



B-284104

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: Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings

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 "Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings" (RIN: 3235-AD97). 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. 61382.

The final rule contains tender offer and Securities Act registration exemptive rules for cross-border tender and exchange offers, business combinations, and rights offerings relating to the securities of foreign companies. The purpose of the exemptions is to facilitate U.S. investor participation in these types of transactions.

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
"CROSS-BORDER TENDER AND EXCHANGE OFFERS,
BUSINESS COMBINATIONS AND RIGHTS OFFERINGS"
(RIN: 3235-AD97)

(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.

In total, the SEC finds that the rule will benefit U.S. security holders by removing regulatory barriers to including such holders in these types of offers.

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

The Initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking and a summary of the Final Regulatory Flexibility Analysis (FRFA) is included in the preamble to the final rule.

Both analyses provide the information required by the Act and include the reasons for the agency action, its objectives, legal basis, and the reporting and recordkeeping requirements. The FRFA discusses the alternatives which were considered and the reasons why certain ones were chosen to reduce the burdens 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, 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 13, 1998, the SEC published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. 63 Fed. Reg. 69136. The SEC received 19 letters of comment in response to the NPRM and discusses the comments in the preamble to the final rule.

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 collections have been approved by OMB and issued OMB control numbers 3235-0518 and 3235-0379.

Statutory authorization for the rule

The final rule is issued pursuant to the authority of sections 3(b), 7, 8, 10, 19, and 28 of the Securities Act, sections 12, 13, 14, 23, and 36 of the Exchange Act, and section 304 of the Trust Indenture Act.

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.