

February 10, 2003

SEC Adopts Rules Regarding Insider Trades During Pension Fund Blackout Periods

The SEC has adopted new Regulation BTR -- Blackout Trading Restriction to clarify and prevent evasion of Section 306(a) of the Sarbanes-Oxley Act (the "Act"). Section 306(a) of the Act expressly prohibits any director or executive officer of an issuer of any equity security from trading in any equity security of the issuer during any pension plan blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer.

Regulation BTR:

- clarifies the operation of the general statutory prohibition on trading by directors and executive officers during a pension plan blackout period and establishes several exceptions to the prohibition;
- describes exceptions to the definition of "blackout period";
- clarifies the operation of the general statutory private remedy for a violation of Section 306(a) of the Act, including a method for calculation of recoverable profits; and
- sets forth the content and delivery requirements of the notice that an issuer must provide to its directors and officers and to the SEC in connection with a blackout period.

Section 306(a) of the Act, by its terms, became effective on January 26, 2003. Regulation BTR also became effective on January 26, 2003. Special transition period rules regarding the notice requirements of Section 306(a) of the Act and Regulation BTR are described in Section VII. D., below.

I. Issuers Subject to Trading Prohibition

Section 306(a) of the Act and Regulation BTR apply to directors and executive officers of all reporting companies (with certain exceptions as described below) and companies that have filed a registration statement that has not yet become effective under the Securities Act of 1933 (the "Securities Act") and that has not been withdrawn.

1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

1615 I. Street, NW
Washington, DC 20036-5694
(202) 223-7300

Alder Castle, 10 Noble Street
London EC2V 7JU England
(44-20) 7367 1600

2, rue du Faubourg Saint-
Honoré
75008 Paris, France
(33-1) 53.43.14.14

Fukoku Seimei Building 2nd Floor
2-2, Uchisawaicho 2-chome
Chiyoda-ku, Tokyo 100, Japan
(81-3) 3597-8120

2918 China World Tower II
No. 1, Jianguomenwai Dajie
Beijing 100004, People's Republic of China
(86-10) 6505-6822

12th Fl., Hong Kong Club Building
3A Chater Road, Central
Hong Kong
(852) 2536-9933

A. Foreign Private Issuers

Regulation BTR applies to equity security transactions by directors and executive officers of a foreign private issuer when 50% or more of the participants or beneficiaries in pension plans maintained by the issuer who are located in the United States are subject to a blackout period, and the affected employees represent an appreciable portion of the issuer's worldwide employees, as more fully described below. It would not apply if a blackout period affected only plan participants or beneficiaries located outside the United States.

B. Banks and Saving Associations

Under Section 306(a) of the Act, the federal banking agencies, not the SEC, have the authority to administer and enforce various provisions of the Act, including the statutory trading prohibition of Section 306(a), with respect to banks and savings associations.

C. Registered Investment Companies

Pursuant to Rule 104 of Regulation BTR, the required notice to the SEC of a blackout period must be filed on Form 8-K. Although registered management investment companies are generally exempt from Form 8-K filing requirements, the SEC is subjecting investment companies to Form 8-K filing requirements for the sole purpose of meeting any filing obligation that might arise under Regulation BTR.

II. Persons Subject to Trading Prohibition

Section 306(a) of the Act applies to directors and executive officers of issuers subject to the Act. Rule 100 of Regulation BTR defines these terms for purposes of Section 306(a) of the Act.

A. Directors

Under Regulation BTR, except in the case of a foreign private issuer, the term "director" has the same meaning set forth in Section 3(a)(7) of the Exchange Act, which states a director is "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated." In determining whether an individual would be a director of an issuer for purposes of Section 306(a) and Regulation BTR, the individual's title would not be dispositive as to whether he or she is a director. An individual may be a director without holding the title, if he or she functions as a director.

B. Executive Officers

Under Regulation BTR, except in the case of a foreign private issuer, the term "executive officer" is defined in the same manner that term "officer" is defined in Exchange Act Rule 16a-1(f). That rule defines an officer to mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making

functions for the issuer. Officers of the issuer's parent or subsidiary are deemed officers of the issuer if they perform policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee who perform policy-making functions for the trust are deemed officers of the trust. While Exchange Act Rule 3b-7 contains a separate definition of the term "executive officer," the SEC stated that, for purposes of Section 306(a) of the Act and Regulation BTR, the broader definition in Exchange Act Rule 16a-1(f) is more appropriate because of its focus on the policy-making functions of the subject individual.

C. Foreign Private Issuers

In the case of a foreign private issuer, Regulation BTR defines the term "director" to mean a director who is a management employee of the issuer and the term "executive officer" to mean the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers of the issuer.

III. Securities Subject to Trading Prohibition

Section 306(a) of the Act applies to any equity security of an issuer other than an exempt security. Regulation BTR defines "equity security of the issuer" to include any equity security or derivative security relating to an issuer, whether or not issued by that issuer.

A. Equity Security

Under Regulation BTR, the term "equity security" has the same meaning as set forth in Section 3(a)(11) of the Exchange Act and Exchange Act Rule 3a11-1. In the case of foreign private issuers, this definition would include depository shares evidenced by American Depositary Receipts ("ADRs").

B. Derivative Security

Under Regulation BTR, the term "derivative security" has the same meaning as set forth in Exchange Act Rule 16a-1(c). The acquisition of a "cash-only" derivative security or the exercise, sale or other transfer of the security during a blackout period will be subject to the statutory trading prohibition unless the transaction is exempt under Regulation BTR.

IV. Transactions Subject to Trading Prohibition

Section 306(a) of the Act prohibits a director or executive officer of an issuer of any equity security from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period with respect to the equity security, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. Thus, the scope of the statutory trading prohibition is limited to:

- an acquisition of issuer equity securities by a director or executive officer during a blackout period if the acquisition is in connection with service or employment as a director or executive officer; and
- a disposition of issued equity securities by a director or executive officer during a blackout period if the disposition involves issuer equity securities acquired in connection with service or employment as a director or executive officer.

A. “Acquired in Connection with Service or Employment”

Section 306(a) of the Act limits the statutory trading prohibition to equity securities that a director or executive officer acquires in connection with his or her service or employment as a director or executive officer. To implement this limitation, Regulation BTR defines this term to include equity securities acquired by a director or executive officer in any of the following situations:

- at a time when he or she was a director or executive officer of the issuer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit-sharing (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate of the issuer;
- at a time when he or she was a director or executive officer of the issuer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S-K (transactions with management and others and potentially conflicting business relationships which are required to be disclosed in Form 10-Ks and proxy statements) or, in the case of foreign private issuers, Item 7.B of Form 20-F (related party transactions), but without application of the disclosure thresholds of such provisions, to the extent that he or she has a pecuniary interest in the equity securities;
- at a time when he or she was a director or executive officer of the issuer, as “director’s qualifying shares” or other securities that he or she must hold to meet an issuer’s minimum ownership requirements for directors or executive officers;
- prior to becoming, or while, a director or executive officer of the issuer, if the equity security was acquired as a direct or indirect inducement to service or employment as a director or executive officer; or
- prior to becoming, or while, a director or executive officer of the issuer, where the equity security was received as a result of a business combination in respect of an equity security of an entity involved in the business combination that he or she had acquired in connection with service or employment as a director or executive officer of that entity.

The SEC has stated that it believes that the broad language of Section 306(a) of the Act was intended to encompass any plan, contract, authorization or arrangement that results in the acquisition of issuer equity securities in exchange for the performance of services for, or employment with, an issuer. The definition in Regulation BTR is intended to reach these types of plans and arrangements. This would ensure that issuers do not shift the form of their compensation programs to enable directors and executive officers to evade the application of Section 306(a) of the Act.

B. Indirect Interests

To prevent evasion of the statutory trading prohibition, the definition of “acquired in connection with service or employment” in Rule 100(a) of Regulation BTR applies to indirect, as well as direct, acquisitions of equity securities for the benefit of a director or executive officer. For purposes of Section 306(a) of the Act, an acquisition or disposition of equity securities would be considered an acquisition or disposition by a director or executive officer if the director or executive officer has a pecuniary interest in the transaction.

To promote consistency and to simplify compliance, Regulation BTR defines the terms “pecuniary interest” and “indirect pecuniary interest” by reference to the definitions in Exchange Act Rule 16a-1(a)(2), so as to be interpreted in a manner consistent with the rules and interpretations that have developed under Section 16 of the Exchange Act. Accordingly, a purchase, sale or other acquisition or transfer of equity securities by immediate family members sharing the same household, a partnership, corporation, limited liability company or trust would be attributable to a director or executive officer for purposes of the statutory trading prohibition if he or she is deemed to have an indirect pecuniary interest in the equity securities in question. An acquisition of equity securities by an immediate family member sharing the same household, a partnership, corporation, limited liability company or trust would be attributable to a director or executive officer for purposes of determining whether the acquisition is “in connection with service or employment” if the acquisition otherwise satisfies the definition in Rule 100(a) of Regulation BTR and he or she is deemed to have an indirect pecuniary interest in the equity securities in question.

C. Service or Employment Presumption

Because the statutory trading prohibition of Section 306(a) of the Act applies only to equity securities acquired in connection with service or employment as a director or executive officer, the statute, by its terms, does not completely preclude a director or executive officer from engaging in an acquisition or disposition of the equity securities of the issuer during a blackout period. Regulation BTR provides that any equity securities sold or otherwise transferred during a blackout period by a director or executive officer of an issuer will be considered to have been “acquired in connection with service or employment as a director or executive officer” to the extent that the director or executive officer owned such securities at the time of the transaction, unless he or she establishes that the equity securities were not “acquired in connection with service or employment as a director or executive officer.” To establish this defense, a director or executive officer must:

- specifically identify the origin of the equity securities in question; and
- demonstrate that this identification of the equity securities is consistent for all purposes related to the transaction (such as tax reporting and any applicable disclosure and reporting requirements).

D. Transitional Matters

Equity securities acquired by an individual before he or she became a director or executive officer of an issuer would generally not be subject to Section 306(a) of the Act or Regulation BTR. This would exclude from the statutory trading prohibition any equity securities acquired under a compensatory plan, contract, authorization or arrangement while the individual was an employee, but not a director or executive officer, of the issuer. However, equity securities acquired by an employee before becoming a director or executive officer will be considered “acquired in connection with service or employment as a director or executive officer” if the equity securities are part of an inducement award.

On the other hand, equity securities acquired by an individual in connection with service or employment as a director or executive officer before a company becomes a reporting issuer or files a registration statement under the Securities Act would be subject to the statutory trading prohibition of Section 306(a) of the Act and Regulation BTR after the company becomes a reporting company or files such a registration statement. Similarly, equity securities acquired in connection with an individual’s service or employment as a director or executive officer before January 26, 2003 would be subject to Section 306(a) of the Act and Regulation BTR.

E. Exempt Transactions

The following transactions are exempt from trading prohibition of Regulation BTR:

- acquisitions of equity securities under dividend or interest reinvestment plans;
- purchases or sales of equity securities pursuant to a trading arrangement that satisfies the affirmative defense conditions of Exchange Act Rule 10b5-1(c);
- purchases or sales of equity securities, other than discretionary transactions, pursuant to certain tax-conditioned plans (see below);
- increases or decreases in the number of equity securities held as a result of a stock split or stock dividend applying equally to all equity securities of that class;
- compensatory grants and awards of equity securities (including options and stock appreciation rights) pursuant to a plan that, by its terms, permits directors or executive officers to receive grants or awards, provides for grants or awards to occur automatically and specifies the terms and conditions of the grants or awards;
- exercises, conversions or terminations of derivative securities that were not written or acquired by a director or executive officer during the blackout period in question or while aware of the actual or approximate beginning or ending dates of the blackout period, and where:
 - the derivative security, by its terms, may be exercised, converted or terminated only on a fixed date, with no discretionary provision for earlier exercise, conversion or termination, or

- the derivative security is exercised, converted or terminated by a counterparty and the director or executive officer does not exercise any influence on the counterparty with respect to whether or when to exercise, convert or terminate the derivative security;
- acquisitions or dispositions of equity securities involving a *bona fide* gift or a transfer by will or the laws of descent and distribution;
- acquisitions or dispositions of equity securities pursuant to a domestic relations order;
- sales or other dispositions of equity securities compelled by the laws or other requirements of an applicable jurisdiction; and
- acquisitions or dispositions of equity securities in connection with a merger, acquisition, divestiture or similar transaction occurring by operation of law.

Foreign private issuers may have employee benefit plans that are not required to satisfy the provisions of the U.S. Internal Revenue Code (the “Code”), but instead satisfy foreign tax and other laws. These plans would come within the exemption for tax-conditioned plans provided that the plan has been approved by the taxing authority of a foreign jurisdiction, or is eligible for preferential treatment under the tax laws of a foreign jurisdiction because the plan provides for broad-based employee participation.

The exemption for tax-conditioned plans does not extend to “discretionary transactions,” such as an intra-plan transfer involving an issuer equity securities fund or a cash distribution funded by a volitional disposition of an issuer equity security, that occur during a blackout period. However, it would cover acquisitions or dispositions of equity securities made in connection with death, disability, retirement or termination of employment or transactions involving a diversification or distribution required by the Code to be made available to plan participants because these transactions are not “discretionary transactions.”

V. Blackout Period

Section 306(a)(4)(A) of the Act defines the term “blackout period” to mean any period of more than three consecutive business days during which the ability of not fewer than 50% of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell or otherwise acquire or transfer an interest in any equity security of the issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan. Regulation BTR clarifies the scope of this provision and addresses the application of this definition to both domestic and foreign private issuers. It should be noted that the above definition differs from the rules under Section 306(b) of the Act adopted by the United States Department of Labor (Notice Requirements to Participants and Beneficiaries Under ERISA), which defines “blackout period” more broadly.

A. Individual Account Plans

Regulation BTR sets forth a definition of the term “individual account plan” for purposes of Section 306(a) of the Act that is based on Section 3(34) of the Employee Retirement Income Security

Act of 1974 (“ERISA”). Regulation BTR defines the term “individual account plan” to mean “a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant’s account, except that such term does not include a one-participant retirement plan, nor does it include a pension plan in which participation is limited to directors of the issuer.” This definition encompasses a variety of plans, including Section 401(k) plans, profit-sharing and savings plans, stock bonus plans and money purchase pension plans.

B. 50% Test

Under Section 306(a)(4)(A) of the Act, a blackout period occurs only when at least 50% of the participants or beneficiaries under all individual account plans maintained by the issuer are subject to a temporary suspension by the issuer or by a fiduciary of the plan of more than three consecutive business days that prevents the participants or beneficiaries from purchasing, selling or otherwise acquiring or transferring an interest in any equity security of the issuer held in the individual account plans. Regulation BTR makes clear that, in determining whether a temporary trading suspension in issuer equity securities constitutes a “blackout period,” the individual account plans to be considered are individual account plans maintained by an issuer that permit participants or beneficiaries located in the United States to acquire or hold equity securities of the issuer. This includes individual account plans that:

- permit participants or beneficiaries to invest their plan contributions in the equity securities of the issuer;
- include an “open brokerage window” that permit participants or beneficiaries to invest in the equity securities of any publicly-traded company, including the issuer;
- match employee contributions with equity securities of the issuer; or
- reallocate forfeitures that included equity securities of the issuer to the remaining plan participants.

An individual account plan is included whether or not the plan actually contains equity securities of the issuer at the time of the temporary trading suspension and related determination. Regulation BTR also provides that, for purposes of determining the individual account plans “maintained by the issuer,” all employees of an affiliated group of businesses should be aggregated.

C. Application of 50% Test

For purposes of Section 306(a) of the Act, once an issuer has identified the relevant individual account plans for purposes of the 50% test, it must apply the test by comparing the number of participants or beneficiaries located in the United States who are subject to a temporary suspension of trading in such equity securities to the overall number of participants or beneficiaries located in the United States under all individual account plans maintained by the issuer. In the case of a domestic

issuer, where this percentage is at least 50%, the statutory trading prohibition would apply to its directors and executive officers.

Regulation BTR provides that an issuer may use plan census data as of any date within the 12-month period preceding the beginning date of the temporary trading suspension in question (such as the last day of the most recently completed fiscal year) to determine the number of participants or beneficiaries in its individual account plans. However, where there has been a significant change in participation in an individual account plan since the date selected (for example, because of a merger or divestiture), an issuer is required to use plan census data as of the most recent practicable date that reflects such change (for example, the most recently completed fiscal quarter or month for that plan).

In the case of a foreign private issuer, a second condition also must be met in order to trigger the statutory trading prohibition. This second condition is that the number of participants or beneficiaries located in the United States in all individual account plans maintained by the foreign private issuer who are affected by the temporary suspension of trading in issuer equity securities exceeds 15% of the total number of employees of the issuer and its consolidated subsidiaries worldwide *or* 50,000. If this condition and the 50% test are both met, the statutory trading prohibition would apply to the directors and executive officers of the foreign private issuer.

D. Exceptions to Definition of Blackout Period

Section 306(a)(4)(B) of the Act expressly excludes two categories of transactions from the definition of “blackout period.” These exceptions are for:

- a regularly scheduled period in which the participants and beneficiaries may not purchase, sell or otherwise acquire or transfer an interest in any equity security of an issuer, if such period is:
 - incorporated into the individual account plan or included in the documents or instruments under which the plan operates; and
 - timely disclosed to employees before they become participants under the individual account plan or as a subsequent amendment to the plan; and
- any suspension that would otherwise be a “blackout period” that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture or similar transaction involving the plan or plan sponsor.

Regulation BTR clarifies the exception for regularly scheduled trading suspensions. It provides that the requirement that the regularly scheduled period be incorporated into the individual account plan may be satisfied by including a description of the regularly scheduled trading suspension in issuer equity securities, including the suspension’s frequency and duration and the plan transactions to be suspended or otherwise affected, in either the official plan documents or other documents or instruments that govern plan operations. In the latter case, these documents or instruments may

include an ERISA Section 404(c) notice or any advance notice included in either the plan's summary plan description or any other official plan communication.

The rule also provides that disclosure of the regularly scheduled trading suspension will be considered timely if the employee is notified of the trading suspension at any time prior to, or within 30 calendar days after, the employee's formal enrollment in the plan, or, in the case of a subsequent amendment to the plan, within 30 calendar days after adoption of the amendment. The rule provides that the notice may be in any graphic form that is reasonably accessible to the intended recipient.

In the case of a blackout imposed to consolidate plans following a merger acquisition, divestiture or similar transaction, Regulation BTR clarifies that the blackout period would not trigger the statutory trading prohibition of Section 306(a) if its principal purpose is to enable individuals to become participants or beneficiaries in the plan, or to terminate participation in the plan, even though the blackout also is used to effect other administrative actions that are incidental to the admission or withdrawal of plan participants or beneficiaries. In addition, Regulation BTR clarifies that the exception is available only with respect to the participants or beneficiaries of the acquired or divested entity.

VI. Remedies

Section 306(a) of the Act contains two distinct remedies. First, a violation of the statutory trading prohibition of Section 306(a) is subject to a possible SEC enforcement action. In addition, where a director or executive officer realizes a profit from a prohibited transaction during a blackout period, an issuer, or a security holder of the issuer on its behalf, may bring an action to recover the profit.

A. SEC Enforcement

A director or executive officer who violates the statutory trading prohibition of Section 306(a) would be subject to possible civil injunctive actions, cease-and-desist proceedings, civil penalties and all other remedies available to the SEC to redress violations of the Exchange Act. Under appropriate circumstances, a director or executive officer also could be subject to possible criminal liability.

B. Private Right of Action

Section 306(a)(2) of the Act provides that any profit realized by a director or executive officer subject to the statutory trading prohibition of Section 306(a)(1) of the Act inures to, and is recoverable by, the issuer, irrespective of the director or executive officer's motive or intention upon entering into the transaction. This remedy reflects a standard of strict liability for prohibited transactions that is similar to the standard that forms the basis for a private right of action under Section 16(b) of the Exchange Act.

Under Section 306(a)(2)(B) of the Act, the issuer may institute an action to recover a director or executive officer's realized profits from a prohibited transaction at law or in equity in any court of competent jurisdiction. If the issuer fails or refuses to bring an action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, the owner of any equity security of the

issuer may bring such an action in the name, and on behalf of, the issuer. As set forth in Section 306(a)(2)(B), no suit may be brought more than two years after the date on which the recoverable profits were realized. Although foreign private issuers would be subject to Section 306(a)(2), they would continue to not be subject to the profit recovery and other provisions of Section 16.

C. Realized Profits

For purposes of Section 306(a) of the Act, a security holder could initiate a private action only if a director or executive officer realized a profit as a result of a purchase, sale or other acquisition or transfer of an equity security during a blackout period. As under Section 16(b) of the Exchange Act, this concept of realized profit would mean that the director or executive officer received a direct or indirect pecuniary benefit from the transaction.

To provide guidance to the courts in Section 306(a)(2) private actions against directors and executive officers who have violated the statutory trading prohibition, new Rule 103(c) of Regulation BTR provides that:

- where a transaction involves a purchase, sale or other acquisition or transfer (other than a grant, exercise, conversion or termination of a derivative security) of an equity security of the issuer that is registered pursuant to Section 12(b) or 12(g) of the Exchange Act and listed on a stock exchange or quoted on Nasdaq, profit is to be measured by comparing the difference between the amount paid or received for the equity security on the date of the transaction during the blackout period and the average market price of the equity security calculated over the first three trading days after the ending date of the blackout period; and
- where a transaction is not otherwise described in the preceding paragraph, profit is to be measured in a manner that is consistent with the objective of identifying the amount of any gain realized or loss avoided as a result of the transaction taking place during the blackout period rather than taking place outside of the blackout period.

VII. Notice

Section 306(a)(6) of the Act requires an issuer to provide timely notice to its directors and executive officers and to the SEC of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1).

A. Notice Requirement

Regulation BTR reflects the general requirement of Section 306(a)(6) of the Act that, in any case in which a director or executive officer of an issuer of any equity security is subject to the statutory trading prohibition of Section 306(a), the issuer of the equity securities must timely notify the director or executive officer, as well as to the SEC, of the blackout period.

The notice would include the following information:

- the reason or reasons for the blackout period;

- a description of the plan transactions to be suspended during, or otherwise affected by, the blackout period;
- a description of the class of equity securities subject to the blackout period;
- the length of the blackout period by reference to:
 - the actual or expected beginning date and ending date of the blackout period; or
 - the calendar week during which the blackout period is expected to begin and the calendar week during which the blackout period is expected to end, provided that the notice to directors and executive officers describes how, during such week or weeks, a director or executive officer may obtain, without charge, information as to whether the blackout period has begun or ended; and provided further that the notice to the SEC describes how, during the blackout period and for a period of two years after the ending date of the blackout period, a security holder or other interested person may obtain, without charge, the actual beginning and ending dates of the blackout period; and
- the name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.

B. Notice to Directors and Executive Officers

Regulation BTR provides that the notice to directors and executive officers will be considered timely if an issuer provides it no later than five business days after the issuer receives the notice from the pension plan administrator required by the Department of Labor Rules. If the issuer does not receive such notice, the issuer must provide its notice to directors and executive officers at least 15 calendar days before the actual or expected beginning date of the blackout period. However, the requirement to give advance notice will not apply in any case in which the inability to provide advance notice of the blackout period is due to events that were unforeseeable to, or circumstances that were beyond the reasonable control of, the issuer, and the issuer reasonably so determines in writing.

If there is a subsequent change in the beginning or ending dates of the blackout period, an issuer is required to provide directors and executive officers with an updated notice explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior notice. The updated notice is required to be provided as soon as reasonably practicable, unless such notice in advance of the termination of a blackout period is impracticable.

C. Notice to the SEC

Section 306(a)(6) of the Act also requires that an issuer provide notice of an impending blackout period to the SEC. Accordingly, Regulation BTR would require that notice to the SEC be provided on Form 8-K. The Form 8-K must be filed by the issuer on the same day the issuer transmits notice to its directors or executive officers.

Foreign private issuers are not required to file current reports on Form 8-K. Regulation BTR requires a foreign private issuer to file as an exhibit to its annual report on Form 20-F or Form 40-F copies of all notices provided to directors and executive officers pursuant to Section 306(a)(6) of the Act and Regulation BTR during the previous fiscal year, unless the notices previously have been provided voluntarily to the SEC in a report on Form 6-K.

D. Transition Period

Section 306(a) of the Act became effective on January 26, 2003. Consequently, for purposes of Regulation BTR, the notice requirement applies to blackout periods commencing on or after January 26, 2003. For blackout periods occurring between January 26, 2003 and February 25, 2003 (the date 30 days after the effectiveness of Section 306(a)), issuers should furnish notice as soon as reasonably practicable. This approach is intended to ensure that the statutorily-required notice is provided with respect to blackout periods that commence before February 26, 2003.

In the case of notice to the SEC, the Form 8-K notice requirements of Regulation BTR are effective March 31, 2003 to allow time for the modifications to the EDGAR system. In the interim, an issuer may provide the required notice to the SEC by disclosing the information described in Item 11 of Form 8-K under Item 5 of Form 10-Q in the first quarterly report filed by the issuer after commencement of the blackout period.

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The summary set forth herein is intended to be general in nature. This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul Weiss Securities Group, including:

Mark S. Bergman	(44 20) 7367-1601	John C. Kennedy	(212) 373-3025
Richard S. Borisoff	(212) 373-3153	Edwin S. Maynard	(212) 373-3034
Andrew J. Foley	(212) 373-3078	Raphael M. Russo	(212) 373-3309
Paul D. Ginsberg	(212) 373-3131	Gustav Bahn	(212) 373-3057

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