

Client Advisory

January 2003

Department of Labor Rules on Notification of Pension Fund Blackout Periods to Take Effect

As a reminder, on January 26, 2003, the provisions of the Sarbanes-Oxley Act of 2002 related to the advance notice of pension fund blackout periods (including 401(k) plan blackout periods) and the prohibition of insider trading during such periods will become effective. The Sarbanes-Oxley Act attempts to address many of the accounting and corporate governance issues raised by the collapse of Enron, Global Crossing and Worldcom. However, the interim final rule relating to notification of blackout periods issued by the Department of Labor extends beyond temporary trading suspensions in company stock.

The interim final rule (*effective for any blackout period beginning on or after January 26, 2003*) generally requires that written notice be given to affected participants and beneficiaries within 30 to 60 days prior to the commencement of any blackout period. (In certain situations, such as in the case of a merger or acquisition, the notice need only be furnished as soon as reasonably practicable.) For this purpose, a blackout period is generally defined as any period of three consecutive business days or more during which the ability of plan participants to (1) direct or diversify assets (not just company stock) credited to their accounts, (2) obtain loans from the plan or (3) obtain distributions, is temporarily suspended, limited or restricted. The notice must include, among other elements, the reasons for the blackout period, identification of the investments subject to the blackout period and the expected beginning and ending dates of the blackout period. The notice must also include the name, address and telephone number of a person who can answer questions concerning the blackout period. Electronic media may be used in distributing the notice, if it is used in compliance with applicable regulations. Failure to provide the required notice may result in a civil penalty against the plan administrator of up to \$100 a day *per participant or beneficiary* from the date of the plan administrator's failure or refusal to provide this notice.

We Can Help

The interim final rule requiring notice of pension fund blackout periods is rather detailed. Legal counsel can provide valuable guidance in ensuring compliance with its provisions. Please direct questions regarding the issues discussed in this Client Advisory to:

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