



Disagreements over meaning of new SEC rule fuel IR controversy

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Published on August 21 2000

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Championed by SEC chairman Arthur Levitt, the rule requires companies to broadly disseminate 'material' information via a press release, Webcast or SEC filing. Before the enactment of the regulation, there were no specific guidelines regarding the release of such information.

The SEC defines 'material' information as things 'that an investor would want to know in deciding whether to buy or sell a security,' including corporate earning reports, new product information and executive staff changes. If material information is accidentally released, a company has 24 hours to release it broadly.

The IR community was split on the merits of the decision. 'This should open the doors to a party that, up to this point, has been invitation-only,' said Carl Thompson of IR specialists Carl Thompson Associates.

Others, however, were not so optimistic. 'This means I'll really have to monitor every word that comes out of the CEO's mouth,' said Fleishman-Hillard/Chicago SVP Sophia Twaddell. 'It also means that, as outside IR counsel, we won't be getting as much information.'

Buy-side analysts, institutional investors and high-end IR pros - those who fought the new rule every step of the way - were predictably downcast about news of the regulation's passing. Realizing that many of their best sources are about to dry up, analysts were particularly vocal with their complaints.

In a statement released just hours after the decision was released, the Association for Investment Management and Research expressed its 'profound disappointment.' Securities Industry Association SVP and general counsel Stuart Kaswell reacted even more vehemently, throwing around phrases like 'unacceptable,' 'unlevel playing field' and 'chilling effect.'

The National Investor Relations Institute didn't even wait for the rule to pass before attacking it. Two days before the vote, the organization

issued a survey of 462 IR pros. The survey found that '(42% of respondents) will probably limit communication practices and another 12% said they would limit their practices 'significantly' if FD passed.

The rule passed by the SEC is actually a scaled-down version of the original regulation. 'The initial rule was much broader,' said Shandwick SVP N.

Gregory Pettit. 'The fear was that it was going to be so strictly interpreted.'

In any case, the battle over Regulation FD is far from finished, especially since the definition of exactly what constitutes 'material' information remains clouded.

'The SEC has promulgated a rule that, at its center, has no definition,' said Al Bellenchia, head of Fleishman/New York's financial practice.

What this means is that legal experts are likely to play a larger role in the IR process from here on out. "'Materiality' is not a vague term, but it doesn't have a precise definition,' explained Michael Blount, a partner at Seyfarth Shaw, a law firm. 'We'll now be more involved in helping analyze what information is material and how to disclose it.'

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MATERIAL MELEE: REGULATION FD

Though the SEC passed Regulation FD earlier this month, the regulator didn't release the full 57-page document until last week. Here are some key excerpts:

The letter of the law: 'Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person ... the issuer shall make public disclosure of that information ... simultaneously, in the case of an intentional disclosure; and promptly, in the case of a non-intentional disclosure.'

Promptly?: ' ... The outer boundary for prompt disclosure is the later of 24 hours or the commencement of the next day's trading on the New

York Stock Exchange, after a senior official learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was material and nonpublic.'

Should've known better: 'A selective disclosure of material nonpublic information is 'intentional' when the person making the disclosure either knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.'

Passing the buck: 'The regulation does not define the terms 'material' and 'nonpublic,' but relies on existing definitions of these terms established in the case law. Information is material if 'there is a substantial likelihood that a reasonable shareholder would consider it important' in making an investment decision.'