



441 G St. N.W.  
Washington, DC 20548

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January 10, 2023

Committee on Banking, Housing, and Urban Affairs  
United States Senate

Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Insider Trading Arrangements and Related Disclosures*

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 (SEC) entitled “Insider Trading Arrangements and Related Disclosures” (RIN: 3235-AM86). We received the rule on December 14, 2022. It was published in the *Federal Register* as a final rule on December 29, 2022. 87 Fed. Reg. 80362. The effective date is February 27, 2023.

SEC states that the final rule amends an existing rule under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, which provides affirmative defenses to trading on the basis of material nonpublic information in insider trading cases. According to SEC, the amendments provided by the final rule add new conditions designed to address concerns about abuse of the rule to trade securities opportunistically on the basis of material nonpublic information in ways that harm investors and undermine the integrity of the securities markets. SEC also states that the final rule adopts new disclosure requirements regarding the insider trading policies and procedures of issuers, the adoption and termination (including modification) of plans that are intended to meet the rule’s conditions for establishing an affirmative defense, and certain other similar trading arrangements by directors and officers. In addition, SEC states that the final rule adopts amendments to the disclosure requirements for director and executive compensation regarding equity compensation awards made close in time to the issuer’s disclosure of material nonpublic information. Finally, SEC states that it is adopting amendments to Forms 4 and 5 to require filers to identify transactions made pursuant to a plan intended to meet the rule’s conditions for establishing an affirmative defense, and to require disclosure of bona fide gifts of securities on Form 4.

Enclosed is our assessment of 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. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
“INSIDER TRADING ARRANGEMENTS AND RELATED DISCLOSURES”  
(RIN: 3235-AM86)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. SEC’s analysis included a separate discussion of the rule’s requirements with respect to each of the following topics: (1) amendments to Rule 10b5-1(c)(1); (2) the disclosure of trading arrangements and policies and procedures as required in new item 408 of Regulation S-K, and in the mandatory Rule 10b5-1 checkbox in amended Forms 4 and 5; (3) additional disclosure of the timing of option grants and related company policies and practices; and (4) additional disclosure of insider gifts of stock. With respect to each of the above topics, SEC established a baseline against which changes imposed by the rule could be measured, as well as discussed the rule’s estimated benefits, costs, effects on efficiency, competition, and capital formation, and reasonable alternatives. SEC’s economic analysis also discussed broad economic considerations that SEC considered relevant to this final rule.

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

SEC prepared a Final Regulatory Flexibility Analysis. The analysis included: (1) a statement of the need for and objectives of the rule; (2) a description of significant issues raised by public comments; (3) a description of the small entities subject to the rule; (4) projected reporting, recordkeeping, and other compliance requirements; and (5) a description of agency actions to minimize effects on small entities.

(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, SEC is not subject to the Act.

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

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

On February 15, 2022, SEC published a proposed rule. 87 Fed. Reg. 8686. SEC responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

SEC determined that the final rule contains information collection requirements under the PRA, and it stated that it has submitted these requirements to the Office of Management and Budget (OMB) for review. SEC further stated that the titles of the affected collections of information,

along with the associated paperwork burden effects of the final rule on the affected forms and schedules, are as follows:

- Form 10-K (OMB Control Number 3235-0063) (20 hours and \$13,681,800);
- Form 10-Q (OMB Control Number 3235-0070) (10 hours and \$34,387,500);
- Schedule 14C (OMB Control Number 3235-0057) (10 hours and \$853,500);
- Schedule 14A (OMB Control Number 3235-0059) (10 hours and \$9,553,500);
- Form 4 (OMB Control Number 3235-0287) (0.5 hours and \$0);
- Form 20-F (OMB Control Number 3235-0288) (4 hours and \$1,312,200);
- Form 5 (OMB Control Number 3235-0362) (0 hours and \$0); and
- Rule 10b5-1 (new collection of information) (1.5 hours).

Statutory authorization for the rule

SEC promulgated this final rule pursuant to section 2(c)(2)(E) of title 7; sections 5221(e)(3) and 5461 *et seq.* of title 12; sections 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78a, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-3, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o(d), 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80 a-1, 80a-6(c), 80a-8, 80a-9, 80a-20, 80a-23, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-3, 80b-4, 80b-10, 80b-11, 7201 *et seq.*, and 8302 *et seq.* of title 15; and section 1350 of title 18, United States Code, as well as Public Laws 111-203, 107-204, 112-106, 114-94, and 116-222.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.