to 3:30 p.m. on Saturdays and Sundays and closed on all federal holidays. SEC officials said this change should increase the capability of the mail room staff to better cope with inconsistent mail volumes.

SEC officials said that these changes should improve mail room operations but may not solve all the problems with large volume deliveries or inconsistent staff performance. They said the ultimate solution is electronic filing through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) System, which is intended to automate the filing, analysis, and dissemination of information filed with SEC by entities seeking to raise capital.<sup>5</sup> SEC officials said that when this system is fully implemented, they will require mandatory electronic filing of all Williams Act information. SEC officials said that EDGAR filings are being phased in over a 3-year period, with the first two groups of mandatory filers phased in April 1993 and July 1993. EDGAR will be fully implemented by May 1996, according to SEC officials.

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## Conclusions

Time-sensitive filings should be made available to the public as soon as possible but certainly not longer than 1 business day after SEC receives them. The changes we suggested—and SEC has made to its mail room operations—should help SEC better achieve this goal and its more ambitious goal to make filings public within 1 hour of receipt. Once EDGAR is successfully implemented, time-sensitive filings should be available almost instantaneously. Until then, to address large mail volumes or inconsistent mail room staff performances that may occur, SEC officials may want to consider additional alternatives.

One alternative would be to require all time-sensitive filings to be delivered directly by the filer to SEC's Document Control Unit. While this

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<sup>5</sup>Securities and Exchange Commission: Effective Development of the EDGAR System Requires Top Management Attention (GAO/IMTEC-92-85, Sept. 30, 1992).

may achieve better timeliness, it also would cause additional costs to some filers. Another alternative would be to establish a separate mailing location for time-sensitive filings, such as a post office box. This separate location could help ensure that SEC's Document Control Unit receives the filings directly instead of in the general mail delivery. Thus, timeliness could be improved at no additional cost to the filers.

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## Recommendation to the Chairman of SEC

If the volume of mail received in the mail room and mail room personnel performance problems continue to delay time-sensitive filings longer than 1 business day, we recommend that the Chairman of SEC consider implementing a separate post office box or some other appropriate alternative to ensure that the public receives timely disclosure of sensitive securities market information.

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## Agency Comments

SEC officials reviewed a draft of this report and generally agreed with the information presented. We incorporated their clarifications and comments where appropriate.

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We are providing copies of this report to the Chairman of SEC and other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix II. Please contact me at (202) 512-8678 if you have any questions concerning this report.

Sincerely yours,



James L. Bothwell  
Director, Financial Institutions  
and Markets Issues

# Objectives, Scope, and Methodology

As agreed with the Subcommittee, we reviewed SEC's procedures for processing time-sensitive filings. We also determined whether delays occurred and whether improvements were needed in the processing of these filings, particularly when they are processed through SEC's mail room.

Also, as agreed, we limited the scope of our review to 13D and 14D filings and focused on SEC's policies and procedures for processing them. We interviewed (1) officials in SEC's Document Control Unit, which is responsible for processing and distributing to the public 13D, 14D, and other filings forwarded to SEC; (2) officials in SEC's Division of Corporation Finance, which is responsible for reviewing these filings for compliance with regulatory provisions concerning the disclosure of market information; and (3) SEC mail room officials and personnel who were responsible for forwarding 13D, 14D, and other filings to SEC's Document Control Unit.

To evaluate the adequacy of SEC's procedures for processing 13D and 14D filings, we observed the mail room operations and on four occasions did on-site inspections of the delivery of filings from SEC's mail room to its Document Control Unit. During these inspections, we reviewed all mail being delivered from SEC's mail room to its Document Control Unit to evaluate timeliness and processing procedures. In addition, for all 13D and 14D filings SEC received between January 1, 1993, and March 31, 1993, we determined how many days it took SEC to disclose the filings to the public after receiving them. We reviewed documentation provided by SEC from a Williams Act filings database that SEC uses to record public disclosure of 13D and 14D filings. We compared the dates the filings were received with the dates the filings were entered into SEC's public disclosure system.

We did not have enough information to evaluate SEC's goal to make 13D and 14D filings available to the public within 1 hour of receipt. Filings are only date stamped, not time stamped, when they are received by the mail room or SEC's Document Control Unit. In addition, filings received by SEC 1 hour before the close of business or on nonbusiness days are processed the next business day. We could not identify which filings were received at these times, so we considered all filings processed on the same day or the next day as being processed in 1 business day. For those filings that took longer than 1 business day to be made available to the public, we reviewed the actual filing document to determine whether the document was received directly by SEC's Document Control Unit or sent to SEC's mail room. We did not attempt to determine the reasons for processing delays

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**Appendix I**  
**Objectives, Scope, and Methodology**

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in the Document Control Unit because those filings that had been delayed represented less than 1 percent of the total 13D and 14D filings received by SEC during the first quarter of 1993.

We conducted our review from February through June 1993 at SEC's headquarters in Washington, D.C., and at the SEC Operations Center in Alexandria, VA, in accordance with generally accepted government auditing standards.

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# Major Contributors to This Report

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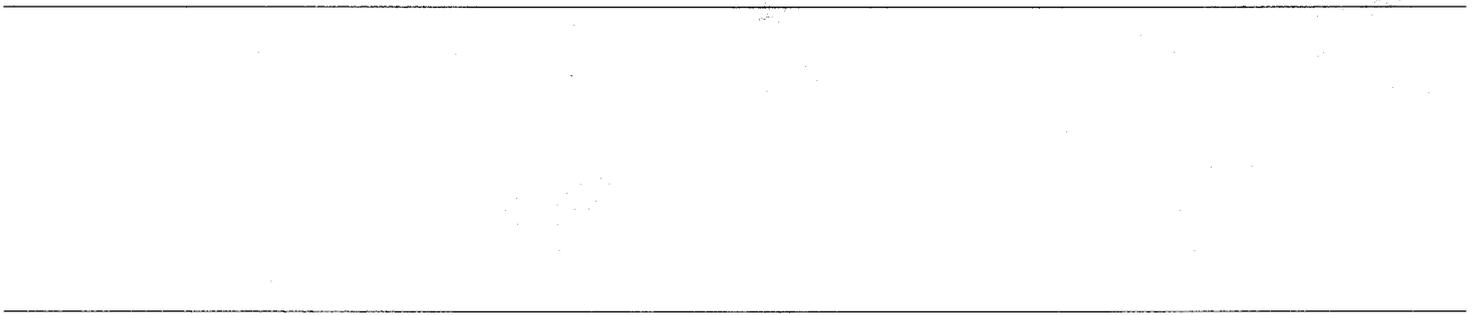
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