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Information is the lifeblood of our service-oriented society. In almost every facet of life individuals and businesses maintain an insatiable desire for the latest, most accurate information. Access to information in the securities markets is the most integral component of success.[1] Because information is not always equally disseminated, protective measures are necessary to protect individual investors from abuses by insiders and those with privileged information. In addition to promulgating new insider trading rules, the SEC has enacted Regulation FD (for Fair Disclosure) in an attempt to curb the practice of selective disclosure.[2]

The stated objective of Regulation FD is to address the common practice of issuers disclosing important non-public information to securities analysts, institutional investors, and individual investors, before such information is released to the general public.[3] Typically, this material non-public information comes in the form of advanced earnings forecasts or other significant corporate developments. This practice allows certain privileged investors to act on this information to their benefit, whether selling prior to a disappointing earnings announcement, or buying before favorable information is released.[4]

This article will first consider the reasons why a Regulation banning selective disclosure was necessary. Second, the article will review the recently enacted Regulation's pertinent provisions. Finally, it will analyze the strengths and weaknesses of the Regulation, and whether, in the author's opinion, it will accomplish the objectives for which it was enacted.

I. The Erosion of Investor Confidence and the SEC's Response

The SEC has long held that the presence of privileged information within the market is detrimental to investor confidence in the stock market as well as other investment markets.[5] Investor confidence and the integrity of the markets are damaged when certain individuals are allowed to make a profit just because they were privy to certain insider information.[6] This effect appears even more frequent as the markets continue to welcome new entrants. Accordingly, investors are less confident, and therefore are less likely to invest in a market when they know that others with superior information are likely to succeed not on their own merits, but through a privileged information conduit.[7] Clearly, an average investor without realistic access to this information will be reluctant to invest in a market that he feels has been "rigged against him."[8]

Information has value as an asset that can be turned into financial gain. The SEC was concerned that management would use material non-public information as a bargaining chip to obtain favorable reports.[9] Without an obligation to publicly disclose such information, analysts feel that they must report favorably about a company or risk losing access to valuable information in the future.[10] This scenario, if known or suspected by investors, results in reduced confidence in analysts' forecasts. Unless an investor has the knowledge and skills to select "winners" himself, that investor might choose not at all to invest in the market. These trends, along with the ever-increasing means of communication (*e.g.*, internet, telecommunications), prompted the SEC to promulgate Regulation FD to address the issue of selective disclosure.

II. Regulation FD

Despite the well-established principle that the securities laws seek to promote disclosure of honest and complete information, there is no general duty to disclose material information *as soon* as it arises or is discovered.[11] While a general duty to disclose does not exist, companies often chose to disclose certain information to selected investors before it is disseminated to the public.[12] Unless insider trading on the basis of this selectively disclosed information could be proven, the company and capitalizing investor went without reprimand. Regulation FD seeks to prevent this.

As adopted, Regulation FD prohibits an issuer (or any person acting on its behalf) from disclosing material nonpublic information relating to the issuer or its securities without making a corresponding public disclosure of the information.[13] Disclosure of the information must be made simultaneously in the event of an intentional disclosure or promptly (within 24 hours) if unintentional.[14]

The Regulation prohibits an issuer from selectively disclosing material nonpublic information to anyone who is "a broker or dealer, or a person associated with a broker or dealer"; "an investment advisor . . . an institutional investment manager . . . or a person associated with either of the foregoing"; "an investment company" and significantly, to anyone "who is a holder of the issuer's securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer's securities on the basis of the information."[15]

Furthermore, the Regulation prohibits communications from senior level executives and officers to the above listed parties. It also relates to any "officer, employee, or agent of an issuer who regularly communicates" with the parties listed in the immediately preceding paragraph.[16] However, where any "officer, director, employee, or agent of an issuer . . . discloses material nonpublic information in breach of a duty of trust or confidence to the issuer," that person shall not be considered to be acting on behalf of the issuer.[17]

Regulation FD applies only to issuers that are registered under Section 12 of the Exchange Act or required to file reports under Section 15(d) of the Exchange Act.[18] Importantly, whether or not an issuer makes a disclosure under Regulation FD, it is still subject to Rule 10b-5 for materially misleading or false statements.[19]

It is expected that by 2003, over 20 million online trading accounts representing approximately three trillion dollars of assets will be in existence. As more average investors increasingly invest in the securities markets, a review of the SEC's new rule, while prophylactic to insider trading, is highly relevant to consumer affairs.

III. Insider Trading v. Selective Disclosure

At first glance, it seems logical that an issuer that provides analysts with insider information, as well as the analyst/investor who trades on that information would subject themselves to insider trading liability. After all, these individuals or entities are acting on material nonpublic information, often resulting in large gains by the investor. The reality of insider trading law, however, is not as straight forward as common sense might dictate.

In *Dirks v. SEC*, the Supreme Court held that a tippee exposes himself to insider trading liability under Rule 10b-5 only if the tipper (insider) breached a fiduciary duty to the shareholders of the issuer by obtaining a direct or indirect personal benefit from the disclosure.[20] This personal benefit often comes in the form of a reputational benefit convertible into future earnings or some other pecuniary gain.[21] Thus, the focus of many insider trading cases shifted away from the nature of the information, and became concentrated on the duty owed to the issuer by the tipper.[22] The essence of the *Dirks* decision is that regardless of the materiality of the information, without a corresponding breach of fiduciary duty by the tipper, no liability under Rule 10b-5 would lie. Commenting on the then-proposed Regulation FD, the SEC noted that after *Dirks*, few insider trading cases were instituted involving selective disclosure.[23] The Commission reasoned that while in some instances of selective disclosure is certainly motivated by the desire for personal benefit, the requisite desire such benefit is often elusive and less clear.[24] Arguably, the common perception among corporate insiders soon after *Dirks* was that insiders were afforded great latitude in disclosing corporate information to securities analysts.[25]

Regulation FD can be viewed as a regulation that applies when pecuniary or reputational benefit cannot be easily ascertained from a particular disclosure. While issuers are still subject to insider trading liability if the disclosure amounts to illegal tipping, Regulation FD provides for an enforcement action without the burden of having to prove the elements of insider trading.[26] An issuer that violates Regulation FD is subject to a SEC enforcement action under Section 13(a) or 15(d) of the Exchange Act, an administrative action for a cease and desist order, or civil action seeking injunctive or monetary penalties.[27] It is important to emphasize that a violation of Regulation FD does not give rise to private liability under Rule 10b-5.[28] Thus, Regulation FD is supplementary in nature to the insider trading laws.

IV. Methods and Timing of Disclosure Under Regulation FD

Under the Regulation, an issuer making an intentional disclosure is required to simultaneously disclose that information to the public.[29] If the disclosure is unintentional, the issuer must publicly disclose the information promptly.[30] Prompt disclosure requires that disclosure be made by the later of 24 hours after the initial disclosure, or the commencement of the next trading day on the New York Stock Exchange.[31]

Not all intentional or inadvertent disclosures of material nonpublic information are covered by Regulation FD. For a communication to come within the scope of Regulation FD, it must be made by an issuer (or someone on its behalf) to a broker, or a person associated with a broker or dealer, an investment advisor, an institutional investment advisor, or a holder of the issuer's securities, who under the circumstances is likely to purchase or sell such securities based upon such information.[32]

Public disclosure within the scheme of Regulation FD may take two forms. First, an issuer may satisfy its disclosure obligation by filing a Form 8-K with the Securities and Exchange Commission sufficiently disclosing the information.[33] Second, Regulation FD permits an issuer to disclose by any means of disclosure that is "reasonably designed to provide broad, non-exclusionary distribution of the information to the public."[34] Regulation FD is silent on satisfactory alternate methods of disclosure.

However, in the Proposed Rule Release, the Commission suggested several methods. These methods include a press release carried through a widely circulated news or wire service, an announcement at a news conference to which the public is allowed access, a posting on the issuer's website, as well as other means provided by technological innovation.[35] Referring particularly to disclosure via website posting, the Commission stated that as not all investors have access to the internet, disclosure by this means, without any other form, would be insufficient.[36].

V. Materiality Requirement

The Regulation does not provide a definition of what constitutes material nonpublic information. Instead, in its Adopting Release, the SEC stated that it was relying on existing definitions of "materiality" established in case law.[37] Per the Adopting Release, materiality under Regulation FD will be governed by the same standard as materiality under 10b-5.[38] Under this standard, information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision."[39] While materiality is generally an issue of fact, the SEC deems certain information such as earnings information, mergers, acquisitions, new products or discoveries, changes in management, and events affecting the issuer's securities, as likely to be material.[40]

VI. Public Reaction to Regulation FD

A. Investor Opinions

Generally, investors appear to be in favor of the new regulation.[41] While the regulation was still in the proposal stage, the SEC invited the public to comment on the wisdom and breadth of the proposed regulation ending selective disclosure. Comments ranged from "Please level the playing field," and "I favor Regulation FD," to "It is very aggravating to see a stock price [fluctuate] for weeks before news of some development regarding the stock becomes available to the *average investor*."[42]

Likewise, the regulation makes sense from a public policy standpoint. A promise that insiders will no longer be trading on the basis of material nonpublic corporate information inures public trust in the market. Arguably, without this trust, the stock market never would have reached the heights it has over these past two years. In a society where over one-half of all adults own stock directly or indirectly, fair opportunity and access must be the goal.[43]

B. Corporate Response

One of the harshest criticisms of Regulation FD is that while its intent is to broadly disseminate investment information, in practice it would have the opposite effect of chilling the amount of information that an issuer is willing to disclose. Opponents of the new rule argue that the reduced level of information, in effect, keeps everyone ignorant of corporate developments, and is detrimental to the investment markets.[44]

While the Commission considered this argument, it was determined that the Final Regulation had been "modified" to prevent such an effect.[45] In essence, the Regulation distinguishes between selective disclosure to certain privileged individuals, and that made in the ordinary course of business to insiders or fiduciaries (lawyers, accountants, and other fiduciaries). Thus, issuers may convey material nonpublic information to its lawyers or accountants, or others who agree to maintain the confidentiality of the information, in the conduct of its normal operations.[46]

Already, corporations are taking note of the new disclosure requirements and adjusting their analyst discussions accordingly. Securities lawyers are urging corporations looking for methods to limit potential liability under Regulation FD to take certain steps. Such steps include managing what individuals are permitted to discuss matters with analysts, investors, and the media; replacing one-on-one conferences with publicly accessible meetings (including refraining from the selective distribution of interim progress reports stating that earnings are on par with projections); and scripting of analyst conferences, so as to preempt any inadvertent disclosure of material information.[47]

Additional recommendations include blocking access to issuer information during the period the company is compiling its quarterly results, and careful scrutiny of forward looking statements.[48] Furthermore, companies that used to conduct one-on-one meetings in order to provide earnings information are now canceling, or greatly scaling back the scope of information disclosed in such meeting, and instead disclosing such information on a public scale.[49]

VII. Regulation FD Benefits Consumer Investors

The practice of selective disclosure damages a typical investor's confidence in investment markets. Where a consumer investor deems the markets unfairly balanced against him, he will be less likely to invest his money in that particular market. This poses problems for both individual investors and the welfare of investment markets. Investors are confronted with a choice: invest in a market when you only have partial information, and hope you win (or hope you don't lose), or place your money in more conservative investments such as savings accounts, government bonds, certificates of deposits, and accept relatively lower yields. In commenting upon the proposed Regulation FD, the Chicago Board Options Exchange noted that selective disclosure results in "unusual trading, increased volatility" which is detrimental to the markets.[50]

Consumers deciding between these investment mediums might choose to pursue the lower yielding, conservative route, rather than invest in a securities market subject to the practice of selective disclosure. The result of the average investor retracting from the securities market would be detrimental to the American economy. Not only would companies suffer from a lack of available funding, but there would also be less market liquidity.

Regulation FD also seeks to inform all investors with equal information, and let skill and diligence, not superior access to information, dictate who the winners will be.[51] While Regulation FD does not mandate disclosure, it does require that once information is disclosed, it be disclosed to everyone. For example, Regulation FD alone does not remedy a situation where an investor purchases stock for $50/share and the next day, the price goes down to $45/share. As long as the issuer or its agents have not selectively disclosed earnings information to analysts, Regulation FD is not implicated. This makes sense assuming that every investor had access to the same information at the same time.[52]

However, where an issuer has disclosed to certain analysts or institutional investors that it is expecting lower than previously expected earnings, it must disclose that information publicly, or it will be liable under Regulation FD. While this Regulation does not address any perceived harm incurred by an investor due to selective disclosure, vigorous enforcement will go a long way in ensuring that investors' decisions are made in light of all available corporate information. This disclosure will in turn make consumer investors more secure in the wisdom of their investment decisions.

Open, non-selective disclosure also encourages open and honest analyst opinions regarding a particular security. In promulgating Regulation FD, the SEC sought to prevent perceived favoritism in the investment community. Securities analysts need not fear that the consequences of their open and honest, albeit unfavorable, opinion will be the withholding of material earnings or other vital information in the future. Consumers benefit in that they will now have access to a presumably more honest assessment of a stock's value and potential. Investors browsing various investment sites on the internet, or reading analysts opinions, will be somewhat more certain that they are receiving a complete and accurate assessment than they would have before the regulation was enacted.

The Regulation as adopted is fair to consumer investors' interests, while still allowing an issuer to discuss confidential information with certain persons. There is no benefit to the market as a whole derived from allowing issuers to disclose information selectively to certain investors while withholding it from others. The premise of the "chilling effect" argument is that certain issuers would chose to withhold material information from all investors for fear of liability under Regulation

FD. This position however, misses the point in that the Regulation does not govern or mandate voluntary disclosure. Under Regulation FD, an issuer remains free to disclose whatever material information they chose, so long as it makes a simultaneous public disclosure. Under Regulation FD, liability would exist only where the issuer chooses to disclose earnings information, or the like, to analysts or other covered investors before making the information available to the public.

Recently, the Wall Street Journal published an article discussing the public announcement of disappointing earnings projections by Intel.[53] News of the disappointing earnings estimates sent the value of Intel stock plunging 22% in one day of trading.[54] The article noted that though Intel has historically made a practice of simultaneous public disclosure, the then-proposed Regulation was already sending tremors through the market, causing companies to publicly disclose negative information.[55] Noting the volatility in the one day trading price of Intel stock, it was stated that while "bad news generally drives down a stock price . . . the market impact is more diffuse when filtered out through analysts."[56] Another article in The Wall Street Journal, discussing the dramatic decline in the NASDAQ index, while attributing cause to the slowing economy, also expressed an opinion that Regulation FD will exacerbate the effect by "blurting this information out, instead of waiting things out."[57] Once again, some argue that the volatility caused by sudden announcements causes such drastic declines in the market index.[58]

Where positive corporate information is involved, an issuer has a strong interest in publicly disclosing such information. Once this information is disclosed to the investing public, market forces will increase the value of the stock, and thus the value of the issuer. Companies as well as their directors and officers, concerned with earnings information and the effect such information has on the stock market price will arguably be more than forthcoming with favorable information. In most instances, the information disclosed under the regulation would be that which the issuer would ultimately disclose to the public anyway.[59] The regulation does not require the issuer to make any more disclosure than it otherwise would have, but simply requires simultaneous public disclosure if the issuer wishes to make a certain statement to an analyst.

The same can not be said, however, about negative issuer information. Regulation FD will not have any chilling effect on the release of negative corporate information. It is here, that Regulation FD acts as the defender of the individual investor. Where an issuer chooses to selectively disclose material information to particular analysts or security holders, aside from the potential for insider trading liability, it generally does so with ulterior motives. In an earnings-sensitive market, such information is harmful to a stock's value and would probably only be publicly disclosed in anticipation of a legal requirement to disseminate such information.[60] In the absence of Regulation FD, issuers and their agents are able to treat the negative earnings information as an asset, disclosing it to particular analysts, gaining favor with the investor with a view toward continued favorable analyst opinions in the future.[61] The effect of this quid pro quo is that analysts or investors privy to the information will be able to act before the rest of the market, enabling them to either liquidate or establish positions in a particular security at a reduced cost.

In its Proposed Rule Release, the SEC noted that analysts and institutional investors privy to this material non-public information often immediately use the information to trade certain securities.[62] This informational advantage gained by conference calls or one-on-one meeting is used by these parties in making trades with other less informed investors.[63] As a result, parties in possession of the material nonpublic information are able to purchase securities at a discount relative to the expected market price after the information is publicly disclosed. The regulation requires that investors from this point must rely on their own diligence and acumen, not on superior access to information, in order to make accurate decisions. Without imposing uniform disclosure obligations on issuers, unsuspecting investors will be at the mercy of those in possession of material nonpublic information. In wake of the uncertainty of whether such investors will be deemed an illegal tippee under *Dirks*, Regulation FD is necessary to protect the average investor as well as the integrity of the equity markets.

Opponents of the Regulation maintain that initial disclosure to analysts or other market professionals prevents market volatility. In essence, this argument goes as follows: analysts will use the information to gradually move the market in the direction the information dictates, and that this slow, steady price adjustment of a particular stock is preferable to sudden, sharp price increases and decreases. While this position contains merit, it does not adequately protect the average investor's interests. Negative information, whether disclosed slowly or suddenly, has the effect bringing a stock's price down. However, in a market where selective disclosure is permitted, those in possession of the information are able to take advantage of those investors not in possession of the information. Fairness dictates that certain analysts and privileged investors should not be allowed to jump from the sinking ship, while ordinary investors are left to sink to the bottom with that ship. Containing market volatility by permitting selective disclosure to analysts, who are believed to bring the market down gently, sacrifices the well being of some investors in order to effectuate a soft landing. In a society where more and more financial planning involves the ownership of stock, such an argument must be viewed with skepticism.

VIII. Conclusion

While Regulation FD is an important step in placing the individual investor on a level playing field with other larger and privileged investors, it is by no means an assurance that all investors will have access to the same information at the same time. It is important to keep in mind that the regulation does not cover selective disclosure of non-material information. The Regulation permits analysts to assemble several individual pieces of non-material information into material information.[64] Furthermore, information whose significance is discerned by the analyst will not come within the purview of the regulation.[65] Thus, the regulation prevents disclosure of material information all at once, but does not prohibit a trickle of selectively disclosed, non-material information, that when assembled by an analyst or sophisticated investor, becomes material. Uncovering and assembling useful information through hard work is consistent with a capitalist society.

The prologue to Proposed Regulation FD states that "all investors should have access to an issuer's material disclosures at the same time."[66] While in theory, the regulation has the effect of making public all material information once it has been disclosed selectively by an issuer, in practice there is a potential deficiency. While information must be disclosed simultaneously, the delivery to investors, in many circumstances, it is at best constructive. For instance, if an issuer makes a disclosure in an 8-K, it has abided by the duty imposed under Regulation FD. Presumably, it is free then to stress this information to certain analysts and individual investors, while not making the information known to others. Thus, investors with greater means, whether by insider status or persistence, might possibly be able to gain access to this "publicly available" information first. Thus, for the growing legions of do-it-yourself on-line investors, caveat emptor is still the game. If disclosure of material information is seen as a gift delivered by Regulation FD, consumer investors must be able to follow the instructions, as they can no longer claim that they lost due to the market being rigged against them.

Endnotes

1. Proposed Rule: Selective Disclosure and Insider Trading, Exchange Act Release No. 34,42259 [1999 Transfer Binder] CCH Fed. Sec. L. Rep., § 86,228 at 82,846 (1999) [hereinafter "Proposed Regulation Release"].

2. 17 C.F.R § 243.100 (2000).

3. Corporate Law and Practice Course Handbook Series, Practicing Law Institute, "Final Rule: Selective Disclosure and Insider Trading" 1204 PLI/Corp 113, 116 (2000) [hereinafter "Corporate Law"].

4. RALPH C. FERRARA, FERRARA ON INSIDER TRADING & THE WALL, CORPORATE COMPLIANCE PROGRAMS FOR SECURITIES ISSUERS: TRADING AND CORPORATE DISCLOSURE ISSUES § 7.08 (2000).

5. Corporate Law, *supra* note 3, at 116; Ferrara, § 7.08.

6. Corporate Law, *supra* note 3, at 116.

7. *Id.*; United States v. O'Hagan, 521 U.S. 642, 658 (1997).

8. H.R. Rep. No. 100-910 (1988).

9. Proposed Regulation Release, *supra* note 1, at 82,848.

10. Corporate Law, supra note 3, at 116, (citing Jeffrey M. Laderman, *Who Can You Trust? Wall Street's Spin Game, Stock Analysts Often Have A Hidden Agenda*, Bus. Wk. Oct. 5, 1998.).

11. Proposed Regulation Release, *supra* note 1, at 82,847.

12. *Id.*

13. 17 C.F.R § 243.100.

14. *Id.*; Final Rule: Selective Disclosure and Insider Trading, Exchange Act Rel. No. 43154 [2000 Transfer Binder] CCH Fed. Sec. L. Rep., 83,319,

83,676 (2000) [hereinafter "Adopting Release"] (Information is material if there is a substantial likelihood that a reasonable investor would view it as important in making an investment decision or would alter the total mix of available information); SEC v. Texas Gulf Sulfur, 401 F.2d 833, 854 (2nd Cir. 1968).

15. 17 C.F.R. § 243.100(b)(1) (2000). For a more exhaustive and detailed list of parties to whom and conditions under which selective disclosure is prohibited, refer to Regulation FD.

16. 17 C.F.R. § 243.100(c) (2000); Adopting Release, *supra* note 14, at 83,680.

17. 17 C.F.R. § 243.100(c) (2000).

18. Proposed Regulation Release, *supra* note 1, at 82,855. The regulation does not apply to issuers undergoing an initial public offering prior to the effectiveness of its registration statement. However, the regulation does apply to reporting issuers that make statements regarding additional securities offerings while the registration statement is still pending.

19. *Id.* For a complete enumeration of liabilities for a violation of Rule 10b-5, see 15 U.S.C. § 78r (2000).

20. Dirks v. SEC, 463 U.S. 646, 663 (1983).

21. *Id.* at 663.

22. Ferrara, *supra* note 4, § 7.08.

23. Proposed Regulation Release, *supra* note 1, at 85,850.

24. *Id.*

25. *Id.*; Ferrara, *supra* note 4 at § 7.08 ("Because a personal benefit to an issuer (or an individual corporate official) is often difficult to discern from selective disclosure to securities analysts . . . . ").

26. Corporate Law, *supra* note 3, at 119; Proposed Regulation Release, *supra* note 1, at 82,857.

27. Corporate Law, *supra* note 3, at 130.

28. Adopting Release, *supra* note 14, at 83,690; Corporate Law, *supra* note 3, at 119. I want to make it clear that a violation of Regulation

FD does not give rise to private liability, nor can it alone be bootstrapped into a Rule 10b-5 violation, unless the selective disclosure gives rise to private liability under existing insider trading law.

29. 17 C.F.R. § 243.100(a)(1) (2000).

30. *Id.* at § 243.100(a)(2).

31. *Id.* at § 243.100(d).

32. *Id.* at § 243.101(b)(i)-(iv). For a complete enumeration of covered investors, see 17 CFR § 234.101 (b)(i)-(iv).

33. *Id.* at § 243.101(e)(1).

34. *Id.* at § 243.101(e)(2).

35. Proposed Regulation Release, *supra* note 1, at 82,849, 82,854. In offering guidance for media of press releases, the Commission stated that Dow Jones, Bloomberg, Business Wire, PR Wire, and Reuters would be satisfactory.

36. Corporate Law, *supra* note 3, at 137.

37. Adopting Release, *supra* note 14, at 83,683.

38. *Id.*

39. *Id.*

40. *Id.*

41. Comments on the Proposed Rule: Selective Disclosure and Insider Trading, at http://www.sec.gov/rules/ proposed/ s73199.html.

42. *Id.* (emphasis added).

43. Robert J. Shiller, *Outlaw Selective Disclosure? Yes, Markets Must Be Fair*, WALL ST. J., Aug. 10, 2000, at A18. "The public has inferred a promise that they will have equal access to material information, and we must ensure that this promise is kept." *Id.*

44. Ferrara, *supra* note 4, § 7.08.

45. *Id.*

46. 17 C.F.R § 243.100(b)(2).

47. Elizabeth Kitslaar, *Regulation FD: Practical Implications and Recommendations*, Andrews Securities Litigation and Regulation Reporter, 6 No. 6 ANSLRR 14 (2000).

48. *Id.*

49. Jeff D. Opdyke, *The Big Chill: Street Feels The Effect of 'Fair Disclosure Rule,'* WALL ST. J., Oct. 23, 2000, at C1.

50. *Id.*

51. Corporate Law, *supra* note 3, at 136.

52. An in-depth discussion of insider trading is outside of the scope of this article.

53. Molly Williams and Robert McGough, *Intel's Jolt Shows Shifts in Market's Dynamics, New Disclosure Rules Mean More Legwork Ahead For Analysts*, WALL ST. J., Sept. 25, 2000, at C1.

54. *Id.*

55. *Id.*

56. *Id.*

57. E.S. Browning, *Nasdaq Falls to Nearly 50% Below Record High*, WALL ST. J., Dec. 1, 2000, at C1.

58. *Id.*

59. Proposed Regulation Release, *supra* note 1, at 82,847.

60. Whether in the form of a quarterly earnings report or filing with the SEC, or interim filings required under certain circumstances.

61. Proposed Regulation Release, *supra* note 1, at 82,848.

62. *Id.*

63. *Id.*

64. Corporate Law, *supra* note 3, at 123.

65. *Id.* ("Analysts provide a valuable service in sifting through and extracting information . . . not significant to the ordinary investor to reach material conclusions . . . . [t]he focus on Regulation FD is . . . not on whether an analyst, through some combination of persistence, knowledge, and insight, regards as material information whose significance is not apparent to the reasonable investor.").

66. SEC Proposed Regulation Release, *supra* note 1, at 82,847.

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