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Corporate and Securities Law Developments

SELECTIVE DISCLOSURE AND INSIDER TRADING RULES

On August 10, 2000, by a vote of three to one, the Securities and Exchange Commission ("Commission" or "SEC") adopted Regulation FD, a controversial regulation the SEC designed to encourage full and fair disclosure of financial information from issuers to the public. Hailed by Chairman Arthur Levitt as a necessary step to shutting down a practice of selective dissemination and "bring[ing] all investors, regardless of the size of their holdings, into the information loop,"[1] the proposal of Regulation FD last December generated more than 6000 comments and triggered widespread criticism from issuers and the securities industry. Although the Commission tried to address some of the criticism by narrowing its scope, significant uncertainty remains as to whether the principal effect of Regulation FD will be to enhance or to curtail the flow of information from issuers to the public.

The Commission also unanimously adopted Rule 10b5-1 and Rule 10b5-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), less controversial rules that clarified two issues under insider trading law: 1) the "use/possession" standard for material, non-public information; and 2) the application of the misappropriation theory of insider trading to certain non-business relationships.[2] Regulation FD and Rules 10b5-1 and 10b5-2 will take effect on October 23, 2000.[3]

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[1] Opening Statement of SEC Chairman Arthur Levitt (Aug. 10, 2000). This statement may be found at <http://www.sec.gov/news/extra/endseldi.htm>. Regulation FD will be codified at 17 C.F.R. §§ 243.100-243.103.

[2] To be codified at 17 C.F.R. § 240.10b5-1; 17 C.F.R. § 240.10b5-2. The Commission also adopted amendments to Form 8-K.

[3] *See* Selective Disclosure and Insider Trading, Release Nos. 33-7881, 34-43154, IC-24599, File No. S7-31-99 (Aug. 15, 2000)("Adopting Release"). This release may be found at <http://www.sec.gov/rules/final/33-7881.htm>.

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I. Selective Disclosure - Regulation FD.

Designed to be an issuer disclosure rule and not an anti-fraud rule, Regulation FD prohibits issuers and certain persons acting on their behalf from selectively disseminating material, non-public information to securities industry professionals, institutional investors, and certain other persons who would reasonably be expected to trade or provide trading advice on the basis of the information. Any intentional disclosure of material, non-public information to such persons must be done in a manner that provides for simultaneous public dissemination, and any unintentional disclosure must be remedied within 24 hours or the next business day.

A. Issuers and Issuer Personnel Who Are Covered by Regulation FD.

Issuers subject to the rule are those with securities registered under Section 12 of the Exchange Act and those required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies. The SEC revised Regulation FD from the proposal to *exclude* foreign sovereign debt issuers and foreign private issuers.[4] The regulation excludes open-end investment companies.

The regulation covers only communications by an issuer's senior management, its investor relations professionals, and others who regularly communicate with market professionals and security holders.[5] The SEC narrowed those covered by the rule in response to concerns that the broader coverage in Regulation FD as proposed might hinder legitimate ordinary course business communications. The SEC clarified that the universe of persons who "regularly" communicate with securities market professionals and security holders does not include every employee who *occasionally* communicates with analysts or shareholders.

B. Recipients of Information Who Are Covered Under Regulation FD.

Unlike the proposal, which would have applied to communications with anyone outside the issuer, Regulation FD applies as adopted only to issuer disclosures made to the following categories of persons and their affiliates and associated persons: (1) brokers or dealers; (2) investment advisers and certain institutional investment managers;[6] (3) investment companies and hedge funds;[7] and (4) holders

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[4] The Adopting Release notes that the Division of Corporation Finance has been asked to undertake a comprehensive review of the reporting requirements of foreign issuers. Adopting Release at II(B)(5) & n.75.

[5] In the case of a closed-end investment company, persons acting on its behalf include senior officials of the issuer's investment adviser.

[6] Regulation FD § 100(b)(1)(ii) includes "institutional investment managers", as defined in Section 13(f)(5) of the Exchange Act (15 U.S.C. § 78m(f)(5)), that filed Form 13F for the most recent quarter of the year.

[7] While Regulation FD §100(b)(1)(iii) does not include hedge funds by name, it covers hedge funds "by covering persons who would be categorized as investment companies but for the exclusions

of the issuer's securities, under circumstances in which it is reasonably foreseeable that the holder will purchase or sell the issuer's securities on the basis of the information. Included in these definitions will be sell-side analysts, buy-side analysts, institutional investment managers, and other market professionals who may be likely to trade or provide trading advice to others on the basis of selectively disclosed information.

Expressly exempted from the rule's coverage are disclosures made to: (1) people owing a duty of trust or confidence to the issuer (*i.e.*, professional advisers such as attorneys, investment bankers, or accountants); (2) persons subject to an express written or verbal confidentiality agreement (the agreement may be made after the disclosure of the material, non-public information);[8] and (3) credit rating agencies, provided that the information is solely for credit rating purposes and the ratings are publicly available. As discussed below, also excluded from the rule's coverage are disclosures made in connection with most securities offerings registered under the Securities Act of 1933 (the "Securities Act"). Although the rule does not expressly exempt those involved in ordinary-course business communications with the issuer such as customers or suppliers, or disclosures made to the media or government agencies, the SEC believes the rule as revised "should not" cover these communications.[9]

C. Communications Excluded from Regulation FD (Public Offerings).

Regulation FD excludes communications made in connection with registered offerings (other than specified shelf-registered continuous offerings such as selling stockholder resale shelves and employee benefit plan offerings). Notwithstanding this exclusion, issuers must be careful because communications that do not specifically pertain to the offering may not be excluded. For example, the SEC noted that a public company's discussion of future financial performance with analysts on its regularly scheduled conference call would not be considered to be made in connection with an offering solely because the issuer was engaged in a registered offering at the time. Therefore, disclosures in this context would be affected by Regulation FD. The SEC also noted that the Division of Corporation Finance is currently engaged in a systematic review of the Securities Act disclosure system regarding communications during the offering process.[10]

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from the definition of investment company set forth in Sections 3(c)(1) or 3(c)(7) of the Investment Company Act (15 U.S.C. §80a-3(c)(1) or §80a-(c)(7))". *See* Adopting Release at II(B)(1)(a) & n.25.

[8] Adopting Release at II(B)(1)(a) & n.28. The exemption for persons subject to an express confidentiality agreement may lead to evidentiary problems for issuers if the agreement is not in writing. Where there is a dispute as to the existence of an oral agreement, the burden will be on the issuer to prove the existence of the agreement.

[9] *Id*. at II(B)(1)(a). The Commission observed, however, that if a representative of a customer, supplier, news organization or government agency were to trade on the basis of information obtained in his or her *representative* capacity, he likely would be liable under the misappropriation theory by virtue of breaching a duty to his employer. *Id.* at II(B)(1)(a) n.27.

[10] *Id*. at II(B)(6)(a)(i).

D. Definition of "Material" Information.

According to the Adopting Release, materiality under Regulation FD will be measured against the existing "reasonable shareholder"/"total mix" test of materiality employed in the *TSC* and *Basic* cases.[11] Although the SEC declined to adopt a bright-line test, it observed that close scrutiny is warranted for disclosures relating to:

> (1) earnings information; (2) mergers, acquisitions, tender offers, joint ventures, or changes in assets; (3) new products or discoveries, or developments regarding significant customers or suppliers (e.g., the acquisition or loss of a contract); (4) changes in control or in management; (5) change in auditors or auditor notification that the issuer may no longer rely on an auditor's audit report; (6) events regarding the issuer's securities -- *e.g*. defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, public or private sales of additional securities; and (7) bankruptcies or receiverships.[12]

E. Intentional vs. Unintentional Disclosures.

A selective disclosure is intentional where the person making it knows, or is reckless in not knowing, that the information is both material and non-public. The SEC observed in the Adopting Release that where a selective disclosure is made because of a mistaken determination of materiality, the disclosure will be deemed reckless (and therefore intentional) only if *no reasonable person* similarly situated would have made the same, albeit mistaken, materiality determination.[13] A mistaken materiality determination made in the context of an off-the-cuff response to a question may not be reckless; whereas, the same determination made in the context of a prepared scripted statement might be deemed reckless.[14] If an intentional communication of material information is made, the company must either obtain a confidentiality agreement from the recipient (before the recipient has traded or disseminated the information) or simultaneously disseminate the information to the public.

When an issuer makes an unintentional, selective disclosure of material information, the issuer can attempt to elicit a confidentiality agreement after the fact from the recipient of the information. If the recipient declines or the issuer opts not to seek such an agreement, the issuer must publicly disclose

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[11] *See, TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); and *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). 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 and would view the information "as having significantly altered the 'total mix' of information made available." Adopting Release at II(B)(2).

[12] *Id*.

[13] *Id*. at II(B)(3)(a).

[14] *Id*.; Comments of Deputy Director of the Division of Enforcement Stephen Cutler made at the Open Meeting.

the information "promptly," meaning no later than either within 24 hours or before the beginning of the next trading day. This responsibility is triggered when a senior official of the issuer subsequently learns that there has been a selective disclosure of information that the senior official knows, or is reckless in not knowing, is both material and non-public.[15]

F. Effective Broad Dissemination.

Regulation FD does not prescribe the methods an issuer should use to satisfy the dissemination requirement. Under the rule, an issuer can (1) "file" the information in an Item 5 Form 8-K; (2) "furnish" the information in an Item 9 Form 8-K; or (3) otherwise disseminate the information in a way "reasonably designed to provide broad, non-exclusionary distribution".[16] Thus, the SEC allows flexibility by issuers in their use of one method or a combination of methods to disseminate information most effectively.

Methods deemed generally acceptable to satisfy the broad dissemination requirement include press releases distributed through widely circulated news or wire services, or at conferences or conference calls of which the public is given notice and to which the public has been given access (either in person, by telephonic transmission, or by other electronic transmissions, including the Internet). Posting information on an issuer's own Web site *alone* will not currently satisfy this requirement because many investors do not have computer access.[17]

The Commission warned issuers that methods acceptable for one issuer may not be acceptable for another. Where an issuer is aware, for example, that its press releases are not usually carried by wire services, the use of a press release by such an issuer will not be "reasonably designed" to effectuate broad dissemination of information. Divergence from its own past practices in disseminating a particular type of information may also signal trouble for an issuer if the issuer switches to the new method at the last minute.

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[15] Adopting Release at II(B)(3)(b). While some issuers might try to use the 24-hour window as a "loophole" to circumvent the requirements, the staff warned that "once you get away with it on this basis, you get away with it only once. There is only so much homework that can be eaten by the dog." *Selective Disclosure Rule Gains Approval by Divided SEC*, BNA SECURITIES LAW DAILY (Aug. 11, 2000)(quoting SEC General Counsel David Becker during a press briefing held after the Open Meeting).

[16] Revisions to Form 8-K adopted with Regulation FD provide that "[a] registrant's report under Item 5 or Item 9 will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD". Form 8-K, General Instructions (B)(5). Information that is furnished under Item 9 of Form 8-K is not deemed to be "filed" and is not automatically incorporated into the issuer's short-form registration statements.

[17] Adopting Release at II(B)(4)(b)(noting that in some circumstances, an issuer may be able to demonstrate that disclosure on its website, in combination with other methods, satisfies the requirement).

While the filing of a Form 8-K might seem to be the easiest way to comply with Regulation FD, it may also be the method that attracts the most attention from the SEC staff. In any event, issuers who opt to file a Form 8-K must determine whether to "file" it under Item 5 or to "furnish" it under new Item 9. New Item 9 is specifically labeled "Registration FD Disclosure"; Item 5 is now labeled "Other Events and Regulation FD Disclosure." An Item 5 filing may not signal to the world that the issuer is "correcting" an unintentional selective disclosure; however, it would make the issuer subject to liability under Section 18 of the Exchange Act, and Sections 11 and 12(a)(2) of the Securities Act if the issuer has any short-form registration statements since the filing would be incorporated by reference into the issuer's Securities Act registration statements. On the other hand, while an Item 9 furnishing of Form 8-K would not subject the issuer to the liabilities noted above, it is more likely to signal to the SEC and the world that the issuer made an unintentional selective disclosure. Of course, any method of disclosure whether by press release or filing or furnishing information on a Form 8-K will subject an issuer to potential liability for material misstatements and/or omissions.

G. Communications During Unregistered Offerings.

Although Regulation FD explicitly excludes communications made in connection with registered offerings, the SEC refused to exclude communications made in connection with unregistered offerings. Issuers engaged in unregistered offerings must either publicly disclose any material, non-public information (including information about the private placement or unregistered offering) that they disclose to market professionals and potential investors or require all recipients of the information to agree to keep the information confidential.

The SEC acknowledged that public disclosure of information at such times could jeopardize the availability of the Securities Act registration exemption for the offering. Consequently, unless issuers and placement agents require confidentiality agreements from recipients of non-public information in private placements, issuers may later find themselves in the awkward position of having to choose to violate the prohibition on general solicitation of Section 4(2) of the Securities Act or Regulation D or to violate Regulation FD. Under Rule 135c under the Securities Act, if specified conditions are met, a reporting company may make a public announcement that it is planning to make, is making or has made an unregistered offering of securities without this announcement being deemed an offer to sell securities. Accordingly, an issuer would be able to make a Rule 135c announcement about a private placement without jeopardizing the validity of a private placement exemption. However, the information permitted by this rule is quite limited.

Requiring recipients to keep information confidential may trigger difficulties for prospective purchasers who also trade other securities of the issuer. Recipients may need to construct a "Chinese Wall" or information barrier to avoid insider trading problems. While most large broker-dealers already have Chinese Walls, small entities may have difficulty establishing and maintaining a credible barrier between persons engaged in making the investment decision and other persons engaged in trading public securities. From the standpoint of a recipient that is an entity, the confidentiality agreement should clarify that the entity is not prohibited from trading provided an information barrier is used to wall off the individual recipient from the persons who conduct the trading.

H. Role of the Analyst.

The SEC warned issuers and covered issuer personnel to be cautious in one-on-one discussions with analysts and the discussions they hold at events like industry conferences, where issuers may provide material information in break-out sessions and social gatherings. At the same time, the SEC observed that Regulation FD is not intended to undermine the role of the analyst, a role that the SEC sees as "sifting through and extracting information that would not be significant to the ordinary investor to reach material conclusions."[18] Because the determination of whether information being disclosed to an analyst is material turns on an objective "reasonable shareholder" standard, issuers are permitted to provide analysts with non-public information that may be significant to a knowledgeable analyst but would not be viewed as material by the average shareholder. The SEC noted that Regulation FD is not focused on "whether an analyst, through some combination of persistence, knowledge, and insight, regards as material [any] information whose significance is not apparent to the reasonable investor."[19]

Analysts may continue to engage in private discussions with mid-level employees because such employees are generally not covered by Regulation FD. The SEC observed that "if an analyst sought to ferret out information about an issuer's business by quizzing a store manager on how business was going, the store manager's response ordinarily would not trigger any Regulation FD obligations."[20]

I. Guidance on Earnings.

In light of the comments in the Adopting Release regarding the historic practice of providing earnings guidance, it would be risky for issuers to continue to engage in this practice. The SEC observed that an issuer that has a private conversation with an analyst in which the issuer provides direct or indirect guidance as to whether anticipated earnings will be higher than, lower than, or *even the same as* earnings forecasted by analysts will likely violate the rule.[21] An issuer may violate Regulation FD simply by confirming in a non-public manner the earnings forecast that is already public, because the confirmation itself may be material.

J. Liabilities Attaching to Violations of Regulation FD.

The Commission addressed concerns about private liability arising from an issuer's failure to comply with Regulation FD by providing that no "failure to make a public disclosure required solely by §243.100 shall be deemed to be a violation of Rule 10b-5. . . ."[22] While a violation of the regulation will not create a private right of action for shareholders, the SEC can bring an administrative

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[18] *Id.* at II(B)(2).

[19] *Id.*

[20] *Id.* at II(B)(1)(b) n.36.

[21] *Id.* at II(B)(2).

[22] *See,* Regulation FD §243.102.

proceeding seeking a cease and desist order, or a civil action seeking an injunction and/or civil penalties. Individual employees at the issuer could also be liable under "causing" or "aiding and abetting" charges.

Several caveats to issuers and analysts are in order regarding fraud liability. The SEC cautioned that issuers that selectively disclose material, non-public information could be charged with violating Rule 10b-5 in appropriate circumstances under the traditional theories of liability, including material omissions, false or misleading statements, duty to update and duty to correct.[23] A company official may also face Rule 10b-5 insider trading liability if the disclosure is essentially a tip, conveyed for the "personal benefit" of the insider.[24]

K. What is the Practical Effect of Regulation FD?

At this early stage, it is difficult to predict how significantly Regulation FD will affect issuer communications. It is virtually certain that many issuers will take a more cautious approach to communications with market professionals and investors and significantly curtail permitted communications until they have more experience under the new rules. Such a change in practice will put a strain on relations with those who follow the issuer and may be accustomed to a more open-door policy. Smaller or newer issuers may be hurt by Regulation FD because they must often work one-on-one to nurture a relationship with an analyst. Since those kinds of communications are risky under the new rules, these issuers may have an even more difficult time getting the attention of busy analysts.

Issuers need to review and revise their policies on communications with market professionals and investors to reflect the elements of Regulation FD. The SEC has observed that selective disclosure policies implemented by issuers may be relevant in determining whether a disclosure was reckless or not.[25] At a minimum, issuer policies should:

- Ensure that all planned announcements, speeches, and other communications by covered persons that will not be disseminated broadly and that might include material information, are reviewed by counsel or other appropriate personnel for potentially violative information;
- Include guidelines on how information should be disseminated (Note: a flexible policy that accounts for situational variances will maximize the benefits and minimize the potential negative consequences of any given method of information dissemination);
- Provide for adequate notice, by a press release or other effective means, of meetings or conference calls to which the public is invited;

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[23] Adopting Release at II(B)(7) n.88 (citing *Backman v. Polaroid Corp.*, 910 F.2d 10, 16-17 (1st Cir. 1990)(*en banc*); *In re Phillips Petroleum Sec. Litig.*, 881 F.2d 1236, 1245 (3d Cir. 1989)).

[24] Adopting Release at II(B)(7) & n.87 (citing *SEC v. Phillip J. Stevens*, Lit. Rel. No. 12813, 1991 WL 296537, at *1 (S.E.C. Mar. 19, 1991)(discussing that this settled enforcement action concerned a corporate officer who allegedly disclosed material, non-public information to analysts to protect and enhance his reputation.)

[25] *Id.* at II(B)(7) n.90.

- Outline the steps to follow if a senior company official believes that a selective disclosure has been made;
- Provide for timely corrective filings or public disclosures for any unintentional disclosures as well as disclosures that may be deemed "intentional" (Note: although after-the-fact disclosure will not necessarily cure a Regulation FD violation for an "intentional" selective disclosure, prompt action will prevent a continuing violation and put the issuer in a better position to avoid or mitigate any sanctions imposed by the SEC);
- Give careful consideration to the means by which the issuer distributes information to ensure that it is effective. The SEC noted, by way of example, that small issuers whose press releases are not routinely carried by major wire service should use an additional method; *e.g.*, distribute information to local media, furnish or file a Form 8-K, post information on a website or use a service that distributes the press release to a variety of media outlets and/or retains the press release; and
- Provide for periodic training of all relevant persons to ensure that the company's policies are understood and enforced.

Issuers should also consider taking the following steps:

- Designate a limited number of persons authorized to make disclosures or field inquiries;
- Prohibit discussions of earnings estimates and forecasts in any forum to which neither the public nor the press are invited;
- Permit the public to listen in on analyst conference calls by telephonic means or through webcasting (Issuers are not required to allow the public to ask questions on calls[26]);
- When a webcast or conference call is part of the distribution process, consider making the webcast or call available to the public for a "reasonable period of time" to permit more people to access those disclosures;[27]
- Require confidentiality agreements from all recipients of non-public information in private placements (including Rule 144A offerings) if the information disclosed could be deemed material;
- Keep a record of communications with analysts;[28] and
- Seek time-limited embargo agreements from analysts in appropriate circumstances.[29]

Corporate executives and lawyers will have to be prepared to reach conclusions even faster on whether information that is to be (or has been) disclosed is material. While these judgments are already difficult, the threat of having to "admit" a mistake by making a prompt corrective disclosure will place additional pressure on this decision-making process. Additional training on materiality would be advisable.

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[26] *Id.* at II(B)(4)(b) & n.71.

[27] *Id.* at II(B)(4)(b) & n.73.

[28] *Id.* at II(B)(2) n.44.

[29] *Id.*

Finally, analysts and other market professionals will have to be prepared to handle more frequent requests from issuers to sign confidentiality or non-disclosure agreements. Before signing any such agreement, they should understand all of the ramifications that it may have on trading or hedging activities.

II. Insider Trading and the "Use/Possession" Standard - Rule 10b5-1.

Rule 10b5-1 was crafted to resolve a split among federal appeals courts regarding whether insider trading liability requires proof of the trader's "use" of material, non-public information or proof of the trader's "possession" of that information. The Commission believes that the "knowing possession" standard better achieves the goals of protecting investors and ensuring the integrity of the securities markets.[30] Consequently, Rule 10b5-1 provides that for purposes of insider trading, awareness of the material, non-public information when making the trade is sufficient for liability to attach.

To quell concerns about the SEC's authority to promulgate such a rule, the rule does not purport to change or modify any other aspect of existing insider trading law other than the use/possession issue.[31] Proof of scienter is still necessary to make out a case under Section 10(b) of the Exchange Act and Rule 10b-5. It remains to be seen whether the courts will accept the SEC's rationale.

Three affirmative defenses are provided in the rule for persons who transact in a security and are aware of material, non-public information:

- Prior to becoming aware of the information, the person must show that a binding contract to transact in the security existed, instructions were provided to another to execute the trade, or a written plan for trading existed.

- The contract, instructions or plan for buying or selling securities either: (1) expressly specified the amount, price, and date; (2) amount, price and date were determined by a written formula or algorithm, or computer program; or (3) did not allow the person who is aware of the information to exercise any subsequent influence over how, when, or whether to effect trades, as long as the person affecting the trades was unaware of the material, non-public information.

- The trades in the security were effected pursuant to the contract, instruction or plan.

The affirmative defenses are available only where the contract, instructions or plan was entered into in good faith. The defenses will not apply if the person transacting in the security deviated from or altered the contract, instructions or plan, or entered into or altered a corresponding or hedging transaction. The SEC made it clear that issuer repurchase plans that do not specify amounts, prices and dates can, nevertheless, take advantage of the affirmative defenses if a conforming plan is in place.

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[30] *Id.* at III.

[31] *Id.* at III(A)(1).

The affirmative defenses are a significant advance for the corporate community. They provide a comfort zone within which companies and officers may plan transactions at times when they are not aware of material, non-public information. Those transactions may take place pursuant to the plan or instructions even though the officer becomes aware of the material, non-public information prior to the time a planned transaction is executed. The affirmative defenses enable corporate officers and directors to plan transactions without risk, provided they carefully follow all of the procedures set forth in the affirmative defenses.

Rule 10b5-1 also recognizes the validity of "Chinese Walls" or information barriers as an affirmative defense for trading parties that are entities. An entity will not be liable if it shows that the person responsible for making investment decisions on behalf of the entity was not aware of material, non-public information and the entity had reasonable policies and procedures in place to prevent insider trading.

III. The Misappropriation Theory and Confidential Non-Business Relationships - Rule 10b5-2.

The Commission sought to clarify how the misappropriation theory applies to certain non-business relationships with Rule 10b5-2. Under the new rule, a person receiving confidential information would owe a duty of trust or confidence and thus could be liable under the misappropriation theory if:

- the person agreed to keep information confidential;
- the persons involved in the communication had a history, pattern, or practice of sharing confidences that resulted in a reasonable expectation of confidentiality; or
- the person who provided the information was a spouse, parent, child, or sibling of the person who received the information, unless it were shown affirmatively, based on the facts and circumstances of the family relationship, that there was no reasonable expectation of confidentiality.

Regarding a person's expectation of privacy, the evidence of the type of confidences shared in the past may be relevant to determining the reasonableness of the expectations. Responding to criticisms that the rule would require the SEC to pry into family relationships, the staff suggested that since Rule 10b5-2 is a bright-line rule, it actually lessens the need for the SEC to pry into those relationships.[32]

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If you have any questions regarding Regulation FD or Rules 10b5-1 and 10b5-2, please contact William R. McLucas (202-663-6622), Harry J. Weiss (202-663-6993), Meredith Cross (202-663-6644), Yoon-Young Lee (202-663-6720), or Gail Ennis at (202-663-6014).

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[32] *Id*. at III(B)(1); Comments of SEC staff at the Open Meeting.

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