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Impact of regulation fair disclosure on corporate communications with investors

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IMPACT OF REGULATION FAIR DISCLOSURE ON CORPORATE COMMUNICATIONS WITH INVESTORS

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ABSTRACT

IMPACT OF REGULATION FAIR DISCLOSURE ON CORPORATE COMMUNICATIONS WITH INVESTORS

by Shalini Jhalani

This thesis explains Regulation Fair Disclosure as a means to combat the practice of selective disclosure and focuses on its impact on corporate communications with investors. It explains why the regulation was promulgated by the Securities and Exchange Commission, explains the legal background of the regulation, and differentiates selective disclosure from insider trading. It also discusses previous studies on the impact of the regulation on corporate communications with investors, explores the impact of corporate culture and resources on communications, and also explores the role of investor relations practitioners as boundary spanners and counsels to management.

This study used the qualitative method of in-depth interview based on open-ended research questions in conjunction with a survey questionnaire to obtain primary data. This study found that corporations now communicate more evenly with all investors, the internal boundary-spanning role of practitioners is stronger than the external boundary-spanning role, and that resources have a greater impact on communications than culture.

To Rakesh, for giving me wings

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CHAPTER I

Introduction

Purpose of Study

The main purpose of this study was to examine changes in corporate communications with investors in the light of a new regulation passed by the Securities and Exchange Commission (SEC *or* Commission) called *Regulation Fair Disclosure* (also referred as the regulation and Reg. FD in direct quotes). It examines the results of this study against previous studies that explored the changes in communication practices. The study also explores corporate culture and resources available as causes that could have led companies to respond in varied ways to the regulation. It analyses the role that investor relations practitioners play as boundary spanners for their organization. In addition, it examines the importance of the SEC as a macro environmental factor that regulates corporate communications with investors.

Regulation Fair Disclosure

The SEC has traditionally regulated disclosure practices of public corporations in the United States. Public corporations are those that offer securities to be traded on national exchanges or National Association of Securities Dealers Automated Quotation System (NASDAQ) (Marcus and Wallace, 1997). The SEC rules require that public corporations disclose "all material facts to ensure that prospective investors receive information which will enable them to make intelligent investment decisions" (Graves, 1982, p. 68). On August 10, 2000 the SEC adopted a new regulation that became effective on October 23, 2000. It was meant to regulate disclosure practices of public companies. Under Rule 100 of the regulation, whenever:

(1) an issuer, or person acting on its behalf,
(2) discloses material nonpublic information,
(3) to certain enumerated persons (in general, securities market professionals or holders of the issuer's securities who may well trade on the basis of the information),
(4) The issuer must make public disclosure of that same information:
(a) simultaneously (for intentional disclosures), or
(b) promptly (for non-intentional disclosures). (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002, II B section, ¶1.)

Rationale for Regulation Fair Disclosure

This new regulation was promulgated by the SEC to combat the illegal practice of selective disclosure that was exposed by numerous media reports. According to the Commission, selective disclosure occurs when "issuers release material nonpublic information about a company to selected persons, such as securities analysts or institutional investors, before disclosing the information to the general public" (U.S. Securities and Exchange Commission, *Fact sheet: Reg. FD and New Insider Trading Rules*, Regulation FD section, ¶1).

Other reasons that led to the promulgation of this regulation were the flaws in the existing insider trading rules that were used to prosecute selective disclosure, the innovation of modern communication technology, and issuer (corporation that issues securities to the public) favor with analysts.

Corporate Communications

This focus of this study was on corporate communications with investors because the regulation had a wide-ranging impact on corporate communications with investors and investment professionals in general, as well as on corporate disclosure practices.

Corporate communications is a public relations function. To better explain corporate communications it is important to first define public relations. Larissa A. Grunig (1996) defined public relations as "the management of communication between an organization and its publics. The key element is the notion of managed communication – whether it is called public relations, communication management, or organizational communication" (p. 461). According to the author, it includes such areas as employee communications, media relations, government relations, financial relations, product publicity, and community relations.

A working definition of public relations coined by Richard E. Crable and Steven L. Vilbert (1986) describes public relations as "the multiphased function of communication management that is involved in researching, analyzing, affecting, and reevaluating the relationship between an organization and any aspect of its environment" (p. 5). Certain assumptions that are attached to this definition are that organizations exist in a larger environment that includes their physical, political, economic, and political surroundings; that the organization-environment relationship is important to organizations whether they are nonprofit or profit-making; and that the relations between an organization and aspects of its environment can and should be improved. The definition also assumes that public relations is an important weapon in helping organizations adjust to their environments as well as in adjusting environments to the organization.

Crable and Vilbert's (1986) definition implies certain activities that a public relations practitioner carries out. According to the definition, the "Public relations practitioner can assume the role of a 'boundary role person'; an agent of change and improvement who is a part of the organization" (p. 8). A public relations practitioner spends much time trying to change the organization to match the goals and needs of the environment.

Wilcox, et al. (1999) state that public relations is communication that is a management function; is deliberate, planned, and two-way; and is in the interest of the public. The writers also state that, to be effective, public relations must be based on an organization's policies and performance. Public relations includes areas such as research, publicity, media relations, investor relations, and marketing communications, which implies an audience for public relations that includes the media, government, employees, and investors.

Thus, public relations can be understood as intentional communication between an organization and its publics to maintain a state of equilibrium with the external and internal environment of an organization. However, public relations functions are referred by many other terms.

According to Wilcox, et al., "*Public relations* is used as an umbrella term on a worldwide basis" (p. 10). The most commonly used term for public relations is corporate communications. The writers state that other terms are used for public relations to reflect more accurately the function of communication and to keep away from negative connotations that the term may have.

According to Michael B. Goodman (1994), corporate communications is meant to "meet the strategic goal of developing and perpetuating a corporate image and culture through consistent and coherent messages through various media from face-to-face contact to print to video" (p. 3). It includes traditional disciplines such as public relations, investor relations, employee relations, and labor relations, community relations, government relations, media relations, advertising, marketing communications, technical communications, management communications, and training and employee development.

In the following study, the researcher attempted to study corporate communications wherein corporate communications was seen as a part of public relations. The focus of research was on corporate communications with investors.

CHAPTER II

Literature Review

Investors form an important segment of the audience for corporations. It is the investors whom corporations depend on for valuable investment dollars that are vital to their existence in the marketplace (Mahoney, 1991). As a result, much of the communication of a corporation is directed toward investors through investor relations efforts. To better understand how the regulation affected corporate communications with investors, it is important to know what investor relations is about. The following section explains investor relations in detail.

Investor Relations

According to Marcus and Wallace (1997), investor relations is "the process by which we inform and persuade investors of the values inherent in the securities we offer as a means to capitalize business" (Introduction, xi). In addition, say the authors, investor relations also helps companies compete in the capital markets.

Wilcox, et al. (1999) state that investor relations practitioners create and maintain investor confidence and help build good relations with the financial community, the primary audience being stockholders and financial analysts. According to Mahoney (1991), "The fundamental purpose of investor relations is to create an investment marketplace that is fully informed about the company and a company that is fully informed about its options in the investment marketplace" (p. 142). However, according to Michael Useem (1993), the investor relations agenda sometimes extends beyond keeping investors well informed. It can also be organized in a manner that helps retain and attract new investors and change the mix of investors. This may require the investor relations department to give out more information to the investment community and discipline the information around the central message of the management. If the message is not understood or appreciated, then the agenda becomes one of educating investors.

What Investor Relations Entails

According to Marcus and Wallace (1997), the investor relations professional must consider those people who make up the audience, their information needs, ways to communicate with them, communication tools to be used, and the factors that limit their communication with investors.

Audience. Audience includes security analysts, brokers, traders, money managers and institutional portfolio managers, other investment officers, the financial press, and all shareholders – institutional and individual. What follows is a description of the audience.

According to Vice President and Portfolio Manager of Transamerica Investment Management, LLC, K. F. Broad (personal communication, August 16, 2002), the *security analyst* basically collects data about a company and makes predictions about the future of the company and its stock. One differentiation that can be made between analysts is on the basis of buy- and sell- sides. *Buy-side analysts* are those who are members of investment companies and have the responsibility to analyze and buy (to subsequently hold or sell) stocks of a group of other companies for their own investment company. *Sell-side analysts* are those who analyze the stocks of specific companies and recommend their clients (institutional and sometimes individual investors) buy favorable stocks. In that way, they sell stocks through recommendations. These sell-side analysts require more in-depth information about companies.

The sell-side analysts (who may be part of brokerage houses) are conduits between the issuer (public company that issues securities) of securities and the buyer (or investor) of securities. The analysts convince investors to conduct transactions in the securities of companies they represent. "In this sense, brokerage analysts and their research are part of the investor relations sales team" (Mahoney, 1991, p. 23).

According to Marcus and Wallace (1997), analysts sometimes issue intensive and detailed research reports periodically to investors recommending to them that they buy, sell, or hold the stock of a company. Recommendations by major firms can be taken seriously and, as a result, might affect the price of a stock. For this reason the investor relations officer must constantly develop new interest about the company among members of the financial community.

The *broker*, according to Marcus and Wallace (1997), is a middle-person between the investor and the company whose stock is being sold. Brokers traditionally depend on their firm's research department for information and analysis about a company's security but recent trends have shown that brokers have begun conducting their own research. Thus, brokers are an important part of the audience because they help build a retail following.

According to Marcus and Wallace (1997), the *securities trader* is a person who trades stocks to make capital gains on very small price movements of the stock. For such transactions the trader needs basic information about a company to get a better feel of where a stock might go.

Marcus and Wallace (1997) say that *money managers* are individuals or firms who oversee entire funds or segments of funds owned by others. The money manager may be a portfolio manager, head of a mutual fund, a bank trust department, pension fund, hedge fund, private investment capital, or a discretionary account for a brokerage firm. The money managers invest the funds available in stocks of certain companies. For such investment they need to be well informed about the companies in which they invest.

According to Marcus and Wallace (1997), other investment officers include those in charge of bank trusts and insurance company investments. In order to invest these funds officers need information about the companies in which they will invest.

Marcus and Wallace (1997) also state that the *financial press* is an important segment of the audience. It includes magazines like Forbes, Fortune, and Business Week; newspapers like the New York Times and the Wall Street Journal; wire services like PR Newswire and Business Wire; and radio and television channels.

Corporations have traditionally given lesser attention to *individual investors* as compared to *institutional investors*. In his book on investor relations, Mahoney (1991) explains, the job of an investor relations personnel is two-fold: first, to communicate information to investors clearly and honestly so that investors can get informed about the company and in that process understand the company as a good investment vehicle, and second to put value in that company's securities. The confidence of the investors in the company as a good investment vehicle and their investment in it is vital to the company. This is because it increases the stock price, as well as the future success and survival of the company. Mahoney (1991) states:

> However, the opportunity to have impact on share price and cost of capital is greater when dealing with institutions. By virtue of the size of their holdings and tendency to trade actively, institutions set the price.... That's a good reason for investor relations people to concentrate their communication efforts on the institutional side. (p. 8)

At the same time, says Mahoney (1991), it is easier for companies to identify and contact institutional investors. Companies can track the trading habits of institutional investors by looking at documents that institutional investors file with authorities regarding their trades. They can also directly distribute communication materials to them during meetings, a communication tool described below. On the other hand, it is difficult to identify, contact, and track the trades of the individual investors who are in larger numbers and widely dispersed.

Another reason, according to Mahoney (1991), why corporations treat individual and institutional investors differently is that the trend of individuals relying on institutions to manage their funds has increased. This is because individuals cannot "...compete with institutions in terms of information resources and speed in conducting transactions to catch the market at exactly the right time" (p. 17).

<u>Audience information requirements</u>. The information needs of the audience differ from one segment to another. An analyst, for example, needs much more information than a trader or an individual investor. According to Marcus and Wallace (1997), there are three general categories of information that an investor relations professional must communicate to the audience – financial data, information about the management, and the company's plan. These categories are described below.

The *financial data* includes information about the earnings history, revenues, the cash flow, net margins (percentage of net income to revenues), return on equity, balance sheet, ratios, the cost of capital, and economic conditions.

Information about the *management* includes information about their capability. Examples are: information about the chief executive officer's talents, leadership capabilities, and personal characteristics; capabilities, talents, backgrounds, contributions, and knowledge of key managers and directors; and the success, adaptability to changes in the corporation and the environment, and interaction and effectiveness of key managers as a team.

Another segment of information comes from the *plans and projections* of the company that is considered sensitive information. It is the "...road map of company policy for continued profitability, expansion, and growth" (p. 90). It includes aspects such as plans for management change in the future, plans for acquisition, cost of growth of the company, and expectations of the future economic climate. It is imperative that the investor relations professional communicates the company plan credibly.

Tools of communication. According to Marcus and Wallace (1997), the tools of communication include communication materials, such as print, that can be used to disseminate information. They also include other ways, such as meetings through which investor relations professionals reach out to various segments of the public.

According to Marcus and Wallace (1997), investor relations professionals hold *meetings* mainly with individual security analysts, analyst societies or groups, stockbrokers, money managers, portfolio managers, and traders. The authors state, "Face to face meetings with analysts and investors are crucial" (p. 147). Such meetings provide insight into companies that is not available otherwise. More searching and specific questions are asked by the audience to get in-depth information. At the same time these meetings are valuable to analysts because of competition. If an analyst asks a question to the investor relations professional during a meeting where competitors are present, then the competitors may get unintentionally tipped about the investment strategies of the analyst through the question itself. During the meetings communication aids such as *slide* or *video presentations* and *short films* are used. Other ways that practitioners communicate with investors are through *telephone* and *video conferencing* and through the *Internet.*

The investors are sometimes given *plant tours* that give them a better understanding of the company and its capabilities (Marcus and Wallace, 1997). According to Mahoney (1991), the purpose of plant tours and field trips is to enlighten analysts and key institutional investors. Such trips entail excursions to company facilities such as the research center, a new plant, or production facility. It includes presentations by technical, operational, and financial personnel and also executives.

Other aids used to inform the audience include *annual reports* and *SEC filings.* Filings include forms 10-Q and 10-K. These are important documents that give the basic financial information to investors. According to Marcus and Wallace (1997) they "...include[s] changes in accounting principles, dividend history, product mix, relative profitability of lines of business, advertising, research and development plans and expenditure, acquisition or disposition of material assets..." and similar information (p. 163).

Other printed matter includes *newsletters*, *brochures*, *press releases*, *direct letters to shareholders*, and *reprints* of speeches and significant press articles. In addition, *websites* are also used to inform investors about the company and update them about latest developments.

<u>Investor relations and disclosure by law</u>. When companies communicate with investors it is important that they disclose information in a way that they do not violate

the law to avoid penalties. For example, in the case of the regulation, the SEC states liability to non-compliance as follows:

> If an issuer failed to comply with Regulation FD, it would be subject to an SEC enforcement action alleging violations of Section 13 (a) or 15(d) of the Exchange Act (or, in the case of a closed-end investment company, Section 30 of the Investment Company Act) and Regulation FD. We could bring an administrative action seeking a cease-and-desist order, or a civil action seeking an injunction and/or civil money penalties. In appropriate cases, we could also bring an enforcement action against an individual at the issuer responsible for the violation, either as "a cause of" the violation in a cease-and-desist proceeding, or as an aider and abetter of the violation in an injunctive action. http://www.sec.gov/rules/final/33-7881.htm

According to Marcus and Wallace (1997), "Because the body of regulation regarding disclosure is so elaborate, and so much of it is a question of judgment, much of the direction necessary to make those judgments is not codified" (p. 243). However, according to Louis M. Thompson of National Investor Relations Institute (NIRI) as quoted by the authors, a disclosure policy can bring structure and discipline to the disclosure process. According to Thompson, the disclosure policy "provides all of those who have a direct or indirect role in the process, clear policies with respect to various disclosure issues" (Marcus and Wallace, 1997, p. 363).

According to Thompson, as indicted by Marcus and Wallace (1997), there are some general propositions about disclosure policies that may be useful to companies. The propositions include maintaining investor expectations at a reasonable level, keeping the message simple and consistent, limiting the number of spokespeople, briefing those who hold group or individual analyst or portfolio manager meetings, debriefing people who have had discussions with investment professionals and reporters, keeping a record of disclosures, providing guidance on earnings estimates, and correcting misstatements.

The importance of the law governing investor relations has been explained in detail in the following sections that provide a basis for understanding the problem that this study explores.

Background of Corporate Disclosure Regulations

In 1929 the securities market of the United States plummeted, and with it many investors lost great sums of money. This led to a loss of investor confidence in the securities market. Consequently, Congress decided to identify the problems inherent in the market and pass laws that would solve those problems in order to restore investor confidence. Therefore, in the early 1930s Congress passed two acts – the Securities Act of 1933 and the Securities Exchange Act of 1934 (U.S. Securities and Exchange Commission, *The investor's advocate*, 2001).

The SEC explained the principle underlying the acts as follows:

> The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public, which provides a common pool of knowledge for all investors to use to judge for themselves if a company's securities are a good investment. Only through a steady flow of timely, comprehensive, and accurate information can people make sound investment decisions. (U.S. Securities and Exchange Commission, *The investor's advocate*, 2001, Introduction section, ¶ 3)

Another principle underlying the two acts was to "prohibit misrepresentation, deceit, and other fraudulent acts and practices in the sale of securities, generally, whether or not the securities are required to be registered" (Graves, 1982, p. 70). These acts provided the basis for rules that prohibited manipulative and deceptive practices that could negatively affect investor confidence in the market (Harrison, 2002).

To enforce the concepts underlying the acts, Congress established the Securities and Exchange Commission in 1934, the overriding purpose of which was to protect investors (U.S. Securities and Exchange Commission, *The investor's advocate*, 2001). Two practices that were harmful for investors and their confidence in the securities market were the practices of selective disclosure and insider trading. The following section describes the dual practices and the SEC's efforts in prosecuting them.

<u>Two Illegal Practices</u> – <u>Insider Trading and Selective Disclosure</u>

One notable manipulative and deceptive practice that the SEC intended to prohibit was insider trading. This practice bears a close resemblance to another illegal practice called selective disclosure. These practices have an adverse effect on the confidence the general investing public has in corporations. In both cases "a privileged few gain an informational edge – and the ability to use that edge to profit – from their superior access to corporate insiders, rather than from their skill, acumen, or diligence" (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002, Selective Disclosure section [A.], ¶ 3).

<u>Insider Trading</u>

To understand the issue pertinent to the paper, it is important to clearly understand the related practices of insider trading and selective disclosure. The phrase insider trading involves two terms – *inside information* and *insider*. In their book, "New Dimensions in Investor Relations: Competing for Capital in the 21st Century" (1997), Bruce W. Marcus and Sherwood Lee Wallace defined inside information as:

> Information about a company or its operations that could affect the evaluation of a company or its suitability as an investment vehicle, or that might influence the sale, purchase, or price of its stock, [and] is known by only a limited number of people. (p. 258)

Such inside information, because it is important in making an investment decision, is considered *material* information (Richards, 2000).

Marcus and Wallace (1997) also defined an insider as "anyone who has material information about a company that has not been publicly disclosed" (p. 258). Such corporate insiders include – among others – officers, directors, and controlling stockholders of a corporation (*In the matter of Cady, Roberts & Co.,* 1961).

In the case of insider trading, a securities trader uses inside or *material nonpublic* information about a corporation to trade securities of that corporation. Such trading, which involves an informational advantage, is known as insider trading. This is done at the expense of other investors who do not have access to the inside information and, therefore, are at a disadvantageous position because they lack that informational advantage (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002).

The following example will help explain insider trading: In 1959 a corporate insider, J. Cheever Cowdin, who was a director at Curtiss-Wright Corporation, informed Robert M. Gintel that Curtiss-Wright was going to cut dividends. Gintel was a stockbroker at Cady, Roberts & Co. – a registered broker-dealer. The information about the dividend cut was an obvious material fact that was expected to have an adverse impact on the market price of the company's securities. However, before this information was publicly released, Gintel sold several hundred shares of Curtiss-Wright Corporation. As a result of those trades, Gintel avoided a loss of share value that would have resulted from the release of the news regarding dividend cuts. Thus, Gintel, who was privy to certain material nonpublic information about the corporation, committed insider trading by using the inside information to trade shares of Curtiss-Wright (*In the matter of Cady, Roberts & Co.,* 1961).

Selective Disclosure

On the other hand, "selective disclosure occurs when issuers release material nonpublic information about a company to selected persons, such as securities analysts or institutional investors, before disclosing the information to the general public" (U.S. Securities and Exchange Commission, *Fact Sheet: Reg. FD and New Insider Trading Rules*, 2001, Regulation FD section, ¶1).

Thus, by selective disclosure of information, a privileged few gain the *ability to use* inside information to trade securities and minimize losses, or make a quick profit at the expense of those who do not have access to that privileged information (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002). This was an issue of concern and was put forth by the SEC as follows:

> We have become increasingly concerned about the selective disclosure of material information by issuers. As reflected in recent publicized reports, many issuers are disclosing important nonpublic information, such as advance warnings of earnings before making full disclosure of the same information to the general public. Where this has happened, those who were privy to the information beforehand were able to make a profit or avoid a loss at the expense of those kept in the dark. (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002, Selective Disclosure section [A.], ¶1)

Thus, in both cases – selective disclosure and insider trading – a privileged few gain the ability to use inside information in making a better investment judgment. In the latter case, however, the privileged person *uses* the inside information and the consequent judgment to trade securities and either make a profit, or minimize losses from changes in the market value of the security before other investors. In the former case, however, the person still *holds* the ability to use the information to his advantage.

Although the legal enactments mentioned above were primarily meant and used to prohibit and prosecute fraudulent practices such as insider trading, they were also used to prohibit selective disclosure of material nonpublic information. But the enactments were neither effective in prosecuting selective disclosure, nor did they specifically prohibit it. Rather, in some instances, court rulings on such cases as *Dirks*, 1983 actually protected the practice of selective disclosure (U.S. Securities and Exchange Commission, *Fact Sheet: Reg. FD and New Insider Trading Rules*, 2001). Such cases are explained in the following section.

The following section explains the rules prohibiting manipulative and deceptive practices such as insider trading and selective disclosure. It also explains the loopholes inherent within those rules. The loopholes are important to the understanding of the background on selective disclosure because they became the main impetus for the promulgation of the regulation.

Rules Prosecuting Manipulative and Deceptive Practices

The rules that were promulgated to combat manipulative and deceptive practices under the Exchange Act are as follows. Section 10 and Rule 10b-5 of the Exchange Act state:

> Section 10 – Regulation of the Use of Manipulative and Deceptive Devices:
> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange –
> b. To use or employ, in connection with the purchase or sale of any securities registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. (17 CFR 240.10b)

Rule 10b-5 under Section 10(b) states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
(a) To employ any device, scheme, or artifice to defraud,
(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person, in connection with the purchase or sale of any security. (17 CFR 240.10b-5)

Although these rules did not prohibit any specific acts of fraud, they were designed to "encompass the infinite variety of devices by which undue advantage may be taken of investors and others" (40 SEC at 911).

As a result, prohibitions regarding illegal practices developed over time on a case-by-case basis. Since selective disclosure was linked to insider trading, the insider trading case law was used to prosecute selective disclosure (U.S. Securities and Exchange Commission, *Fact Sheet: Reg. FD and New Insider Trading Rules*, 2001). The case-by-case development of the insider trading law is explained below. The developmental history of insider trading law reflects the gap in it that was the cause of insufficient legal protection against the practice of selective disclosure.

<u>Legal Impetus for Regulation Fair Disclosure</u>

In early cases, the courts prosecuted the practices of insider trading and selective disclosure under the common umbrella of Section 10(b) and Rule 10b-5. However, court rulings made an about face in this approach when an important distinction was made between the practices of insider trading and selective disclosure. The reader will notice that as compared to early landmark cases, subsequent cases did not enjoy the application of Section 10(b) and Rule 10b-5 for the prosecution of selective disclosure. This change in approach by court rulings was, in part, a responsible impetus for the formulation of new selective disclosure rules.

Early Landmark Cases

Case 1. The development of *insider trading law* or the *insider trading doctrine* began with a seminal case, In the matter of "Cady, Roberts, & Co." (1961) (Harrison, 2002). The facts of the case have already been mentioned in the example on insider trading. In this case the SEC determined that the broker's conduct operated as a fraud or deceit upon purchasers and, therefore, was a violation under rule 10b-5(c).

The broker's conduct was determined a violation because there was a "special obligation traditionally required of corporate insiders.... [to restrain from trading] lest the uninformed be exploited" (40 SEC at 912). The obligation rested on the broker because of two reasons – (a) the "existence of a *relationship* [italics added] that gives access, directly or indirectly, to information available only for a corporate purpose and not for the *personal benefit* [italics added] of anyone" (40 SEC at 912), and (b) there is an inherent unfairness where one party, that is privy to certain information, takes advantage of that information at the cost of another (40 SEC 907). The SEC further stated that as a result of the special obligation the insider must make appropriate disclosures or must refrain himself from transaction. This came to be commonly known as *disclose or abstain* rule.

Thus, because the broker had taken advantage of the information at the cost of another party and had personally benefited from the transaction, he had violated the law.

Case 2. The case of *SEC v. Texas Gulf Sulphur* (1968) saw the affirmation of the disclose or abstain rule (Harrison, 2002). In this case, Texas Gulf Sulphur Company discovered very rich mineral deposits in Ontario, Canada. This fact was kept a corporate secret and only a few individuals at the company knew about it. During the time this discovery was kept a corporate secret, a few insiders bought a significant number of company stocks ahead of other investors who were unaware of the information. The stocks were bought with the intention of being sold when the stock price would move up as a result of public knowledge of the discovery of rich mineral deposits.

The court ruled that such an act was a violation of Rule 10b-5. The court, based on *Cady, Roberts & Co.*, held that anyone who has "access, directly or indirectly, to… material inside information must either disclose it to the investing public, or, if he is disabled from disclosing it… must abstain from trading in or recommending the securities concerned while such inside information remains undisclosed" (401 F.2d at 848).

The court also stated that such material information must be "*enjoyed equally* [italics added]… so that outsiders may draw upon their own evaluative expertise in reaching their own investment decisions with knowledge equal to that of insiders" (401 F.2d at 849). This approach commonly came to be known as *parity of information* approach.

According to Harrison (2002), this case set the foundation for subsequent courts to hold the inside party, who provides the material information, liable under Rule 10b-5.

Case 3. Another landmark case of insider trading was the case of *Shapiro v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1974). In this case Merrill Lynch was a prospective managing underwriter of a debenture issue of Douglas Aircraft Company. Since Merrill Lynch was the underwriter of the debenture issue, some of the employees of Merrill Lynch, a few of whom were senior officers, had access to material nonpublic information about Douglas Aircraft Company.

Douglas, for business purposes, had informed some of the officers of Merrill Lynch that its earnings would be sharply down and that it was going to reduce its estimate of future earnings. Before the public release of this information, Merrill Lynch informed many of its institutional clients of the earnings shortfall. The news was expected to adversely affect Douglas' share price in the market. As a result, clients of Merrill Lynch sold a substantial number of shares of the aircraft company to avoid losses.

The court held that along with those who traded stocks on the basis of material nonpublic information (clients of Merrill Lynch), Merrill Lynch itself had also violated Section 10(b) and Rule 10b-5. This was a violation based on the Texas Gulf Sulphur case whereby the court had stated that anyone "in possession of material inside information" must follow the 'disclose or abstain' rule. The court stated that in selectively disclosing the information to a few investors and not disclosing the information to all investors, Merrill Lynch had *violated a duty that it owed* to those investors who did not have access to the information.

The court held that clients of Merrill Lynch had also violated the rule because they violated a duty they owed other investors when they sold the Douglas stock without disclosing the information that had been given to them.

Conclusion. When the courts initially began to prosecute insider trading on the basis of Section 10(b) and Rule 10b-5 they "explicitly extended potential insider trading liability to tippers – those who selectively disclose" (Harrison, 2000, p. 193). The following cases show how the courts subsequently rejected liability to *tippers* on the basis of the rule.

Subsequent Landmark Cases

Case 4. The case *Chiarella v. United States* (1980) – was about Vincent Chiarella, a markup man employed by a financial printer. During the course of his employment, Chiarella came across inside information about a prospective takeover bid. Chiarella was able to deduce the names of the acquiring companies and those companies that were being taken over from the inside information.

Chiarella used that informational advantage and traded stocks of target companies, before the information was made public, to make a profit of $30,000.00. The SEC investigated this act and sued Chiarella on charges of insider trading.

The Supreme Court held that Chiarella did not violate Section 10(b) of the Exchange Act. The court stated that, "What [Section 10(b)] catches must be fraud. When an allegation of fraud is based upon nondisclosure, there can be no fraud absent a duty to speak. We hold that a duty to disclose… does not arise from the mere possession of nonpublic market information" (100 S. Ct. at 1118). Rather, the court said that a duty arises only from legislative enactments or fiduciary relationships. The court further stated, "Chiarella was not the sellers of securities' agent, he was not a fiduciary, he was not a person in whom the sellers had placed their trust and confidence. He was, in fact, only a stranger who dealt with the sellers only through impersonal market transactions" (100 S. Ct. at 1117).

Thus, because Chiarella did not owe a fiduciary duty or a relationship of trust or confidence, he did not need to disclose the inside information. At the same time, because he did not have a fiduciary relationship, he also could not have breached it. In other words, for nondisclosure to be considered fraudulent there has to be a breach of fiduciary duty or a breach of a relationship of trust and confidence. Absent such a duty or relationship, disclosure is not compulsory and therefore, cannot be considered fraudulent.

According to Harrison (2002), "The Court greatly reduced the reach of the section 10(b) insider trading doctrine by reading the 'fraud' back into the section" (p. 194). This approach was in contrast to the parity of information approach that was taken in earlier cases as already mentioned. This marked a turning point in the traditional approach that courts took to prosecute selective disclosure.

<u>Case 5</u>. The last, and most important, landmark case was that of *Dirks v. SEC* (1983). Raymond Dirks was an analyst of securities at a broker-dealer firm. He received information about an insurance firm, Equity Funding, from a former officer of the insurance corporation about a massive accounting fraud within the insurance firm. Dirks investigated and found that there was indeed a huge accounting fraud.

During his investigation Dirks met the insurance company's officers and employees who corroborated the findings. However, senior officers of the insurance company denied the fraud charges.

Dirks also talked about this fraud with many of the company's clients and investors of the insurance firm.

While investigating, Dirks was in touch with a Wall Street journalist and requested him to publish a story about the fraud. The journalist, who did not believe that such a massive fraud could take place and go unobserved by the authorities, refused to publish such a story. Besides, the journalist feared libel charges for such a story.

As a result of Dirks' discussions about the ongoing fraudulent activities with clients and investors, some of the holders of the insurance company's securities sold their stocks totaling more than sixteen million dollars. Consequently, the insurance company's stock fell from twenty-six dollars to less than fifteen dollars per share.

During this period neither Dirks nor his company owned any securities of the insurance company. But, shortly after the stock price dropped, the New York Stock Exchange halted trading in stocks of the company. Subsequently, California state authorities discovered the fraud.

Later, the SEC filed a complaint against the insurance company. It was after the SEC filed a complaint that the Wall Street journalist published a story. After the story got published, the SEC began an investigation into Dirks' role in exposing the fraud and held that Dirks had aided and abetted violations of the antifraud provisions of the securities laws by narrating the allegations of fraud to members of the investment community who later sold the stock.

The SEC reasoned that when a corporate fiduciary passes inside information to a person(s), the obligations of the fiduciary pass on to that person(s) to whom the information is disclosed (*Dirks v. SEC,* 1983). By taking such a stand, the Commission extended the insiders' duty to Dirks (Harrison, 2002).

The Supreme Court rejected this stand citing the following reason: (a) if there is no personal gain to the insider, then there is no obligation to disclose, (b) when there is no personal gain to the insider, there can be no breach, and (c) when there is no breach by the insider, there can be no derivative breach. The Court held that disclosure as a breach of duty depends partly on the personal benefit the insider receives as a result of the disclosure. If there is no improper purpose then there is no breach of duty to stockholders. And when such a breach by the insider is not present, there can be no derivative breach.

The Court further stated that Dirks had no pre-existing fiduciary duty to the insurance company's shareholders. Moreover, the insurance company's employees, as insiders, did not violate their duty to the shareholders by providing information to Dirks. In the absence of such a breach of duty to shareholders by insiders, there was no derivative breach by Dirks. Thus, Dirks did not have an obligation to disclose and did not violate Section 10(b) and Rule 10b-5.

This was, therefore, a case about the protection granted to the disclosure of material nonpublic information by insiders to analysts (and their clients). As a result, after this case, there were very few cases based on disclosure to, or trading by, security analysts.

According to Marcus and Wallace (1997), an analyst is the prime practitioner of corporate analysis and is an important information intermediary. According to Burton (1966), analysts make recommendations as to whether a particular stock is a good investment or not. He published reports that are circulated to customers and potential customers of a brokerage house. A report that holds a stock as a good investment vehicle may cause a stock to rise high in value, and vice versa.

For such a job, according to Burton (1966), analysts require a wide range of information on companies whose stocks they analyze. For such analysis, analysts need information from companies that is not normally accessible to the common investor (*Dirks*, 1983). This practice is worrisome to the SEC because it makes a few individuals and institutions privy to material information before it is available to others (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002).

The Court gave the following opinion in *Dirks* (1983) that expressed the protection given to selective disclosure for the maintenance of a healthy marketplace. This part of the opinion came to be an important reason for the promulgation of new rules (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002). The opinion is as follows:

> Imposing a duty to disclose or abstain solely because a person knowingly receives material nonpublic information from an insider and trades on it could have an inhibiting influence on the role of market analysts, which, the SEC itself recognizes is necessary to the preservation of a healthy market. It is commonplace for analysts to "ferret out and analyze information," and this is often done by meeting with and questioning corporate officers and others who are insiders. And the information that the analysts obtain normally may be the basis for judgments as to the market worth of a corporation's securities. The analyst's judgment in this respect is made available in market letters or otherwise to clients of the firm. It is the nature of this type of information, and indeed of the markets themselves, that such information cannot be made simultaneously available to all of the corporation's stockholders or the public generally. (463 U.S. at 658, 659)

However, the SEC stated, "[We] do not believe that selective disclosure of material nonpublic information to analysts – or to others… is beneficial to the securities markets" (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002, Selective Disclosure section [A.], ¶ 6).

In time, the SEC, mainly through media reports, discovered cases of selective disclosure to analysts and selected institutional investors. This is explained below as another cause for the promulgation of Regulation Fair Disclosure.

Other Impetus for Regulation Fair Disclosure

Media Reports On Selective Disclosure

The SEC, in its proposal for the regulation (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002), cited many media reports about the ongoing practice of selective disclosure. The Commission stated that in some cases selective disclosure had been made during conference calls or meetings that were open only to a few selected analysts and/or institutional investors while other investors, the general public, and the media were not allowed access to those conferences or meetings. In other cases, corporate officials made selective disclosure directly to individual analysts.

The SEC viewed the practice of selective disclosure as a serious threat to the fairness and integrity of the capital markets. It stated that one of its aims was to protect investors from the prospect that a few others in the marketplace possess an informational edge merely through better access to corporate insiders. As a result, the Commission decided to use its authority to impose a new *issuer disclosure rule* to protect the general investors (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002).

However, along with media reports there were other reasons that the SEC cited as responsible for it to push the regulation through including technological advances and issuer favor with analysts.

Technological Advances

According to the SEC, few years ago when communication technology such as through the Internet was not developed enough, it was difficult for companies to communicate with investors speedily and directly. At that time, companies relied on a few news releases and interested parties to communicate information to the general investing public. Such interested parties included securities analysts and institutional investors with whom issuers communicated during conferences. These selected few then served as information intermediaries who let the information flow to the other investors. Such a method of indirect communication led to the delayed transmission of communication, which was enough to render the general investor at a disadvantageous economic position (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002).

However, with technological advances that have made simultaneous communication possible through conveniences like live webcasts, telephone-conferencing, and websites, companies no longer need to rely on intermediaries like analysts. Rather, they can now communicate directly and in a timely fashion with investors.

Issuer Favor with Analysts

The SEC also expressed concern that selective disclosure by corporate managers to analysts and institutional investors may be used to curry favor or bolster credibility with them. This would have the following detrimental effects: (a) analysts might feel pressured to report favorably about companies so that they do not face the threat of being eliminated from future disclosure of nonpublic material information and (b) there would be a trend toward less independent research and analysis by analysts – and more dependence on easy access to inside information – as a basis of analysts' advice about stocks (U.S. Securities and Exchange Commission, *Proposed rule: selective disclosure and insider trading*, 2002).

Conclusion

Thus, legal loopholes, media reports of illegal practice, technological advances, and issuer favor to analysts led the SEC to promulgate new rules regulating corporate disclosure practices.

Scope of Regulation Fair Disclosure

The SEC based the new regulation primarily on Section 13(a) of the Exchange Act that states:

Every issuer of a security registered pursuant to section 12 shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security –

1. Such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.
2. Such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. (http://www.law.uc.edu/CCL/34Act/sec13.html)

Who Cannot Be Subject to Selective Disclosure

According to the regulation, selective disclosure cannot be made to the following persons: (a) broker-dealers and their associated persons, (b) investment advisers, certain institutional investment managers, and their associated persons, (c) investment companies, hedge funds, and affiliated persons, and (d) any holder of the issuer's securities under the circumstance in which it would be reasonably foreseeable that he would buy or sell securities on the basis of that information. The first three categories include securities analysts, large institutional investment managers, and other market professionals who are likely to trade on the basis of the selective disclosure (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002).

Who the Regulation Covers

The SEC specified that the regulation would cover issuer senior management, investor relations professionals, and others who regularly interact with securities market professionals, or security holders (Fisch, 2001).

Type of Information the Regulation Covers

The SEC intended the regulation to apply to material nonpublic information. Nonpublic information, according to the Commission, is that which has not been disseminated in a way that makes it available to investors generally. The SEC also defined material information as information that carries a substantial likelihood that a reasonable shareholder would consider it important to make an investment decision. For the information to be important, the investor has to view the information as significantly altering the *total mix* of information made available.

The definition of material information, as the reader might note, is not clear-cut.

How Issuers Should Disclose Information

The Commission specified the way companies would be required to disclose information to investors. The Commission set forth two types of disclosures and the respective disclosure requirements. The first type of disclosure is *intentional* disclosure that takes place when the person communicating the information knows, or is reckless in not knowing, that the information being conveyed is both material and nonpublic.

For intentional disclosure, the Commission requires that companies release the information *simultaneously* to the investors on a broad and non-exclusionary basis. This can be done through a combination of methods like a press release distributed through widely circulated news or wire service, and announcements made through press conferences or conference calls of which the public must be given adequate notice. The SEC also encourages companies to webcast conference calls, and use company websites as a method of communication. Issuers can also disclose information by filing Form 8-K with the SEC However, the SEC stated that "an issuers method of making a disclosure in a particular case should be judged with respect to what is reasonably designed to effect broad, non-exclusionary distribution in light of all relevant facts and circumstances" (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002, Selective Disclosure section B. 4b, ¶7).

For *non-intentional* disclosures the issuer is required to make public disclosure of the information *promptly*. Promptly has been described as public disclosure either within 24 hours, or, if there is a weekend in between, at "the commencement of the next day's trading in the New York Stock Exchange, after a senior official knows (or is reckless in not knowing) that the information disclosed was material and nonpublic" (U.S. Securities and Exchange Commission, *Final rule: selective disclosure and insider trading*, 2002, Selective Disclosure section B. 3b, ¶1).

Conclusion

Thus, considering the job duties of investor relations personnel, legal boundaries within which they must act, and legal actions against personnel for violation of the law, it can be concluded that investor relations is directly affected by law. As a result, issuers face either the challenge of compliance with the regulation or liability for violating the regulation as put forward by the Commission. The following examples will help explain selective disclosure, and the challenges and liabilities that corporate officials can face.

Recent Examples of Selective Disclosure and Liability

There are three examples of violation of the regulation by high-technology (hi-tech) companies. The first is the example of Raytheon Co., based in Lexington, Massachusetts. According to Tam Harbert (2003), Chief Financial Officer (CFO) Franklyn Caine conducted one-on-one calls with individual analysts after an investor conference that was webcast. During the conference the company had reiterated the annual earnings-per-share (EPS) guidance, but gave no quarterly EPS guidance. However, during the individual calls the CFO stated that the company would generate one-third of its EPS in the first half of the year and the remaining two-thirds in the next half. After the individual calls, the analysts made adjustments to their analysis and lowered their EPS estimates. The S.E.C issued cease-and-desist orders to the CFO and the company.

The second example is that of Schaumburg, Illinois based Motorola, Inc. According to Harbert (2003), Motorola publicly announced on February 2001 that that it was experiencing “significant weakness” in sales and orders and was expecting to miss its earnings estimates and have an operating loss for the quarter if the order pattern continued. A month later, in March 2001, the director of investor relations consulted the legal counsel of the company and after getting a green-signal called 15 analysts telling them that “significant” weakness meant a 25% decline. The SEC stated that the legal counsel was wrong in giving the advice. However, according to the SEC, the company acted in good faith and did not issue any enforcement action against the company or its officials. The Commission only issued a report of investigation about Motorola that included the Commission’s findings. In addition, the Commission stated that such dependence on legal counsel would not always provide sufficient defense in future cases.

Although, says Harbert (2003), violation of the regulation was unintentional in the Motorola case, it was intentional in the case of Siebel Systems Inc., San Mateo, California. In this case, the Chief Executive Officer (CEO) disclosed material, non-public information at an invitation-only conference. The CEO thought that the conference was being webcast. However, although the investor relations director knew that the conference was not being webcast and was private, he did not tell the CEO. The SEC stated that the company either knew, or was reckless in not knowing that it was selectively disclosing material, non-public information. Siebel was given cease-and-desist orders and was fined $250,000.

The section that follows explains the areas of corporate communications where the regulation has had an impact as documented by recent literature.

Impact of Regulation Fair Disclosure on Corporate Communications

According to Fisch (2001), the effect of the Regulation on corporate communications has been disparate impacting it in both directions – positive and negative. According to a report by *The Conference Board* (2001), research on the impact of the regulation on corporate communications is ongoing and therefore, the real effects of the regulation are yet being tracked. At the same time, according to Unger (2002), most of the evidence of impact on communication has been anecdotal rather than empirical.

According to discussions arising from a meeting of a non-profit organization, *The Conference Board*, on corporate governance, Regulation Fair Disclosure was "expected to shape the style and methods of communications between shareholders and corporations…." (p. 13).

The following sections discuss four surveys that were conducted to gauge the impact of the regulation.

Thompson Financial/Carson Global Consulting Survey

This survey reflects some of the changes that corporate investor relations practitioners made as a result of the regulation The results are those of a survey conducted by Thompson Financial/Carson Global Consulting on clients in the year 2001.

More than 80% of the respondents made important procedural and policy changes due to the regulation. Such changes include starting a formal disclosure policy, adding more information on earnings releases, webcasting conference calls, giving more information during conference calls, posting more information on company website, and issuing press releases more frequently – in that order.

About 40% of the companies made changes in dissemination of quarterly earnings mainly by webcasting earnings conference calls, adding or expanding earnings guidance, and adding on the press release how to access a conference call or webcast. A similar number of companies stated that they made changes in the way earnings guidance was disseminated between quarterly profit reports. Forty-nine percent of the companies also offered intra-quarter guidance through press releases, conference calls, and 8-K or 10-Q filings. In addition, 53.6% of the companies stated that they added information to quarterly earnings releases.

More than half the companies (50.7%) made changes in communications with analysts mainly by making changes in the following ways – less frequent contact, less detailed information, and focused more on public documents. Some companies limited the number of company spokespeople.

Again, 39.2% of the companies made changes in the way they conducted quarterly earnings calls. Companies made changes in the following ways – webcast conference calls, issued press releases to announce the call, increased the amount of information given on the call, archived the call replay, and allowed more participants on the call.

Thus, this study found that most corporations gave more information to investors after the regulation, many corporations brought structure in personal communications with greater focus on public documents, and many other companies changed the quality and method of dissemination of quarterly earnings for the greater benefit of investors.

Association of Investment and Management Researchers Survey

On January 31, 2001, the Association of Investment and Management Researchers (AIMR) electronically distributed a survey to US members whose titles were listed as credit analyst, equity analyst, fixed income analyst, and portfolio manager. There were a total of 423 respondents. Seventy-five percent (316) responses were that of buy-side analysts whereas, twenty-five percent (107) of the responses were that of sell-side analysts.

More than half the analysts who regularly communicated with IRO's, CEO's, and CFO's before the regulation stated that the quantity of communication with these individuals decreased after the regulation. Very few respondents stated that the quality of communications with these individuals increased.

More than two-thirds of the respondents who regularly held interviews with IRO's and executives before the regulation stated that their ability to access these individuals for interviews had decreased. A little over a third of analysts who regularly accessed company sponsored group analyst meetings stated that their ability to access such meetings decreased after the regulation. A similar number of analysts who regularly participated in company plant tours stated that their access to such tours decreased after the regulation. Less than a fourth of the analysts who regularly participated in company sponsored conference calls stated that their opportunity to participate in such calls decreased after the regulation came into effect. One-tenth of the analysts who regularly participated in webcast conferences stated that their opportunity to participate in such conferences decreased after the regulation. More than half the respondents stated that the overall quality of information released by companies they research decreased after the regulation was imposed.

Thus, overall, securities analysts faced restricted contact with corporate officials and experienced decrease in the quality of information being provided by corporations.

National Investor Relations Survey

In March 2001 Rivel Research Group conducted a survey for National Investor Relations Survey (NIRI). That survey was conducted on IRO's in NIRI's member firms. The survey focused on the impact the regulation had on corporate disclosure to assist members in dealing more effectively with the constantly evolving dynamics of investor communications. A total of 577 responses were received. The methodology utilized e-mail and an online questionnaire.

According to the research highlights, IRO's in most member companies reported that they made no major changes to key aspects of their IR programs as a result of the regulation. One-third of the companies said that they provide the same or more information to analysts and investors. Nearly four out of five companies continued to hold the same number or more one-on-one meetings with investment professionals. The same number still offered some form of earnings guidance to the investment community.

A distinct minority of IRO's had cut back their investment communication since the regulation went into effect. One-fourth IRO's disseminated less information about their firms. About one-tenth of the companies reduced the number of one-on-one meetings. One-third of the companies that provided earnings guidance did not update the guidance during the quarter.

In an effort to avoid selective disclosure fewer IRO's reviewed earnings models (43% after the regulation as compared to 81% earlier) and draft reports (57% after the regulation as compared to 79% earlier). Seventy percent IRO's said that they always accompanied top corporate officers during one-on-one meetings with investment professionals. One-forth of the IRO's said that their firms planned to establish written disclosure policies.

As another adjustment to the regulation, most NIRI companies took steps to facilitate access to corporate information through conference calls, webcasts, and corporate websites. Fully 89% of the companies that provided earnings guidance allowed public access to quarterly conference calls and webcasts. Almost two-thirds included earnings guidance in their news releases. More than half of the firms used e-mail to notify investors of upcoming webcasts or telephone calls.

<u>Securities Industries Association Study</u>

The Securities Industries Association (SIA) conducted in-depth interviews and surveys in May 2001 with 30 buy and sell-side analysts working in member firms titled *Costs and Benefits of Regulation Fair Disclosure* (2001). The organization put forward results that reflected not just its own research, but also that of NIRI and AIMR. The research found that there was a "chilling effect" on the quantity of information disseminated by certain issuers. The research also reported that there was a decline in the quality of information that was disseminated. Fifty-seven percent of the analysts interviewed by the SIA stated that companies were disclosing less. Seventy-two percent of the analysts interviewed stated that the quality of information had deteriorated after the regulation came into effect. Some of the sell-side analysts reported that one-on-one discussions had reduced and that company management often reduced free dialogue or replaced it with scripted statements and references to already public material.

Causes for Differential Effects on Corporate Communications

As can be understood from the statistics discussed above, the regulation had a differential impact on corporate communications with investors. The literature reviewed pointed to two main reasons that could have been responsible for such a differential impact. Those reasons are discussed below.

Corporate Culture

According to Fisch (2001), the variation in responses of companies to the regulation is based a lot on the culture they follow. When a company has a transparent culture, it regularly competes for investors by providing more information and disclosure, and as a result it errs on the side of compliance. In other cases, where companies have a tradition of withholding information and do not compete for investors with a free flow of information, companies might have fewer disclosures. This is particularly true in the case of those companies where lawyers and senior management feel that those officers who carry out the communication tasks, such as making phone calls and answering investor questions, do not have a good sense of what is material and what is not material.

Resources Available

It had been contemplated that the response of companies to the regulation may have been varied because of availability or unavailability of resources. According to the SIA's research titled *Costs and Benefits of Regulation Fair Disclosure* (2001):

"Not all companies have the resources or acumen to take these (determining materiality of information and following up by filing Form 8-K, issuing press releases, and/or webcasting meetings and calls) measures. Anecdotal evidence suggests that many of the companies communicating less – i.e., not taking measures to communicate in compliance with Reg. FD – are small or new. These companies may be less able to adjust resources to accommodate for Reg. FD…. Anecdotal evidence suggests that many of these companies are also not able to rally resources necessary to communicate in compliance with Reg. FD." (p. 14-15)

Conclusion

Thus far, the researcher explored why and how the SEC's Regulation Fair Disclosure affected corporate communications, especially through investor relations, with the investment community. Corporations responded in disparate ways – some responding to the regulation by communicating less, while the others responding by communicating more, in both oral and written communications. There were two reasons why corporations may have reacted in different ways – lack of resources and corporate culture. However, due to lack of research, the reasons understood as determinants for opposite responses from companies remained largely speculative.

The following sections outline the theoretical framework that enabled the researcher to explore changes that occurred in corporate communications with investors and investment professionals.

Theoretical Framework for Study

Corporate Communications and Macro Social Environment

Summing up the work of systems theorists (including Katz & Kahn, 1978; and Kast & Rosenzweig, 1972), Jablin and Krone (1987) state that organizations are open systems that are composed of suprasystems and subsystems that are in a hierarchical-interactive relationship with one another. According to the writers "This principle suggests that in order for researchers to depict accurately communication activity in organizations, they must not only explore behaviors within isolated levels of analysis, but also consider how the simultaneous interaction among levels affects the phenomenon under observation" (p. 711).

In the following theoretical framework, the researcher has used levels of analysis as explained by systems theorists to explore communication activity in organizations.

Levels of Analysis

According to Jablin and Krone (1987), organizational communication occurs at four levels: (a) intra-individual, (b) interpersonal or interactive, (c) network or organizational, and (d) macro-societal. For purposes that pertain to the research, the researcher focused on the latter two levels of analysis. The four levels have been illustrated in Figure 1.

Jablin and Krone (1987) examined the research of various theorists and have explained the macro environment as having various components, such as legal, political, cultural, ecological, and economical. These components form the task-environment (or, according to Evan (1972), *organization-set*) of an organization and contain elements within them. For example, the legal component contains various regulatory agencies that form elements within the component. The elements and the organization are in direct interaction with each other and are relevant to organizational decision-making.

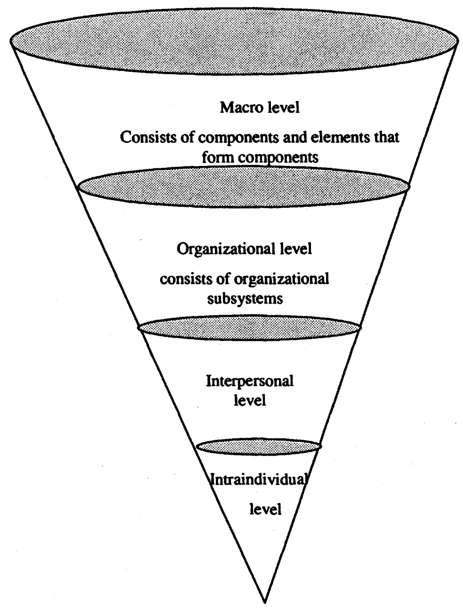

Figure 1. Levels of organizational communication. The cone-shaped diagram illustrates the four levels at which organizational communication occurs.

The next level is the organizational level. The interaction of an organization with the environment or macro level can be explained with the help of systems theory. According to Evan (1972) "A systems approach to organizational phenomena begins with the postulate that organizations are 'open' systems which, of necessity, engage in various modes of exchange with their environment" (p. 182).

Moving further with the discussion about the systems approach, Evan (1972) states that a system interacts at three levels: the subsystem level that considers the subunits of the organization, the system level that considers the organizational system in its entirety, and the suprasystem level that considers various organizations within the environment of the organization with which it interacts.

According to Evan (1972), a system or organization that is the point of reference of a study is the focal organization that interacts with other organizations within its environment that make up its organization-set. Evan states that a system is composed of input elements, process elements, output elements, and feedback effects. He illustrated this composition using the example of Ford Motor Company as the focal organization. The input organizations would include suppliers, trade unions, government agencies, etc. that provide for heterogeneous resources – human, material, legal, financial, etc. The resources are then transformed by the social structure and technology of the organization into products and services that are exported to the output organizations. The output organizations would mainly include automobile dealers. The success with which the company manages relations with the output organizations has feedback effects on the company as well as the input organizations. The feedback effect again starts the cyclical interrelationship between the organizations.

Systems Theory

Deriving mainly from Katz and Kahn's (1978) work, Grunig and Hunt (1984) have explained systems theory as follows. According to them, most organizations have similar subsystems as illustrated in the figure describing public relations as an organizational subsystem. The environment forms the suprasystem within which the system as a whole exists. The organizational system has six subsystems: (a) the production subsystem that includes manufacturing and engineering departments, (b) the maintenance subsystem such as the personnel development department, (c) the disposal subsystem responsible for marketing and distribution, (d) the adaptive subsystem such as research and development departments, (e) the management subsystem that controls and integrates other subsystems, and (f) the public relations subsystem that supports the other organizational subsystems.

The public relations subsystem also includes public relations personnel. According to Grunig and Hunt (1984), public relations personnel play the role of boundary spanners. According to White and Dozier (1992), public relations personnel span organizational boundaries to represent the organization to the external environment. The writers state that boundary spanners are "individuals within the organization who frequently interact with the organization's environment and who gather, select, and relay information from the environment to decision makers" in the organization (p. 93).

According to Grunig and Hunt (1984), "public relations practitioners support other organizational subsystems by helping them to communicate across the boundaries of the organization to external publics and by helping them to communicate with other subsystems within the organization." The public relations subsystem is generally a part of the management subsystem. It helps "top management plan and evaluate the organization's total communication activities" (p. 9).

According to Grunig and Hunt (1984), there are certain assumptions that underlie the systems theory. The assumptions of systems theory that are of import to the pertaining research are as follows.

1. Systems management is holistic. Organizations exist in a larger environmental system and have various units within them that depend on each other to solve organizational problems that come from the larger environment. As a result, holistic thinking indicates that some public relations problems come from the environment and must be solved by adapting to or controlling the environment.

2. The systems management develops innovative solutions to organizational problems to maintain the organization in equilibrium with the outside environment. This equilibrium shifts with movements in the environment.

3. Systems managers may attempt to control other systems, adapt to other systems, or do both depending on the environment of the organization.

Summary

Thus far, it has been seen that organizations exist within a larger macro environment with which they must interact and maintain equilibrium to be successful. The literature explained how the macro environment has various components, such as the legal and economic components, each of which are made up of elements. The literature focused on the legal component of the environment and the element within it called the SEC.

It explained how the SEC is a crucial part of the macro environment for those organizations that are public corporations. The SEC is important because those corporations that do not abide by the provisions of the SEC, in such a case as that of the regulation, can be subject to enforcement action alleging violations of the law. The SEC can bring administrative and civil action against the corporations or bring enforcement action against an individual at the corporation for the violation.

This chapter also explains how the public relations subsystem within the organization helps it maintain equilibrium with the macro environment through public relations practitioners. It explains public relations practitioners as boundary spanners who relay changes in the macro environment to the organization's management and help management meet the needs and goals of the environment. The boundary spanners then relay the changes to the macro environment in an effort to maintain balance. The literature has shown how investor relations is a part of the public relations subsystem that helps the management maintain links with investors that form a vital part of the external environment. Thus, it has shown how public corporations exist in the macro environment as organizations that constantly strive to maintain balance with various environmental components and elements.

The chapter suggests that in this adjustment process, organizations either adapt to the external environment, or change the environment, or do both to maintain equilibrium. In the particular case of the regulation, corporations, generally, have adjusted to the enforcement demands of the SEC. The literature corroborates this by discussing various surveys conducted on a national basis.

However, the surveys and other research material indicate that corporations responded in disparate ways to the regulation. Although the reasons for such disparate responses from corporations had not been formally researched, the literature suggested that type of corporate culture and resources available to the corporation may have played an important role.

Research Questions

Applying theory to the organizational communication situation at hand, the following ties could be drawn. First, the SEC that regulates corporate disclosure, and consequently corporate communications practices, could be seen as an important element in the corporation's macro environment and could not be overlooked. As a result, corporations should have tuned themselves to the Commission's expectations. Thus the following research question:

1. How much importance do corporations attribute to the SEC as a macro environmental factor in terms of its influence on the communication process of corporations with investors?

Second, given that those within the public relations subsystem play the role of boundary spanners and relay information from the macro environment to the management of the organization, the following question could be derived:

2. To what extent were investor relations practitioners responsible in relaying information about the regulation to the management of the corporation?

Third, since the role of boundary spanners also includes helping the management adjust to the needs of the macro environment, the following question could be derived:

3. To what extent did investor relations practitioners help management adjust to the regulation in terms of communication with investors?

Fourth, the aforementioned surveys that were conducted on a national basis brought forward many specific areas of change in the communication process of corporations that affected the structure of corporate communications. Based on those specific areas of change, the following question could be derived:

4. What changes have companies made in communications with investors and investment professionals following the implementation of the regulation in terms of the quality of information disseminated to investors, personal communications, written communications, disclosure policies, use of communication technology, SEC filings, structure of communications, and/or any other area of communication?

The chapter discussed results of prior research conducted on public corporations to assess their response to the regulation. Based on the availability of results from prior study the following question could be derived:

5. How do the results obtained in this research about changes that corporations made to their communications with investors as a result of the regulation compare to results obtained in prior research?

The literature reviewed also found that corporations responded in disparate ways and the reasons may have included type of corporate culture and availability of resources. This provided basis for the following questions:

6. Can corporate culture of the corporation be held accountable for influencing its communication strategy? If yes, to what extent?

7. Can resources available to a corporation be held accountable for influencing its communication strategy? If yes, to what extent?

CHAPTER III

Methods

Study Design

The researcher used the written survey and in-depth interview method for research. The survey method was well suited for this research because the study was exploratory. The survey questionnaire consisted of close-ended questions taken from the NIRI survey. That survey was conducted on investor relations officers of member firms in March, 2001, to explore the effects of the regulation on corporate communications with the investing public. The researcher used closed-ended questions because, according to Babbie (2000), "they provide a greater uniformity of responses and are more easily processed" (p. 240).

The researcher also used the interview method because, according to Babbie (2000), the structured questionnaire may exclude some important responses "and direct observation in the field lets researchers observe subtle communications and other events that might not be anticipated or measured otherwise" (p. 277). The interview format offered another advantage because it allowed the researcher to use open-ended questions that allowed in-depth research by giving respondents a chance to provide information that may not have been found in earlier studies or may have been vital and was overlooked by earlier researchers. An added advantage was that the researcher could modify the field research design at any time. It also provided greater validity over other methods of research because through such a method a field researcher can tap the depth of meaning in concepts.

Another reason for conducting interviews was that the researcher used part of the NIRI survey questionnaire used in 2001. That survey did not explore all the research questions in this study. Thus, the interview method helped the researcher fill that gap in the questionnaire. The researcher used only parts of the NIRI survey that were relevant to the study.

Data Collection

Units of Analysis

The researcher collected data from nine companies located in the Bay area. The reasons for selecting companies from the Bay area were, first, some of the important cases on selective disclosure were associated with companies in the area as mentioned in the examples provided in the previous chapter. As a result, other companies in the area may have taken cues from those companies to adjust their communication policies and practices to the regulation – possibly making the impact more observable.

Specifically public companies were approached because the regulation was meant to regulate disclosure practices of public companies only.

The researcher collected data about companies from senior investor relations practitioners who were involved with changes in corporate communications as a result of the regulation, or had knowledge of such changes. This was because investor relations practitioners are boundary spanners and mainly responsible for communicating with investors and investment professionals. An attempt was made to interview at least one and a maximum of two officials from each company. The survey was administered on one interviewee per company.

Survey Questionnaire

In addition, a survey was used supplement the interview to obtain more a detailed response to question four that explored the specific changes corporations may have made in communications with investors after the regulation. The researcher used only sections one, two, and three of the NIRI survey. The last question of section three (Q22), section four, and section five were not used because they were not relevant to the study.

Triangulation

In this study, the researcher obtained data from corporate officials through interviews. The researcher matched data obtained from companies with data available on the websites of respective companies. However, the researcher was able to cross-check only that data that was publicly available on the websites. Some of the information that the researcher sought for in-depth exploration was anecdotal and, therefore, it was not possible to triangulate that information. At the same time, many corporations had disclosure rules that did not allow employees to reveal corporate information beyond certain limits. Thus, there were limitations to this kind of triangulation.

However, the following method of data analysis provided another method to triangulate data – through the identification of dominant response patterns and comparison of results of this study with prior studies. This has been described in greater detail in the next section and the next chapter.

Data Analysis

The most appropriate method for data analysis was qualitative interpretation. According to Babbie (2000), qualitative data collection and analysis can help the researcher identify patterns of responses "appearing across several observations that typically represent different cases under study" (p. 360).

In this research, therefore, the researcher looked for dominant patterns in responses and based conclusions on such analysis. Referring to two strategies of analysis provided by A. Michael Huberman and Matthew B. Miles (1994), Babbie (2000) says that cross-case analysis can be done through variable-oriented and case-oriented analysis. In variable-oriented analysis the researcher tries to predict behavior on the basis of inter-relations among variables. In the case of this particular study, the variables (corporate culture and resources available) were carried by the units of analysis or organizations. Variable-oriented research suggested that the researcher study the impact of variables such as corporate culture and resources available on the responses of corporations to the regulation. Such analysis of responses of corporations, therefore, allowed the researcher to predict corporations' responses to environmental factors more effectively.

The second kind of analysis, case-oriented analysis, required the researcher to look at each case in-depth and see critical elements in responses. In such analysis the researcher analyzed the first case and then subsequent cases to see if the critical elements of the first case held in the subsequent cases. Such a study helped the researcher explore patterns of responses and reasons why certain cases reflected a particular kind of pattern while others reflected another.

Thus, in this research, the researcher studied critical elements and dominant patterns in responses to derive answers to research questions.

Limitations of the Method

According to Babbie (2000), the qualitative method of research has a problem with reliability. It is because measurements in such research are often personal that the response assessment of one researcher can differ significantly from that of another researcher. Thus, for example, it can be possible that researcher A who is very liberal describes the political orientations of party X as conservative, whereas researcher B who is moderately liberal may describe the political orientations of party X as moderate.

Thus, the limitation of this method was that the assessment of responses could have been affected by personal biases and could potentially vary from researcher to researcher.

Research Questions

1. How much importance do corporations attribute to the SEC as a macro environmental factor in terms of its influence on the communication process of corporations with investors?

2. To what extent were investor relations practitioners responsible in relaying information about the regulation to the management of the corporation?

3. To what extent did investor relations practitioners help management adjust to the regulation in terms of communication with investors?

4. What changes have companies made in communications with investors and investment professionals following the implementation of the regulation in terms of the quality of information disseminated to investors, personal communications, written communications, disclosure policies, use of communication technology, SEC filings, structure of communications, and/or any other area of communication?

5. How do the results obtained in this research about changes that corporations made to their communications with investors as a result of the regulation compare to results obtained in prior research?

6. Can corporate culture of the corporation be held accountable for influencing its communication strategy? If yes, to what extent?

7. Can resources available to a corporation be held accountable for influencing its communication strategy? If yes, to what extent?

CHAPTER IV

Findings

In all, the researcher contacted approximately 75 companies to collect data from nine companies between the second week of December 2003 and the third week of February. The nine companies were: Adobe Systems Incorporated; Advanced Micro Devices, Inc.; Applied Materials, Inc.; Genencor International, Inc.; Intel Corporation; KLA-Tencor Corporation; PalmSource, Inc.; Silicon Valley Bank; and, Symyx Technologies, Inc.

Overview of Findings

This section provides an overview of the findings under each research question before elaborating the details of the findings. It also summarizes the additional findings that the study came across.

This research found that the most important change that companies made in communications with investors and investment professionals following the implementation of the regulation was in the way that information was made available to investors. Companies leveled the opportunity of all investors with regard to quality and accessibility of information. Specific changes in communications were that corporations improved the quality of information that was disseminated to investors; brought more structure in the internal and external communication process by creating formal disclosure policies, standard operating procedures, and timelines; stopped reviewing analysts' draft earnings reports and draft earnings models; increased the number of 8-K filings; added additional information on their websites; emphasized training on SEC rules; paid more attention to non-verbal communication; eliminated plant tours; initiated or increased the use of communication technology in communication with investors; decreased one-on-ones with analysts; and, increased overall personal communications.

In terms of the two variables – corporate culture and resources available – the study found the following. In the light of the regulation, corporate culture affected communications only in terms of emphasis in message and not in content of communications. It was also found that corporate culture did not always impact communications with investors. On the other hand, according to the data obtained, especially from AMD, resources available to a corporation did play a part in influencing communications with investors. Better resources in terms of professional and informed practitioners were able to develop sound and working communication strategies that complimented the regulation. This helped corporations improve reputation among investors and avoid legal damages.

As far as the boundary spanning function of practitioners was concerned, investor relations practitioners were responsible in relaying information about the regulation to the management only in conjunction with the legal department. No IR department reported that it had the sole responsibility of relaying information of the regulation to the management. Thus, outside the organization, the boundary-spanning role of practitioners was supported primarily by the legal department. In some cases, the IR department did not play a part in informing the management about the regulation. In addition, along with the IR department as a boundary spanner within the organization, the finance and legal departments too had boundary-spanning roles within the organization. Thus, the coordination among the three departments – legal, finance, and IR – was very high. All these departments played equally important roles in keeping information flowing within the organization.

Investor relations departments played an important role as an equilibrating force by assisting the management to adjust to the regulation. However, IR departments introduced changes only after discussions with the legal and finance departments. In some cases, the finance and legal departments played a more important role than the IR department.

There was an increase in the importance given to the SEC by corporations after the regulation. It could be seen from changes in communication strategy made by corporations, especially AMD, that the SEC played a very important role in corporate communications with investors. As a result of the regulation, AMD, for example, revamped its investor relations department from one that existed on an ad hoc basis to one that was accepted as the formal investor relations department. Earlier employees who indulged in selective disclosure were let go and a new and qualified staff was recruited.

In comparison to earlier studies this study obtained results that were mostly similar to those of earlier studies mentioned in the literature review. Three of the prior studies – the studies conducted by Thompson Financial/Carson Global Consulting, AIMR, and NIRI – had found that corporations increased the information being given to investors, attempted to evenly distribute information to all investors, and reduced giving potentially material information to major investors and analysts through reviews of analyst reports. However, this study, just like the studies mentioned above, differed significantly with the results obtained by the SIA that reported that there was a chilling effect on flow of information from companies to investors. This study did not find any chilling effect on the flow of information to investors.

In addition to the above research areas, this study found that the IR departments have become more important for corporations in their communications with investors than in the past. The study found that the respect and voice that IR practitioners got within the organization also increased significantly as management needed their advice and could not overlook them. Investor relations departments also shared a closer relationship with the organizations' legal department now as compared to before the regulation.

The study also found that some companies put more emphasis on non-verbal communication as a method of communication. As a result, IR practitioners had to take into account, not just verbal and written communications but also, body language while conveying messages.

At the same time, some companies, such as Applied Materials and AMD, reported that corporate communications with investors were also affected by the Sarbanes-Oxley Act of 2002. According to the SEC:

> The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the "Public Company Accounting Oversight Board," also known as the PCAOB, to oversee the activities of the auditing profession. http://sec.gov/about/laws.shtml#sox2002

Analysis of Data

This chapter discusses data in detail in four steps. In the first step, data from each company is discussed to provide an overall summary of information obtained. In this step, the researcher matched data of each company given by the interviewees with data that was publicly available on websites of the respective companies. Websites reflect some of the actual changes that companies made to the regulation. The drawback in this method of triangulation is that all information provided by the interviewee(s) of each company can be cross-examined only as much as it is publicly available. Some communication strategy changes that companies made as a result of the regulation are part of the corporate disclosure policy that is not made public in most cases. At the same time, many of the changes that the companies made were not scripted such as an understanding of the internal communication process among employees of the organization.

However, this chapter provides additional basis for triangulation when data from various companies is compared to identify dominant adjustment patterns. In the last step, data from this study is compared with data from previous studies discussed in the literature review.

Adobe Systems Incorporated

The researcher interviewed the Vice President of Investor Relations Mike Savage. His job duties included looking after all aspects of investor relations including relations with analysts and investors; production of all investor relations materials; looking after all presentations and meetings with investors in the US and abroad; looking after SEC filings of 8-K, 10-K, and 10-Q forms; and reporting to the CFO.

Changes in corporate communications. According to Savage, the quality of information being disseminated did not change as a result of the regulation. However, after the regulation, the company made the availability of information more even among investors. Prior to the regulation the company used to review analysts' draft earnings models. After the regulation the company still reviewed only those analysts' draft earnings models who had not initiated coverage. In addition, the review was done only to check facts. Prior to regulation the company reviewed analysts' draft reports, but stopped such review after the regulation. Earlier, the company informally provided earnings guidance during the quarter on whether the guidance was still on track. After the regulation, it began to formally and routinely issue a mid-quarter review of guidance through news release.

Savage said that as a result of the regulation the company used technology to make more information generally available to investors by opening-up investor conferences and presentations through webcasts. He said, "We have been webcasting our earnings calls for several years now, before Reg. FD. Once the regulation occurred we began webcasting every investor presentation."

Commenting on the change in status of personal communications towards greater structure and formality, Savage said that:

In the past, you know, you could have the CEO at a conference say the quarter looks great! And not everybody will get that confidence, right? And so you are providing lots of disclosure to that group, or maybe in a meeting he said that. What Reg. FD changed was – now if you make any material statements about your company you have to do it in a public way.

According to Savage, the company added structure in communication by putting "in place a policy about who could speak to investors and who couldn't, which essentially formalized whatever they [the company] already had in place."

According to Savage, there was no significant change in the use of tools of written communications and the number of SEC filings.

Another change was in terms of extra cost of communication when using the world wide web for webcasts. In addition, the company updates its employees on the latest developments of the regulation once a year through a training program. Summarizing the main changes in communications of the company:

1. The company began disseminating information more evenly by enabling all investors to access the same information, stopping review of analysts' draft reports, and stopping review of draft earnings models of those analysts who did not initiate coverage.

2. The company increased formal communication by using a mid-quarterly update of earnings.

3. The company increased use of communication technology by more extensive use of webcasts to cover events.

4. The company brought more structure in its communication policy by formally designating spokespeople.

<u>Impact of corporate culture on adjustment of communications to the regulation</u>. According to Savage, culture can play a role in how a company may choose to respond to the regulation. He stated that some companies might use the regulation to withhold information while some might be more forthcoming. In the case of Adobe, which has an open culture, Savage said that the company has used the regulation to "benefit the outflow of information." This openness is also reflected in the company's website that provides good contact and other information useful to all investors.

Summarizing the impact of culture on communication strategy:

1. The company's open culture helped it use the regulation for better outflow of information.

Impact of resources available on communication strategy. There was no reported impact of resources on communication strategy.

Role of practitioners as boundary spanners. According to discussions with Savage, it was clear that the IR department of the company played the role of boundary spanner for the organization and its management through direct responsibility of sharing information. Savage said that the responsibility of informing the management about the regulation lay with both the legal and the IR departments. Savage was the main IR officer in charge of providing management with information about the regulation and discussing the issue with the legal department.

Summarizing the role of the IR practitioner as boundary spanner:

1. The IR practitioner had a strong boundary-spanning role within the organization. The responsibility to inform management about the regulation lay partially in the hands of the practitioner.

2. The practitioner also had a boundary-spanning role outside the organization into the legal component of the macro environment as he needed to keep himself informed about changes in the legal environment.

IR practitioners as an equilibrating force. As an equilibrating force, Savage was himself part of the decision-making body of the management. Decisions in such matters as the regulation were made among the CEO, the CFO to whom he reports, the person in charge of production, and himself. At the same time, with Savage, the legal department was also responsible in helping the management adjust to the regulation. Savage held consultations with practitioners in the legal department to determine what adjustments the company had to make to the regulation. According to Savage, both departments worked closely on that aspect and "did lots of research and lots of reading and put together lots of presentations to our executives, to our salespeople, to our spokespersons so they understood what Reg. FD meant." He also said that there was a training session for the spokespeople of Adobe where they were trained on what they could do and could not do with respect to speaking publicly.

Summarizing the role of practitioners as an equilibrating force:

1. The practitioner was part of the decision-making body in the company and influenced the communication strategy.

2. The practitioner played a strong role as an equilibrating force by actively bringing changes in the communications strategy.

3. The practitioner trained executives and other employees about what the regulation was and what they could and could not do.

Importance of the Commission as a macro environmental factor. Reviewing the above data it can be concluded that, through the process of adjustment to the regulation and the attention paid by the company to comply with the requirements of the SEC, the Commission has become a more important factor in corporate communications. The Commission affected the structure and dissemination of communication with investors.

Summarizing the importance of the SEC as a macro environmental factor:

1. There was a noticeable increase in the importance of the SEC as a macro environmental factor in the communication strategy with investors.

Advanced Micro Devices, Inc.

This company provided itself as the most interesting case that showcased the impact of the regulation on communications with investors. The researcher interviewed

Ruth Cotter, Manager, Investor Relations. Her job duties included communicating with investors; preparing communication materials such as press releases and the annual report; preparing for shareholder meetings; and taking care of all other IR activities. Her job duties were more-or-less the same as that of the Director of IR so that she could take charge in his absence.

Changes in corporate communications. Discussions with Cotter revealed that there was definitely a major change in the quality of information being provided to investors after the regulation came into place. Cotter said that after the regulation the company expanded on the Management Discussion and Analysis (M.D.&A.) section in the 10-K and 10-Q forms in a way "that would include everything that would be written and discussed in a conference call and earnings. In the past they may have said something in an earnings call that may not necessarily appear in a filing whereas now it is a must-be." In addition, a new section on corporate governance was added to the website where information about all board members, committee, and the company's plans and procedures were made publicly available.

Another change in the quality of information that the company made was in the range of earnings per quarter given out by the company. Before the regulation the company would give out a broad range of estimated earnings per share. After the regulation, the company began providing estimates or forecasts of specific factors that drive the earnings, but not all the factors that might be in the internal financial forecasts. Earlier the earnings range, according to Cotter, "could be large and crazy" for example "between two billion and seven billion." That was stopped and in the past few quarters the company narrowed the range to be much more realistic and credible. For example, if the estimated earnings per quarter would be $3.8 million, then the company would put an estimated range of $3.6 – $4.0 million. Another change that the company made was that it stopped reviewing analysts' draft reports after the regulation. The company limited itself to reviewing draft earnings models only for factual accuracy. Thus, the quality of information changed in terms of the information being more realistic, credible, detailed, and evenly accessible for all investors.

According to Cotter, personal communications in the form of one-on-ones with investors and investment professionals increased after the regulation. The company developed an open-door policy whereby anyone who is interested in a discussion is welcome.

It was apparent to the researcher from the discussion that important tools of written communication such as press releases, the Web, SEC filings were already in place before the regulation but were used more extensively after the regulation than they were in the past to help communicate better. Cotter stated that the number of SEC filings of 8-K forms increased in number as compared with the period prior to the regulation.

Before the regulation the company did not have a proper disclosure policy in place. In the later part of 2002, the IR department and the legal department together created a defined disclosure policy and got it signed by the company board. This lent a formal and concrete structure to the communication strategy.

Earlier, the company communicated information to investors primarily through the press release. After the regulation the company began using the Internet to webcast its conferences. It also makes presentation slides available on the Web. This was not done in the past.

According to Cotter, now the company pays more attention to make new and material information available to all investors instantaneously and simultaneously. That was not the case earlier. Citing an example of such relaxed communication in earlier times, Cotter said that some time back the company's CEO participated in a conference call in China and said that the company was going to make a profit that quarter. That conference was not webcast and therefore only the Chinese people knew about it. Such a thing, Cotter stated, does not happen any more. All the information is released simultaneously and to keep up with the challenge the company covers itself in multiple ways such as through a press release, a conference call, and webcast on the same topic. The company also put an earnings procedure timeline in place that was not in existence before. This timeline, according to Cotter, is:

An internal planning document so that we have an efficient process in place for all of our earning to ensure consistency and efficiency. We introduced a formal process around how we organize earnings and how we decide what we want to say on the call and Q & A [Question and Answer], etc.

The company began scripting all its conference calls after the regulation. It also began to train all new recruits about SEC regulations. This was not done in the past.

Many of these changes are reflected in the website of the company. Archives of communications – written material and live broadcasts, and a separate section on corporate governance are available in the investors section.

Summarizing the company's changes in communications with investors:

1. There was a major increase in the quality of information given to investors. Information given out after the regulation had more breadth, was more detailed, realistic, and credible.

2. The company increased personal communications and overall interaction with investors by developing an open-door communication policy.

3. There was an increase in formal communications by increasing the use of press releases and SEC filings.

4. There was a decrease in informal communication out of caution to avoid inadvertent disclosure.

5. The company increased written communications such as filings with the Commission and added more information sections on the website such as the corporate governance section.

6. The company put an effort into even distribution of information to all investors by making information generally available as laid down in the regulation.

7. The company brought structure to the communication process by creating timelines and a written corporate disclosure policy for the first time.

8. The company began training new recruits on SEC laws for the first time after the regulation.

9. The company began using Internet communication technology – webcasts – to disseminate information for the first time after the regulation.

10. The company started scripting conference calls for the first time after the regulation that increased documentation of communication.

<u>Impact of corporate culture on adjustment of communication to the regulation</u>. In this case, corporate communications with investors was affected as a result of corporate culture. According to Cotter, "three years ago we got a new CEO so that heritage [the heritage of the previous CEO] was thrown out the door." The earlier CEO was the

founder of the company and, according to Cotter, "still thought he owned the company even though it was a public company." The new chief, on the other hand, shared more power and responsibility with management than in the past and, according to Cotter, "he is much more open in his communications." This, said Cotter, lent to better accessibility even to investor relations. Now all inquiries sent to the IR department are answered as best as possible within limits and if the department cannot answer the question then they find someone who can answer the question.

Summarizing the impact of culture on communication strategy:

1. A change in CEO saw a change in the culture of the company.

2. The CEO, who was more open and democratic, lent to a similar corporate culture.

3. Thus, with a change in culture, the communication with investors also became more open and two-way.

<u>Impact of resources available on communication strategy</u>. In this case, the resources available, in conjunction with the regulation, clearly affected the communication strategy. According to Cotter, before the regulation, the IR department was on an ad hoc basis. She said that the history of the company certainly pointed toward the regulation as a factor that gave reason to establish a good communication resource. Commenting on the communication resource in terms of quality of practitioners that the company had before the regulation, Cotter said:

> There was a gentleman here who was in government affairs and he was very personal in the way he approached it. So, if he did not like an investor he chose not to interact with him. He had an assistant who was very hands-on with the retail shareholders – so much so there were a couple of retail cases taken because this person shared information with them.

Just after the regulation came into place, the company decided to create a proper IR department and began to look out for recruits. That is how Cotter was hired as manager in September 2002 and another practitioner, Mike Hasse, was hired as Director of Investor Relations in May 2002. Together they make up the IR department and report to the CFO under whom the department was formalized. According to Cotter, after the new department was established and after the new communication strategy came into effect, the company stock rose from \$3.00 per share in 2002 to \$18.00 per share in 2003. This reflected an increase in investor confidence in the company.

Summarizing the role of resources in communication strategy:

1. Previous communicators at the company lacked professionalism so the resultant communication with investors was unprofessional and costly for the company.

2. An introduction of qualified practitioners in the company saw the development of a sound communication strategy with investors.

3. The development of a good communication strategy provided confidence to investors and that led to better stock valuation.

<u>Role of practitioners as boundary spanners</u>. The IR department came into existence after the regulation therefore the question about the boundary-spanning role of practitioners in light of the regulation does not really exist. However, now the company protocol is such that the legal department brings information about the legal component to the IR department to keep practitioners informed. Cotter does research on such issues on her own to keep herself informed. When such a relevant issue emerges, IR and other relevant departments come together and discuss what should be done. Changes in investor communications are made with the consent of the IR department. In addition,

the IR department holds regular meetings with the finance, public relations, legal, and other departments to give and take information for purposes of coordination and consistency in message.

Summarizing the role of practitioners as boundary spanners:

1. The department has an important boundary-spanning role outside the organization into the legal component to keep itself and the management informed. However, the legal department supports it in this role.

2. The IR department currently plays a strong boundary-spanning role within the organization.

IR practitioners as an equilibrating force. In this case the IR practitioners played an important role in helping management adjust to the requirements of the regulation. According to Cotter,

> The main role in AMD was taken by the legal department. But we were present while the legal department drove the changes. They were with our consent, our advice, or our discussion with them… We initiated the disclosure policy as a must-be, but because a lot of the change internally was affecting the office of the CEO, the CFO, and the Board. The way F.D. was structured is that it's just our legal department [that] communicates directly with the Board. So we would have met with internal and external experts and Mike and I would have said what we thought was necessary to change within the organization.

Summarizing the role of IR practitioners as an equilibrating force:

1. The IR department played an important role as an equilibrating force for the organization by actively participating in creating a fresh communication strategy.

Importance of the Commission as a macro environmental factor. The importance of the SEC magnified as a result of the regulation as can be understood through the above changes. According to Cotter, if the company were to make a mistake now "there would be a lot more knockdown effect than in the past." According to Cotter:

In the past, the SEC was like this body out there, somewhere, could be in a depressive room covered in spider webs or something. And they crossed the mind once a year, maybe. Now you certainly read a lot about the SEC ...I think as an organization, the CEO, the CFO, and the board are very more aware of the SEC. Because of them we are more cautious about the kind of guidance we give, for sure.

As an IR practitioner, Cotter reads more about the Commission and is more informed and aware of the rules. According to Cotter, the following incident that occurred some months ago makes this clear. The CEO was going to attend a product launch in New York that was not being webcast. Before the event started the CEO stated that the product would be imperative to the future success of the company. This was material information. Cotter, who was present with the CEO, reported it to the legal department, and two hours before the launch began the company decided to webcast it. This caution and awareness about how the company was communicating with investors was a direct result of the regulation.

Summarizing the importance of the SEC as a macro environmental factor:

1. The importance of the Commission increased tremendously for the organization. The organization established a proper IR department and put in place a new and concrete communication strategy. The company began exercising far more caution in communication than the past.

Additional findings. A very important effect of the regulation in this case was that it acted as a factor that increased the importance of the IR department in corporate communications with investors. The company introduced a formal IR department for the first time. When the new department established it was not as strong because both Cotter and the Director, Mike Hasse, were new and did not have contacts within the organization. However, with time and as a result of the regulation, the department, according to Cotter, gained "voice and respect" within the organization. Now, if such a regulation comes up, the department will have a greater say in the adjustment process. In addition, the increased level of partnership that the department now enjoys with the legal department is a direct result of the regulation. Such a partnership did not exist before. Summarizing additional findings:

1. The importance of IR as a department within the organization increased tremendously.

2. The "voice and respect" that the IR department got in the organization increased after the regulation.

<u>Applied Materials, Inc.</u>

The researcher interviewed the Director of Investor Relations, Sherry Blum. She handles the day-to-day activities of the group and talks to financial analysts, shareholders, and others seeking information. She reviews all SEC documents, oversees the generation of written literature, writes scripts for conference calls, and works on product launches. In a department of five, Blum has three people reporting to her and she reports to the managing director.

<u>Changes in corporate communications</u>. As a result of the regulation, the company began webcasting conference calls with financial analysts that are held by the analysts. The company also started broadcasting its product launches. On the other hand, the company stopped reviewing analysts' draft earnings models after the regulation.

The biggest change in communication with investors that the company brought about was in terms of personal communications. The company no longer does the one-on-ones that it used to conduct during financial conferences before the regulation. Blum stated, "We just present to the audience and those presentations are webcast." The company also signed-up for webcasting financial conferences organized by analysts. Prior to the regulation those conferences were not webcast. The company also reduced "call-backs" to analysts after financial conference calls that are arranged by the company. "Call-backs" mean that in the one or two days following the financial conference the company answers additional questions and provides some more information to make clarifications to what has already been disclosed in the conference call. According to Blum, "That was probably the biggest impact on our department – to reduce that part of the workload."

In addition, the company emphasized to the employees that they should not randomly communicate with the Street. This was because some employees did not follow the policy closely. According to Blum, that was more of "an emphasis change rather than an actual change." In addition, now whenever there is a trade show or such an event, the IR department gives all those employees attending the event instructions that outline their roles and responsibilities and tell them what they can and cannot communicate.

The company began using more communication technology like webcasts and e-mail after the regulation, but the regulation itself did not influence such use. The merits that the company saw in such technology were the main influence for such changes. There was also no change in written communications, disclosure policy, and the number of SEC filings.

Summarizing the changes in corporate communications:

1. The company decreased personal communications with analysts during conferences to avoid selective disclosure.

2. The company increased the use of webcasts to disseminate information.

3. The company made the dissemination of information more even by webcasting conferences that were previously not made available to the general public and by stopping review of analysts' draft earnings models.

4. The company put more emphasis on the corporate disclosure policy.

5. The IR department made job responsibilities of employees during public communication events more specific and structured.

Impact of corporate culture on adjustment of communication to the regulation. According to Blum, the culture of the corporation does play a role in communication with investors but it only influences communication in terms of emphasis and tone of communication. She stated that corporate culture does not influence the content of communication with investors.

Summarizing the impact of corporate culture on corporate communications:

1. At Applied Materials, culture did not play an important role in communication with investors. Corporate culture has the potential to set the tone of communication, but does not affect content.

Impact of resources available on communication strategy. There was no reported impact of resources on communication strategy in this case.

Role of practitioners as boundary spanners. In this case, the IR department did play a boundary-spanning role, both by communicating with the legal department and by obtaining information on its own about the regulation. The two departments, together, brought the regulation to the forefront of management and also discussed the issue with the finance department.

Summarizing the boundary-spanning role of practitioners:

1. The department displayed an important boundary-spanning role outside the organization as its responsibility, along with the legal department, was to develop awareness among management about legal developments related to IR.

2. The department displayed an important boundary-spanning role inside the organization as it coordinated with other departments – finance and legal – to help the organization adjust to the regulation.

IR practitioners as an equilibrating force. The IR department did help the company adjust to the regulation. The IR department, in conjunction with the legal department, was responsible for perpetuating changes in the communication strategy.

Summarizing the role of practitioners as an equilibrating force:

1. Practitioners played an important role as an equilibrating force for the organization. Changes in the communication policy were made only in conjunction with the IR department.

Importance of the Commission as a macro environmental factor. In this case, the importance of the SEC as a macro environmental factor increased as it can be seen in the efforts of the company to bring fairness in the dissemination of information to all investors. The company adjusted its communication strategy accordingly.

Summarizing the importance of the SEC as a macro environmental factor:

1. The SEC increased in importance as a macro environmental factor for the company and changes were made in the company's communication strategy with investors.

Genencor International, Inc.

The researcher interviewed two officials from the company who, together, formed the IR department under the CEO. The first interviewee was Senior Investor Relations Specialist Ruey-li Hwang. Her job responsibilities included coordinating all road shows, and US and international conferences; speaking at industry and investor conferences; working on the annual report, collateral materials, and presentations; and traveling to various investor locations.

The second interviewee was Vice President of Investor Relations Tom Rathjen. His primary job responsibility was to act as a liaison between the company and the financial community; coordinate conferences; work on the annual report; and handle quarterly earnings, conference calls, and script press releases.

Genencor became a public company in July 2000, a few months before the regulation went into effect.

Changes in corporate communications. According to Hwang and Rathjen, there was no change in the content of information that the company was putting out to the investors. The only change that the company made was in the structure, even distribution, and timeliness of information provided to investors.

According to Hwang, after the regulation, the company made sure that conference calls, press releases, and earnings calls covered the same information. She said, "If not, then we definitely have to file an 8-K… We definitely have to be very, very detailoriented in that sense." The department added structure to communication by developing standard operating procedures and timelines that, according to Hwang, "put down what to do and when to do." These procedures had been in place before but were not written down. After the documents were written they were given to various departments, such as finance and legal, for approval. In addition, the company pushed back the conference call one hour behind the earnings release, so that it provided sufficient time to make sure that the 8-K form was filed and confirmed before the start of the conference call. In addition, there was an increase in the number of 8-K forms that the company began filing with the SEC.

Summarizing the changes in corporate communications:

1. It brought structure in the communication process by creating standard operating procedures and timelines.

2. The company made an effort to put out information at the same time to all investors for even accessibility.

3. The company increased the number of 8-K filings with the SEC

<u>Impact of corporate culture on adjustment of communication to the regulation</u>. According to Rathjen, corporate culture did not play a role in communication strategy because "communication is a joint effort." According to him, communication with investors is affected by the CEO, the CFO, the finance department, the legal department, and the IR department. The CEO does affect the tone of the message, but can be overruled by others. Corporate culture did not influence communications with investors.

Summarizing the impact of corporate culture on communication strategy:

1. There was no reported impact of corporate culture on the basic strategy and content of communication with investors.

Impact of resources available on communication strategy. There was no reported impact of resources on the communication strategy of the company.

Role of practitioners as boundary spanners. The IR department did not span out into the legal component of the macro environment to get information into the organization. That was done by the legal and finance departments. However, there was good coordination among the legal, finance, and IR departments in developing the strategy for communication with investors.

Summarizing practitioners' role as boundary spanners:

1. The department did not have a boundary-spanning role outside the organization into the legal component of the macro environment.

2. The department had a good boundary-spanning role within the organization as far as inter-department coordination for developing communication strategy was concerned.

IR practitioners as an equilibrating force. In this case the department did help the company adjust to the regulation by putting forward what it thought was required, but changes were made in conjunction with other departments.

Summarizing the role of practitioners as an equilibrating force:

1. Practitioners played a moderately important role as an equilibrating force for the organization.

Importance of the Commission as a macro environmental factor. The importance of the SEC as a macro environmental factor increased marginally for the company. This was reflected in the changes that the company made in its communication strategy. Summarizing the importance of the SEC as a macro environmental factor:

1. The importance of the Commission as a macro environmental factor influencing the communication strategy of the company with investors rose marginally.

Intel Corporation

The researcher interviewed Cary I. Klafter who had three designations in the company. Klafter's designations were — the Vice President of Legal and Government Affairs, Director of Corporate Affairs, and Corporate Secretary. His job duties included overseeing legal activities; financial matters; SEC filings; investments; mergers and acquisitions; and IR. He was also responsible for corporate governance and board of directors activities.

Changes in corporate communications. According to Klafter, the company made only one change and that was in compliance with the regulation. The company stopped reinstating material information that it provided at the beginning of the quarter. In addition, the company refreshed its training to employees about the regulation and outcome of cases that came up as a result of the regulation. After one of the selective disclosure cases that focused on body language as a means of communication, the company emphasized in its training to employees that communicators must mind their body language and not send unwanted signals.

Summarizing the changes in communication strategy of the company:

1. The company stopped reinstating material information during the quarter.

2. The company emphasized the importance of body language to employees during communication.

Impact of corporate culture on adjustment of communication to the regulation. There was no reported impact of corporate culture in the communication strategy of the company.

Impact of resources available on communication strategy. Klafter and Blum from Applied Materials told the researcher that one of the attorneys working with Intel was previously an attorney with the SEC. As a result, according to Klafter, the communication strategy of the company was already very well aligned to the spirit of the Commission and did not require any significant changes.

Summarizing the impact of resources available on communication strategy:

1. Legal expertise on requirements of the Commission influenced sound communication strategy.

Role of practitioners as boundary spanners. Since the responsibility of various departments – finance, legal, and IR – lay with the interviewee, the specific roles that each of those departments played were blurred.

IR practitioners as an equilibrating force. Since the legal, financial, and communication functions lay with the interviewee, the specific role of IR practitioners as an equilibrating force within the organization was blurred.

Importance of the Commission as a macro environmental factor. The importance of the SEC as a macro environmental factor remained almost unchanged.

KLA-Tencor Corporation

The researcher interviewed Albert Huang from the IR department. His job responsibilities included financial analysis, writing press releases, talking to vendors and investors, and providing logistic support to the department.

Changes in corporate communications. According to Huang, the company has stopped giving mid-quarter guidance to investors but gives updates if significant changes in business take place. It also stopped reviewing analysts draft earnings models.

In addition, after the regulation, and also as a result of better communication technology, the company started webcasting its conference calls. The company saw a decline in personal communications with analysts after the regulation. This was because the analysts themselves refrained from such communications as the company did not provide any additional material information or updates.

Summarizing changes in communication strategy:

1. The company stressed on even information for all investors by stopping review of analysts' draft earnings models.

2. The company increased the use of webcasts.

3. The company reduced mid-quarter updates to instances where there were significant changes in business.

Impact of corporate culture on adjustment of communication to the regulation. There was no reported impact of corporate culture on the communication strategy.

Impact of resources available on communication strategy. There was no reported impact of resources on communication strategy.

Role of practitioners as boundary spanners. The legal department played a stronger role than the IR department in informing management about the regulation. Details in this regard were not specified by the interviewee.

In summary:

1. The IR department did not play a strong boundary-spanning role outside the organization.

2. The IR department played a marginally significant boundary-spanning role within the organization.

IR practitioners as an equilibrating force. The IR department played a less significant role as an equilibrating force as compared to the legal department.

Thus, in summary:

1. The IR department played a marginally significant role as an equilibrating force within the organization.

Importance of the Commission as a macro environmental factor. The importance of the SEC did not increase significantly as a result of the regulation.

PalmSource, Inc.

The researcher interviewed the Director of Investor Relations Kip Meintzer. His responsibility was to act as the conduit between the company and the Street. His responsibilities included competitive evaluation; making sure the company complies by SEC regulations; overseeing the production of written materials such as press releases and SEC filings; keeping in touch with internal and external counsel; and acting as a counselor to the management.

PalmSource was a public company before the regulation, but it was part of its parent company, Palm, Inc. It was spun-off from Palm in October 2003. However, PalmSource, even as a segment of Palm, had its own IR department.

Changes in corporate communications. According to Meintzer, after the company spun-off, there was no change in communications with investors as a result of the regulation. The only impact was in its training of employees where the company began emphasizing, like Intel, that employees mind their body language and not give unwanted and unnecessary signals.

Summarizing changes in corporate communications:

1. The company emphasized the importance of body language in personal communications with investors.

Impact of corporate culture on adjustment of communication to the regulation. In this case, there was no reported impact of culture on communication strategy.

Impact of resources available on communication strategy. There was no reported impact of resources in this case.

Role of practitioners as boundary spanners. The IR department, in general, does have a boundary-spanning role in the company. Referring to SEC rules, Meintzer stated, "We drive the change." However, since the company was already aligned with the spirit of the regulation, this case did not provide much opportunity to study the boundary-spanning role of practitioners.

In summary:

1. The IR department traditionally has a boundary-spanning role within the company. However, that role was not observable in this case.

IR practitioners as an equilibrating force. According to Meintzer, IR, in conjunction with the legal department, does play an important role as an equilibrating force. However, because there were no changes in the communication strategy of the company, the company did not provide much opportunity to study the role of practitioners as an equilibrating force for the organization.

In summary:

1. The IR department traditionally plays an important role within the company as an equilibrating force. However, that role was not observable in this case.

Importance of the Commission as a macro environmental factor. The importance of the SEC as a macro environmental factor in corporate communications with investors remained unchanged.

Other findings. According to Meintzer, the importance of the IR department rose in the organization. Now, the IR department and the legal departments work more closely than before. According to Meintzer, prior to the regulation "The IR guy would be pounding on the table. Now you don't have to pound on the table. Management... before they had a choice, now they don't... Overall, I'd say IR has risen in importance."

Summarizing other areas of impact of the regulation:

1. The IR and legal departments coordinate more closely now as compared to before the regulation.

2. The IR department has risen in importance for the organization and management pays more attention to what the department has to say.

Silicon Valley Bank

The researcher interviewed Investor Relations Manager Lisa Bertolet. Her job responsibilities included acting as the liaison between the shareholders, investors in general, and the management. She was also in charge of managing the corporate stock plan for employees and reporting directly to the CFO.

According to Bertolet, the regulation did not have much impact on the corporation because it had already begun making a fresh communication plan for the company before the regulation came into place. This was not the result of an anticipation of the regulation on the basis of the proposed regulation that came about in 1999. This decision to create a new plan came about after the company noticed a number of lawsuits against other companies, in general, from investors. Three departments – finance, legal, and IR – of the company were responsible for gauging the environment and creating a new communication plan. Another reason the company did this was because, according to Bertolet, officials thought, "this is the right thing to do to get a consistent message to the public." There was also a general desire to get as much information to the public as possible.

Changes in corporate communications. Despite the new plan, the regulation did impact the company's strategy, but almost insignificantly. The company became more cautious in communication with investors and there were more legal reviews and scrutiny on what was being communicated after the regulation as compared to before. The company cut back on forward-looking guidance as compared to before. Earlier it would issue such guidance every quarter, but after the regulation its policy was to issue such guidance only if required. In addition, prior to the regulation, the replay of the conference call would be available on the Web for 30 days. Now, the replay is available for a year. The changes that were brought about as a result of the regulation were minor and only to fine-tune the communication plan to the regulation.

Summarizing the changes in corporate communications:

1. Legal reviews and scrutiny of communication increased after the regulation, thereby increasing caution in communication.

2. Availability of replay of webcasts was increased from one month to one year.

3. The company cut back on forward-looking guidance.

<u>Impact of corporate culture on adjustment of communication to the regulation</u>. The impact of corporate culture was not evident in this case.

<u>Impact of resources available on communication strategy</u>. There was no reported impact of resources available on corporate communications.

<u>Role of practitioners as boundary spanners</u>. Looking at the background of the present communication plan, and keeping in mind that three departments including IR were responsible for gauging the environment, it can be concluded that the IR department, traditionally, does play a boundary-spanning role both internally and externally.

Summarizing the boundary-spanning role of practitioners:

1. Practitioners traditionally play an important role as boundary spanners outside and inside the organization.

<u>IR practitioners as an equilibrating force</u>. Looking at the background of the present communication plan, and keeping in mind that three departments including IR

came together to make adjustments in communications, it can be concluded that the IR department did act as an equilibrating force.

Summarizing the role of practitioners as an equilibrating force:

1. Practitioners traditionally play an important role as an equilibrating force for the organization.

Importance of the Commission as a macro environmental factor. The importance of the SEC as a macro environmental factor changed minimally in this case.

Other findings. Reviewing the reason for the creation of a fresh communication strategy discussed above, it can be concluded that the Commission itself was not as important to the company as was the environment of increasing lawsuits created by investors against companies. Thus, legal action – whether from the Commission or from investors - can be seen as a factor that can cause change in communication strategy.

Symyx Technologies, Inc.

The researcher interviewed Senior Vice President and CFO Jeri Hilleman. His job duties included looking after all investor relations activities of the company with the help of the external legal counsel and public relations firm.

Changes in corporate communications. According to Hilleman, the regulation:

> Serves as a guideline but not a driving force to communication. We, of course, comply with F.D. but F.D. did not drive a big change in our approach to communication since, as a then newly-public company, it mirrored the approach we were taking anyway.

However, in general, the company began providing more information to investors after the regulation. The company has stopped doing facility tours because the regulation requires giving the same information to all investors and it is not possible for the company to give such a tour to all investors. Commenting on tours of company officials to investor locations, Hilleman said that the company is "also reflecting need to monitor communications during tours." The company has also expanded the investor section of its website to include information on corporate governance, including listing Board members and stock trading of inside officials. The company, in the near future, will include committee membership on its website.

The company has increased the number of one-on-ones with investors but made no change in the use of tools for written communications. In addition, the company has begun using webcasts. According to Hilleman, though the company relied on formal presentations during meetings with the investment community, it routinely started using webcasts with those formal presentations.

Summarizing the changes in corporate communications:

1. The company began providing more information by adding additional corporate information sections on the website.

2. The company made the availability of information more even by taking steps such as by stopping plant tours and webcasting information.

3. The company increased personal communications.

Impact of corporate culture on adjustment of communication to the regulation. There was no reported change in communication as a result of corporate culture. However, the investor communications of the company, according to Hilleman, is "driven by a desire to accurately project the company's business model to investors, and to operate in a clear and predictable manner." Thus, company mission is more of a driving force in communication as compared to culture.

Summarizing impact of corporate culture on communication strategy:

1. There was no reported impact of corporate culture on the communication strategy.

2. Corporate mission can play a role in influencing corporate communication strategy.

Impact of resources available on communication strategy. There was no reported impact of resources on communication strategy.

Role of practitioners as boundary spanners. According to Hilleman, he is the CFO and IR functions rest with him. He has to "rely on outside counsel for help with [Reg.] FD related questions." In this way, Hilleman's role spans out, not to the macro environment directly, but to outside legal counsel that helps him keep informed about developments in the legal environment. As the Vice President and CFO of the company, Hilleman is part of the management. Through his role he keeps the rest of the management informed and develops corporate communication strategy to work with investors.

Thus, in summary:

1. The practitioner has a strong boundary-spanning role, both outside and within the organization and through his role keeps management informed about changes in the legal component of the macro environment.

IR practitioners as an equilibrating force. Hilleman, as the CFO, was responsible for the adjustments that the company made as a result of the regulation. Those changes were in consultation with the legal counsel.

Summarizing the role of the practitioner as an equilibrating force:

1. The practitioner played an important role in the organization as an equilibrating force by bringing changes in the communication strategy.

Importance of the Commission as a macro environmental factor. The importance of the SEC as a macro environmental factor, according to Hilleman, did not change much. However, the adjustments that the company made to the regulation do show that the Commission has increased in importance by influencing communications with investors. On the other hand, according to Hilleman, these adjustments were in tune with the company's "desire to accurately project the company's business model to investors, and to operate in a clear and predictable manner. Reg. FD is consistent with that approach."

Summarizing the importance of the Commission as a macro environmental factor:

1. The Commission moderately rose in importance as a macro environmental factor in the communication strategy of the company but was not the sole factor contributing to such change. The other factor was the mission of the company itself.

Dominant Patterns in Data

In the second stage of analysis, the researcher has tried to group together the findings from all companies under each research area and obtain dominant patterns. These findings have been drawn from the summaries provided beneath the discussion of interviewee responses of each company.

Changes in Corporate Communications with Investors

Adobe Systems Incorporated.

1. The company **began disseminating information more evenly** by enabling all investors to access the same information, stopping review of analysts' draft reports, and stopping review of draft earnings models of those analysts who did not initiate coverage.

2. The company **increased formal communication** by using a mid-quarterly update of earnings.

3. The company **increased use of communication technology** by more extensive use of webcasts to cover events.

4. The company **brought more structure in its communication policy** by formally designating spokespeople.

<u>Advanced Micro Devices, Inc</u>.

1. There was a **major increase in the quality of information** given to investors. Information given out after the regulation had more breadth, was more detailed, realistic, and credible.

2. The company **increased personal communications and overall interaction** with investors by developing an open-door policy.

3. There was an **increase in formal communications** by increasing the use of press releases and SEC filings.

4. There was a **decrease in informal communication** out of caution to avoid inadvertent disclosure.

5. The company **increased written communications** such as **filings** with the Commission and added **more information sections on the website** such as the corporate governance section.

6. The company put an effort into **even distribution of information** to all investors by making information generally available as laid down in the regulation.

7. The company **brought structure in the communication process by creating timelines and a written corporate disclosure policy** for the first time.

8. The company **began training new recruits on SEC laws** for the first time after the regulation.

9. The company **began using Internet communication technology – webcasts –** to disseminate information for the first time after the regulation.

10. The company **started scripting conference calls** for the first time after the regulation.

<u>Applied Materials</u>, <u>Inc</u>.

1. The company **decreased personal communications with analysts** during conferences to avoid selective disclosure.

2. The company **increased the use of webcasts** for dissemination of information.

3. The company made the **dissemination of information more even by webcasting conferences** that were previously not made available to the general public and by **stopping review of analysts' draft earnings models.**

4. The company put more **emphasis on the corporate disclosure policy**.

5. The IR department made **job responsibilities of employees during public communication events more specific and structured.**

<u>Genencor International</u>, <u>Inc</u>.

1. It brought **more structure in the communication process by creating standard operating procedures and timelines.**

2. The company made an effort to put out information at the same time to all investors for **even accessibility of information**.

3. The company **increased the number of 8-K filings** with the SEC

Intel Corporation.

1. The company **stopped reinstating material information during the quarter**.

2. The company **emphasized** the importance of **body language** to employees during communication.

KLA-Tencor Corporation.

1. The company stressed providing **even information** to all investors by **stopping review of analysts' draft earnings models**.

2. The company **increased the use of webcasts**.

3. The company **reduced mid-quarter updates** to instances where there were significant changes in business.

PalmSource, Inc.

1. The company **emphasized the importance of body language** in communication with investors.

Silicon Valley Bank.

1. **Legal reviews and scrutiny of communication increased** after the regulation.

2. **Availability of replay of webcasts was increased** from one month to one year.

3. The company **cut back on forward-looking guidance**.

Symyx Technologies, Inc.

1. The company **began providing more information**, such as, adding additional corporate information sections on the website.

2. The company made the **availability of information more even** by **stopping plant tours** and **starting to webcast meetings and presentations.**

3. The company **increased personal communications.**

Dominant Patterns in Changes to Communication Strategy.

1. Most companies made changes regarding the availability of information to investors. The information that corporations provided was made either **generally available** to all investors **or generally unavailable** to all. The changes were made primarily to provide **even accessibility to information** to all investors – institutional and individual.

2. **Potentially material information, that was previously partially distributed, was made generally unavailable** to all by reducing personal communication with analysts, terminating review of analysts' draft earnings reports, terminating review of analysts' draft earnings models, terminating plant tours, and reducing forward-looking statements and informal mid-quarter guidance.

3. **Material and other information that was previously not generally available, was made generally available** by scripting conference calls, increasing or initiating use of communication technology for general dissemination of information, adding information sections on the website such as corporate governance, increasing 8-K filings, and increasing availability of replay on the world wide web.

4. **More structure was brought into the communication process** by creating written timelines, standard operating procedures, and disclosure policies. Some companies put more emphasis on already existing policies, designated spokespeople, and clear-cut communication responsibilities during public events. Other companies either

began training employees or began putting emphasis on SEC rules during employee training sessions.

5. **Quality of information disseminated to investors was improved** to be more expansive, credible, and timely.

6. Some companies put **emphasis on proper body language** during personal interaction with investors to avoid transmitting unwanted and unnecessary signals.

Influence of Corporate Culture on Communications with Investors

Adobe Systems Incorporated.

1. The company's **open culture helped it use the regulation for better outflow of information**.

Advanced Micro Devices, Inc.

1. A **change in CEO saw a change in the culture of the company toward a more open and democratic culture**. As a result, the **communication with investors** also became **more open and two-way**.

Applied Materials, Inc.

1. At Applied Materials, **culture did not play an important role** in communications with investors. Corporate culture only **set the tone of communications, but did not affect content**.

Genencor International, Inc.

1. There was **no reported impact of corporate culture** on the basic strategy and content of communications.

Intel Corporation.

1. There was **no reported impact of culture** in communications with investors.

KLA-Tencor Corporation.

1. There was **no reported impact of culture** on the communication strategy of the company.

PalmSource, Inc.

1. In this case, there was **no reported impact of culture** on communication strategy.

Silicon Valley Bank.

1. The **impact of culture was not evident** in this case.

Symyx Technologies, Inc.

1. The **impact of culture was not evident** in this case. But the **corporate mission impacted communications.**

Dominant patterns in influence of corporate culture on communications.

1. Culture affected mainly two out of nine participating companies. Thus, culture **does not always influence communication strategy with investors.**

2. An **open and democratic corporate culture encourages open and two-way communication** with investors.

3. In some cases, corporate culture **affects only the areas of emphasis in communication.** In other words, **corporate culture does not affect content of communication.**

Impact of Resources Available on Communication Strategy

Adobe Systems Incorporated.

1. There was **no reported impact of resources** on communication strategy.

Advanced Micro Devices, Inc.

1. Previous communicators at the company lacked professionalism so the resultant communication with investors was unprofessional and costly for the company. **Unprofessional communicators provide poor and costly communication strategy**.

2. Introduction of qualified practitioners in the company saw the development of a sound communication strategy with investors. **Professional and qualified communicators provide sound and reliable communication strategy**.

3. **Good communication strategy** provides confidence to investors and that **leads to better stock valuation**.

Applied Materials, Inc.

1. There was **no reported impact of resources** on communication strategy in this case.

Genencor International, Inc.

1. There was **no reported impact of resources** on the communication strategy of the company.

Intel Corporation.

1. **Legal expertise** on requirements of the Commission **influenced sound communication strategy**.

KLA-Tencor Corporation.

1. There was **no reported impact of resources** on communication strategy.

PalmSource, Inc.

1. There was **no reported impact of resources** in this case.

Silicon Valley Bank.

1. There was **no reported impact of resources** on strategy of communications.

Symyx Technologies, Inc.

1. There was **no reported impact of resources on communication strategy**.

Dominant patterns in impact of resources on communication strategy.

1. All, except two of nine participating companies, reported that there was no impact of the company's resources on communications strategy. However, those companies that did not report impact also did not report change in quality of resources before and after the regulation. Thus, **stable resources do not provide opportunity to study its impact on communication strategy**. Impact of resources on corporate communication strategy is observable when there is a change in resources.

In the study of impact of resources on communication strategy, AMD provided itself as a case that strongly pointed out the following areas of impact.

2. **Unprofessional communicators provide unprofessional and poor communication strategy**.

3. **Unprofessional communicators lead investors to lose confidence in the company**.

4. **Unprofessional communicators can potentially create situations that may lead to lawsuits against the company regarding corporate communications practices and adversely affect corporate image**.

5. **Professional and qualified communicators provide good, working, and productive communication strategy.**

6. **Professional and qualified communicators lead to good communication strategy that boosts investor confidence and that**, in turn, **increases stock valuation.**

<u>Role of Practitioners as Boundary Spanners</u>

<u>Adobe Systems Incorporated</u>.

1. The practitioner had a **strong boundary-spanning role within the organization.** The responsibility to inform management about the regulation lay partially in the hands of the practitioner.

2. The **practitioner also had a boundary-spanning role outside the organization** into the legal component of the macro environment as he needed to keep himself informed about changes in the legal environment.

<u>Advanced Micro Devices, Inc</u>.

1. The IR department has an **important boundary-spanning role outside the organization** into the legal component that helps it keep itself and the management informed. It is supported by the legal department in this role.

2. The IR department currently plays a **strong boundary-spanning role within the organization.**

<u>Applied Materials, Inc</u>.

1. The department displayed an **important boundary-spanning role outside the organization** as its responsibility, along with the legal department, was to develop awareness among management about legal developments related to IR.

2. The department displayed an **important boundary-spanning role inside the organization** as it coordinated with other departments – finance and legal – to help the organization adjust to the regulation.

Genencor International, Inc.

1. The department **did not have a boundary-spanning role outside the organization** into the legal component of the macro environment.

2. The department had a **good boundary-spanning role within the organization** as far as inter-department coordination for developing communication strategy was concerned.

Intel Corporation.

1. As the functions and duties of various departments– finance, legal, and IR – lay with the interviewee, the specific roles that each of those departments played were blurred.

KLA-Tencor Corporation.

1. The IR department **did not play a strong boundary-spanning role outside the organization**.

2. The IR department **played a marginally significant boundary-spanning role within the organization**.

PalmSource, Inc.

1. The IR department **traditionally has a good boundary-spanning role within the company**. However, that role was not observable in this case.

Silicon Valley Bank.

1. The **practitioners traditionally play an important role as boundary spanners** outside and inside the organization.

Symyx Technologies, Inc.

1. The practitioner has a **strong boundary-spanning role, both outside and within the organization** and through his role keeps management informed about changes in the legal component of the macro environment.

Dominant patterns in boundary-spanning roles.

1. **Most companies displayed a strong or important boundary-spanning role within the organization** in light of the regulation. Those companies where that role could not be studied had traditionally strong boundary-spanning roles within the organization. The **IR department usually spans out to the legal and finance departments** to keep information flowing across departments.

2. **Most companies played an important role in spanning outside the organization to obtain legal information**. All IR departments were **supported by the legal departments** in keeping themselves and the management informed about legal developments.

3. **Not all the companies played an important boundary-spanning role outside the organization** into the legal component of the macro environment.

Role of Practitioners as an Equilibrating Force

Adobe Systems Incorporated.

1. Practitioners played a **strong role** as an equilibrating force by **actively bringing changes and being part of management**.

Advanced Micro Devices, Inc.

1. The IR department played a **strong role** as an equilibrating force for the organization by **initiating changes and actively participating in creating a communication strategy**.

Applied Materials, Inc.

1. Practitioners played a **strong role** as an equilibrating force for the organization. **Changes** in the communication policy **were made only in conjunction with the IR department**.

Genencor International, Inc.

1. Practitioners brought changes in the communication strategy only in conjunction with other departments such as finance and legal and top officers such as the CEO and CFO. Thus, by **sharing the role with other departments, practitioners played a moderately important role** as an equilibrating force for the organization.

Intel Corporation.

1. Since the legal, financial, and communication functions lay with the interviewee, the specific role of IR practitioners as an equilibrating force within the organization was blurred.

KLA-Tencor Corporation.

1. The IR department played a **marginal role** as an equilibrating force within the organization. The legal department played a stronger role.

PalmSource, Inc.

1. The IR department **traditionally does play an important role** within the company as an equilibrating force by driving change. However, that role was not

observable in this case as the company was already in alignment with the requirements of the regulation.

Silicon Valley Bank.

1. Practitioners **traditionally play an important role** as an equilibrating force for the organization in conjunction with the legal and finance departments.

Symyx Technologies, Inc.

1. The practitioner played a **strong role** in the organization as an equilibrating force by **making changes and adjustments in the communication strategy**.

Dominant patterns in practitioners role as an equilibrating force.

1. The **IR departments of most companies played a strong role in the company as an equilibrating force.**

2. In most cases, practitioners actively participated in adjusting the communication strategy and initiated changes. Such changes were in conjunction with other departments – legal and finance – but the IR department had a strong say. Thus, the **IR department typically plays the role of an equilibrating force, not alone, but in conjunction with other departments.**

3. The IR departments that did not play a strong role did not do so because other departments – legal and finance – played a more important role. **Thus, the IR department is not always as strong and important as the legal and finance departments in assisting management with the adjustment process in investor communications.**

Importance of the Commission as a Macro Factor

Adobe Systems Incorporated.

1. There was a **noticeable increase in the importance given to the SEC** as a macro environmental factor in the communication strategy with investors.

<u>Advanced Micro Devices</u>, <u>Inc</u>.

1. The **importance of the Commission increased tremendously** for the organization. The organization **established a proper IR department** and put in place a **new and concrete communication strategy**. The company began exercising far **more caution in communication** than the past.

<u>Applied Materials</u>, <u>Inc</u>.

1. The **SEC increased in importance** as a macro environmental factor for the company and the **company made changes in the communication strategy** with investors.

<u>Genencor International</u>, <u>Inc</u>.

1. The **importance of the Commission increased slightly** in the communications strategy of the company. Changes were made to provide a more even reach to investors to enable them obtain information.

<u>Intel Corporation</u>.

1. The importance of the **SEC as a macro environmental factor remained almost unchanged**.

<u>KLA-Tencor Corporation</u>.

1. The **importance of the SEC increased marginally** as a result of the regulation. Adjustment in communication strategy was made to provide even access of information to all.

PalmSource, Inc.

1. The **importance of the SEC** as a macro environmental factor in communications **remained unchanged.**

Silicon Valley Bank.

1. The importance of the SEC as a macro environmental factor **changed marginally** in this case.

Symyx Technologies, Inc.

1. The Commission **moderately rose in importance** as a macro environmental factor in the communication strategy of the company. However, changes that the company made were also aligned by the company's mission to communicate accurately with investors.

Dominant Patterns in the Importance of the Commission.

1. The importance of the SEC in corporate communications with investors **increased moderately for most companies**. The importance of the Commission **increased because companies tried to comply with the regulation** that governed communications more stringently as compared to earlier times (prior to October 23, 2000).

2. **The importance of the SEC did not increase, or increased marginally, for some companies because they were already in compliance and in tune with the spirit of the Commission** that requires companies to provide fair information to all investors.

3. The **importance of the SEC increased tremendously** in the case of one company – AMD – **where the company had previously not paid reasonable attention** to the requirements of the Commission.

4. Overall, the importance of the SEC increased to a level where all companies that participated in the research made an effort to reach a certain standard of communication practice. In other words, **the practice of communication with investors after the regulation became more standardized**.

<u>Comparisons of the Results of This Study with Prior Research</u>

Results of each of the four studies discussed in the literature review have been compared with the results of this study in terms of the changes in communications with investors.

<u>Thompson Financial/Carson Global Consulting survey</u>. This survey was carried out on investor relations practitioners. It found that some companies had added information to quarterly news releases and had increased the number of 10-Q filings. This study did not find that to be the case with participating companies. However, all other changes that were reported in the survey were found to hold in this study.

This study, like the Thompson Financial survey found that changes in corporate communications included starting a formal disclosure policy; disseminating quarterly earnings through multiple ways such as issuing a press release and webcasting the earnings call; posting more information on the website; offering intra-quarter guidance (but only if needed), increase in 8-K filings; less frequent contact with analysts; focus on public documents while interacting with analysts; archiving call replays; and formally designating spokespeople. Thus, this study basically endorsed the results of the Thompson Financial/Carson Global Consulting survey.

Association for Investment Management and Research. This study obtained similar results to those found by the AIMR survey that was administered on analysts and institutional investors. The survey found that the interaction and individual interviews of most participants with corporate officials decreased or stayed the same. This study found that two companies increased personal communications overall, and one company reduced interaction with analysts. Another company – KLA-Tencor – reported decrease in interaction from analysts themselves. Most AIMR survey participants said that their ability to access company sponsored group analysts meetings and attend webcast conferences stayed the same. This study similarly found that participants did not limit access of analysts to meetings. Most survey participants reported that the opportunity to tour plants stayed the same. This study found that only one company – Symyx Technologies – eliminated plant tours. Most participants of the survey reported that the quality of overall information given by companies decreased. Most companies that participated in this study stated that they cut-back on reviews of analysts' draft earnings models, analysts' draft earnings reports, and informal mid-quarter guidance. One company – Applied Materials – cut back on one-on-ones with analysts.

In conclusion, this study obtained similar results to those obtained by the AIMR survey.

National Investor Relations Institute survey. The results obtained by this study differed from the results obtained in the study conducted by NIRI in the following ways. NIRI found that some IRO's disseminated less information about their firms and some companies provided more information to analysts. This study did not find any company that provided more information to analysts after the regulation as compared to before the regulation. Rather the study found the reverse. This study also did not find any IRO disseminating less information about the firm, but found the reverse to hold.

Similar to the findings of the NIRI study, this study found that most companies did not make major changes to communications with investors – except in the case of AMD. At the same time, in an attempt to avoid selective disclosure fewer companies reviewed analysts' earnings models and draft reports. Both studies found that companies took steps to provide better access to information to all investors through various means. Thus, this study supported most of the findings of the NIRI survey.

<u>Securities Industries Association study</u>. This study found opposite results as compared to the results obtained by the SIA study. According to the SIA, there was a "chilling effect" on the quantity and quality of information disseminated by corporations. This study found that there was an increase in the quantity and quality of information being disseminated by corporations. Corporations, after the regulation, began providing additional information sections on the Web, increased 8-K filings, and began to webcast conferences and presentations in an effort to provide more and even information to all investors. The only area where corporations cut back on quality was in their effort to avoid selective disclosure by reducing reviews of analysts' draft reports and draft earnings models that were not previously accessible to the general investors.

Thus, the findings of this study were contradictory to the findings of the SIA.

In conclusion, the findings of this study, the Thompson Financial/ Carson Global Consulting study, the AIMR study, and the NIRI study are similar in many respects. On the other hand, this study and the other three studies show that the findings of the SIA are more towards one extreme. The SIA study mainly projects that there was a chilling effect on the information from companies.

Additional Findings

In addition to the intended areas of exploration, this study found other areas where the regulation had an impact. One of the findings was that the IR department rose in importance within the company as an advisory body. As stated earlier both Kip Meintzer from PalmSource and Ruth Cotter from AMD said that management paid more attention to what they had to say as compared to before.

At the same time, the importance of the IR department as a formal entity increased to a must-be after the regulation as compared to before the regulation. This could be seen in the case of AMD where the department was earlier on an ad hoc basis.

Another area of communication that came into the forefront was the area of non-verbal communication. This study found that body language became more important as a result of a case based on the regulation that focused on the importance of body language in communication. Thus, after the regulation, it was not just verbal and written communications that companies began focusing on, but also the use of non-verbal communication as a means to communicate information.

Thus, the study found that the respect and existence of the IR department in corporations increased. It also found that non-verbal communication is something that is given more importance now than in the past.

CHAPTER V

Conclusion

This qualitative research was done primarily to gauge the changes that corporations made as a result of Regulation Fair Disclosure. It was also meant to assess the role of investor relations practitioners in their organizations, and assess the change in importance of the SEC as a factor in corporate communications. The research intended to find if and to what extent corporate culture and resources of a corporation acted as variables in the way corporations chose to respond to the regulation.

In the previous chapter the researcher discussed data from each company and highlighted the dominant patterns that emerged from the responses. This chapter begins with an attempt to provide answers to all research questions on the basis of those dominant patterns and moves forward to discuss the limitations of the research and provide suggestions for future research.

Answers to Research Questions

1. What changes did companies make in communications with investors and investment professionals following the implementation of the regulation in terms of quality of information disseminated to investors, personal communications, written communications, disclosure policies, use of communication technology, SEC filings, structure of communications, and/or any other area of communications?

The data obtained through this study suggested that the changes that companies made in the above mentioned areas improved the fairness with which all investors – individual or institutional – could access information. This fairness was strengthened by improvement in timeliness of information disseminated. The research also found that there was some improvement in the breadth of information available to investors especially through websites. In summary, all changes were in compliance with the regulation that intended to provide fairness to all investors in the opportunity provided by corporations to seek information to make investment decisions.

2. Can corporate culture of the corporation be held accountable for influencing its communication strategies? If yes, to what extent?

Corporate culture was not a consistent influencing variable in corporate communications with investors. It did not affect the content of the message, but only the emphasis in the message. Thus, corporate culture impacted communications of some companies only slightly.

3. Can resources available to a corporation be held accountable for influencing its communication strategies? If yes, to what extent?

Resources available to a corporation were accountable for influencing the communication strategy of the corporation. Better resources in terms of professional and informed practitioners were able to provide a sound and working communication strategy in accordance with the regulation. Such practitioners through the strategy helped increase investor confidence in the company and thereby helped increase the value of the company's stock. On the other hand, unprofessional communicators developed weak communication strategies and caused damage to the company in terms of lawsuits against the company, monetary costs, and poor reputation among investors.

4. To what extent were investor relations practitioners responsible in relaying information about the regulation to the management of the corporation?

Investor relations departments played an important role as boundary-spanners for their respective organizations by relaying information from the macro environment into the organization's management, but only in conjunction with the legal departments. Thus, the IR department did not act as the sole boundary-spanner for the organization as far as flow of information from the macro environment into the organization was concerned.

Similarly, the IR departments were not the only ones that played a part in keeping information flowing within the organizations' various departments. The boundary-spanning roles of the IR departments within the organizations were shared with other departments.

In conclusion, the IR departments were not the sole boundary-spanners outside and within the organizations that made them an important, but not indispensable, part of the boundary-spanning process.

5. To what extent did investor relations practitioners help management adjust to the regulation in terms of communication with investors?

The IR departments were not the only departments responsible to help management adjust communications to the regulation. Other departments responsible were finance and legal. Investor relations did play an important role in advising management on communications with investors but only in conjunction with other relevant departments. Thus, IR cannot be looked upon as the sole counsel to the management on communication issues with investors.

6. How much importance do corporations attribute to the SEC as a macro environmental factor in terms of its influence on the communication process of corporations with investors?

Corporations that did not take the Commission seriously before the regulation began to pay more attention to it after the regulation. Reviewing the changes that various corporations made in their communications with investors it can be concluded that the overall importance of the Commission as a macro environmental factor increased after the regulation. The real effect can be amply described by quoting Ruth Cotter of AMD:

> In the past, the SEC was like this body out there, somewhere, could be in a depressive room covered with spider webs or something. And they crossed the mind once a year, maybe.... Now you certainly read a lot about the SEC. Because of them we are more cautious.

7. How do the results obtained in this research about changes that corporations made to their communication with investors as a result of the regulation compare to results obtained in prior research?

The results of this research showed that the changes that corporations made to their communication program were similar to the changes reflected in most of the prior studies including NIRI, AIMR, and the Thompson Financial/Carson Global Consulting survey. These studies had shown that companies, through various methods, had removed themselves from situations that could potentially give rise to selective disclosure such as review of analysts' draft earnings reports and draft earnings models. These studies did not indicate an information chill that was reported by the study conducted by the SIA. Similarly, this study found an increase in the information given out publicly and did not find any information chill.

Additional Findings

This study found that the regulation resulted in the rise of the IR department in public corporations as one that could not be overlooked and had to be made an important part of the corporate machinery dealing with investors and investor communications.

The study's finding that some corporations began paying attention to non-verbal communications indicated that the realm of communications is expanding into an area that was not considered important prior to the regulation.

On the whole, the study found that Regulation Fair Disclosure was a success with companies that agreed to participate in the research. But, the success of the regulation cannot be concluded to be total. The reason is that the success of the regulation was measurable in only those cases where companies agreed to discuss the adjustments in communications with investors that were made as a result of the regulation, or in cases where the companies were already complying. Companies that did not make the required adjustments yet must understandably not have been willing to discuss the impact. Thus, the success of the regulation can be measured, in a way, by gauging the willingness of companies to participate in the research. The researcher contacted approximately 75 companies to get feedback from a total of nine companies. However, one caution that readers must use in accepting this measurement of success is that there could have been other reasons for companies to refuse to participate in the study. Some reasons given to the researcher for not participating were lack of time and resources, detailed questions, restrictions imposed by the corporate disclosure policy to discuss such matters, and corporate policy not to participate in student research.

Limitations of the Study

The limitations of this study arise from the limitations of the method used in this research. Since the researcher obtained qualitative data through interviews, the data gathered could be influenced by the researcher's personal biases and orientations. Thus, this study may have low reliability even if it has high validity.

Another limitation that this study may have with accuracy of data could arise from the fact that the data obtained could be triangulated only to the extent that the information provided by the interviewees was available publicly on the respective websites of companies. Anecdotal data and data reflecting social discourse within the organization cannot be obtained as documentation from other sources. However, it strongly appeared from the interviews that the chance of interviewees faking responses ran very low.

Benefits of the Study

Given that public relations practitioners play the role of boundary spanners for an organization, this study can benefit practitioners, academicians, and students by bringing forth recent developments in investor relations, the relevant legal environment, and the interaction of the department with the macro environment. It also attempted to assess corporate communications with investors by explaining the impact of the changed environment on investor relations. The study benefits practitioners and students by generating awareness of newer legal risks and duties inherent in the field of investor relations.

Importance of the Study

The study is important because it provides the reader with a convenient and comprehensive overview of the problems and laws prosecuting selective disclosure and insider trading. The study introduces selective disclosure as a concept separate from the concept of insider trading. It explains these concepts using examples to help the reader understand fine differences clearly. It explains the scope and meaning of the regulation and puts together important cases that led to the promulgation of the regulation. It explains how the existing insider trading law grew to be ineffective in dealing with the practice of selective disclosure and also explains other reasons for the promulgation of the regulation.

The study is important because it examines corporate communications with investors in the light of the regulation and in that sense updates current academic literature contributing to the understanding of students, academicians, and others interested.

This study, through scientific research, tried to explore if, and to what extent, certain variables could be held responsible for influencing corporate response to the regulation. This research explored two variables, which in public opinion as expressed in various articles, were thought to have led companies to respond in disparate ways. Various articles had suggested corporate culture and resources available to corporations as possible variables that could have affected corporate response.

Another important aspect of this study is that it explores the role of investor relations practitioners as boundary spanners and counsels for their organization in the light of the regulation. In this way the study refreshes previous research on the theoretical aspect of practical relations in the field of public relations.

Suggestions for Future Research

This research brought to light the changes that corporations made in communications with investors as a result of Regulation Fair Disclosure. However, though these changes reflected the impact of the regulation as a factor governing corporate communications with investors, the changes did not indicate the *extent* of impact of the regulation on such communications. Future studies, therefore, must focus on exploring the extent of such impact.

This study also explored the extent of influence that corporate culture had on corporate communications with investors. It found that culture did not influence the content of such communications. Rather, the SEC was a more important factor in such communications and influenced the content of information being given out to the investors. Culture influenced communications mostly in terms of the area of emphasis in communications. Future research must focus on exploring the impact of culture on communication in *greater depth and in conjunction with other variables* such as the macro environment, resources available, and corporate mission. In addition, such research should attempt to find how much impact corporate culture and other variables have on corporate communications with various segments of the target audience.

Keeping in mind the findings of this research besides those intended by the research questions, future studies should focus on tracking the importance of IR practitioners and departments within corporations as new regulations come into existence.

References

Association for Investment Management and Research. (2001, Jan.31). *Regulation FD e-survey summary*. Retrieved May 05, 2001,from http://www.aimr.org/pressroom/01releases/regFD_surveysum.htm

Babbie, Earl (2000). *The practice of social research*. Belmont, CA: Wadsworth/Thomson Learning.

Burton, Paul (1966). *Corporate public relations*. Reinhold Publishing Corporation, NY.

Chiarella v. United States, 100 S. Ct. 1108 (1980).

Crable, Richard E. & Vilbert, Steven L. (1986). *Public relations as communication management*. Edina, MN: Bellwether Press.

Dirks v. Securities and Exchange Commission, 463 U.S. 646 (1983).

Evan, William M. (1972). An organization-set model of interorganizational relations. In Matthew Tuite, Roger Chisholm, & Michael Radnor (Eds.), *Interorganizational decision making* (pp. 181-200). Chicago: Aldine Publishing Company.

Fisch, Jill E. (2001). Panel discussion: The SEC's regulation FD. *Fordham Journal of Corporate & Financial Law*, *6*, 273-304. Retrieved March 26, 2002 from the Lexis Nexis Database.

Gayeski, Diane M. (1993). *Corporate communication management: the Renaissance Communicator in information-age organizations*. Butterworth-Heinemann, Stoneham, MA.

Goodman, Michael B. (Ed.). (1994). *Corporate communications: theory and practice*. Albany: State University of New York Press.

Graves, Joseph J. (1982). *Managing investor relations: strategies and techniques*. Dow Jones-Irwin, Homewood, IL.

Grunig, James E. (1992). Communication, public relations, and effective organizations: an overview of the book. In James E. Grunig (Ed.), *Excellence in public relations and communication management* (pp. 1-28). Hillsdale, NJ: Lawrence Earlbaum Associates, Inc.

Grunig, James E., & Hunt, Todd (1984). *Managing public relations*. Holt, Rinehart and Winston, New York.

Grunig, Larissa A. (1996). Public relations. In Michael B. Salwen & Don W. Stacks (Eds.), *An integrated approach to communication theory and research* (pp. 459-477) Mahwah, NJ: Lawrence Earlbaum Associates, Inc.

Harbert, Tam (February 10, 2003). The SEC guide to Reg. FD; how companies can avoid crossing the line. *Electronic Business.* Retrieved September 15, 2003, from the Lexis Nexis database.

Harrison, Michael A. (Winter, 2002). Regulation FD's effect on fixed-income investors: Is the public protected or harmed? *Indiana Law Journal, 77,* 189-219. Retrieved March 27, 2002, from the Lexis Nexis database.

In the matter of Cady, Roberts & Co., 40 SEC 907 (1961).

Jablin, Fredric M., & Krone, Kathleen J. (1987). Organizational assimilation. In Charles R. Berger & Steven H. Chaffee (Eds.), *Handbook of communication science* (pp. 711-746). CA: Sage Publications.

John Radzin (2001). *The global investor and corporate governance: what do institutional investors want?* (Conference Board Rep. No. R-1297-01-RR). New York: The Conference Board.

Mahoney, William F. (1991). *Investor relations: the professional's guide to financial marketing and communications.* New York Institute of Finance.

Marcus, Bruce W., & Wallace, Sherwood Lee (1997). *New dimensions in investor relations: competing for capital in the 21st century.* John Wiley & Sons, Inc., New York.

Rivel Research Group. (March, 2001). *Corporate disclosure practices survey 2001.* National Investor Relations Institute, Silicon Valley Chapter.

Richards, Clay (Fall, 2000). Selective disclosure: "A fencing match conducted on a tightrope" and Regulation FD – The SEC's latest attempt to "Electrify the Tightrope." *Mississippi Law Journal, 70,* 417-440. Retrieved December 01, 2001 from the Lexis Nexis database.

Securities Act, Section 17(1933). Retrieved August 09, 2002, from http://www.law.uc.edu/CCL/33Act/sec17.html

Securities Exchange Act, 17 C.F.R. 240.10b-5 (1934).

Securities Exchange Act, 17 C.F.R. 240.10b (1934).

Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F.2d 833 (2nd Cir.1968).

Securities Industries Association (2001, May). *Costs and benefits of Regulation fair disclosure.* New York: Author.

Shapiro v. Merrill Lynch, Pierce, Fenner & Smith Inc., 495 F. 2d 228 (2nd Cir. 1974).

Sriramesh, K., Grunig, James E., & Buffington, Jody (1992). Symmetrical systems of internal communications. In James E. Grunig (Ed.), *Excellence in public relations and communication management* (pp. 577-596). Hillsdale, NJ: Lawrence Earlbaum Associates, Inc.

Thomson Financial/Carson Global Consulting. (2001, January 17). *Investor relations survey.* Author.

Unger, Laura S. (December, 2001). Special study: regulation fair disclosure revisited. Retrieved from http://www.sec.gov/news/studies/regfdstudy.htm

U.S. Securities and Exchange Commission. (n.d.). *Descriptions of SEC forms.* Retrieved July 9, 2003, from http://www.sec.gov/info/edgar/forms.htm

U.S. Securities and Exchange Commission. (n.d.). *Fact sheet: Regulation fair disclosure and new insider trading rules.* Retrieved October 15, 2001, from http://www.sec.gov/news/extra/seldsfct.htm

U.S. Securities and Exchange Commission. (n.d.). *Final Rule: Selective Disclosure and Insider Trading.* Retrieved December 02, 2002 from http://www.sec.gov/rules/final/33-7881.htm

U.S. Securities and Exchange Commission. (n.d.). *Proposed Rule: Selective Disclosure and Insider Trading.* Retrieved August 30, 2002 from http://www.sec.gov/rules/proposed/34-42259.htm

U.S. Securities and Exchange Commission. (n.d.). *The investor's advocate: How the SEC protects investors and maintains market integrity.* Retrieved December 02, 2001, from http://www.sec.gov/about/whatwedo.shtml

Useem, Michael (1993). Executive defense: shareholder power and corporate reorganization. Harvard University Press, Cambridge, MA.

White, Jon & Dozier, David M. (1992). Public relations and management decision making. In James E. Grunig (Ed.), *Excellence in public relations and communication management* (pp. 91-108). Hillsdale, NJ: Lawrence Earlbaum Associates, Inc.

Whitney, Margaret A. (1994). Analyzing corporate communications policy using ethnographic methods. In Michael B. Goodman (Ed.), *Corporate communications: theory and practice* (pp. 185-197). Albany: State University of New York Press.

Appendix A

(Consent Letters)

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To: Shalini Jhalani
952 Kiely Blvd., Unit I
Santa Clara, CA 95051

From: Pam Stacks,
Interim AVP, Graduate Studies & Research

Date: December 1, 2003

The Human Subjects-Institutional Review Board has approved your request to use human subjects in the study entitled:

"Impact of Regulation Fair Disclosure on Corporate Communications with Investors."

This approval is contingent upon the subjects participating in your research project being appropriately protected from risk. This includes the protection of the anonymity of the subjects' identity when they participate in your research project, and with regard to any and all data that may be collected from the subjects. The approval includes continued monitoring of your research by the Board to assure that the subjects are being adequately and properly protected from such risks. If at any time a subject becomes injured or complains of injury, you must notify Pam Stacks, Ph.D. immediately. Injury includes but is not limited to bodily harm, psychological trauma, and release of potentially damaging personal information. This approval for the human subjects portion of your project is in effect for one year and data collection beyond December 1, 2004 requires an extension request.

Please also be advised that all subjects need to be fully informed and aware that their participation in your research project is voluntary, and that he or she may withdraw from the project at any time. Further, a subject's participation, refusal to participate, or withdrawal will not affect any services that the subject is receiving or will receive at the institution in which the research is being conducted.

If you have any questions, please contact me at (408) 924-2480.

cc: Dr. Kathleen Martinelli

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B.S. Degree
Advertising
Journalism
Magazine
Photojournalism
Radio-TV News
Reporting & Editing
Public Relations

M.S. Degree
Mass Communications

The California State University:
Chancellor's Office
Bakersfield, Channel Islands, Chico, Dominguez Hills, Fresno, Fullerton, Hayward, Humboldt, Long Beach, Los Angeles, Maritime Academy, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San José, San Luis Obispo, San Marcos, Sonoma, Stanislaus

Letter of Informed Consent

Responsible Investigator: Shalini Jhalani

Thesis Title: *Impact of Regulation Fair Disclosure on Corporate Communications with Investors*

You have been asked to participate in a research study investigating corporate communications with investors as a result of Regulation Fair Disclosure in terms of structure, formalization, and use of technology in communication. The study also explores the causes that led companies to respond in varied ways – did corporate culture and resources available play a significant role in corporate response? Or, were there other factors involved? In addition, it explores the role of public relations and/or investor relations practitioners as boundary spanners for their organization – did they really span out of the organization into the macroenvironment and within the organization itself to relay information about the regulation and the resulting adjustments? Also, did they play a part in helping management adjust to the regulation in terms of communication?

You will be asked to answer the above questions in-depth and as fully as possible. The investigator may also ask you to fill the first three sections of the National Investor Relations Institute, March 2001, survey on corporate disclosure practices. The investigator would prefer to obtain information by face-to-face interview. However, if you do not wish to do so, you may do so by e-mail and/or phone.

You and your corporation could directly benefit from this study because it can potentially provide a glimpse of the current status of corporate communications with investors. It could provide insight into how other companies have adjusted to the situation and why they adjusted the way they did. The study would also benefit public relations/investor relations practitioners and departments by endorsing their importance to corporations as an equilibrating force with the internal and external environment.

Information you provide may be used in the thesis and the information may be attributed to you. Also, there will be no compensation for your participation.

Questions about this research may be addressed to Shalini Jhalani at (408) 248-9913. Complaints about the research may be presented to Dr. Dennis Wilcox, Director, School of Journalism and Mass Communications, at (408) 924-3249. Questions about research subjects' rights may be presented to Pam Stacks, Interim Vice President, Graduate Studies and Research, at (408) 924-2480.

No service of any kind, to which you are otherwise entitled, will be lost or jeopardized if you choose "not to participate" in the study.

Your consent is being given voluntarily. You may refuse to participate in the entire study or in any part of the study. If you decide to participate in the study, you are free to withdraw at any time without any negative effect on your relations with San Jose State University or with any other participating institutions or agencies.

Appendix B

(Survey Questionnaire)

CORPORATE DISCLOSURE PRACTICES SURVEY
(MARCH, 2001)

Source: National Investor Relations Institute (NIRI)

The following questions relate to your company's disclosure practices, particularly those related to the SEC Regulation Fair Disclosure. Please choose the appropriate answer(s) by placing the alphabet x adjacent to your choice(s).

Please select which of the following best approximates your actual title:

CFO
Vice President, IR
Director/Executive Director of IR
Manager of IR
IR Associate/Assistant/Specialist
Other

Section 1: Trends in Corporate Disclosure Practices

Q1 Since Regulation FD went into effect, has your company been providing more, the same amount or less information to analysts and investors?

Providing more information
Providing the same amount of information
Providing less information

Q2 Prior to the adoption of Regulation FD did you or someone in your company review analysts draft earnings models?

Yes (Go on to Q3)
No (Skip to Q5)
No sell-side coverage (Skip to Q8)

Q3 Are you still reviewing analysts' draft earnings models?

Yes (Go on to Q4)
No (Skip to Q5)

Q4 Are you: *(Select both if applicable)*

Reviewing draft earnings models only for factual accuracy of historical information in the public domain
Reviewing assumptions that you believe are non-material

Press release
Notice on company website
E-mail (using push technology)

Q10c If you are planning to discuss new material information on your upcoming webcast, telephone conference call or other webcast presentation, do you indicate this in your notification to individual investors and the media?

Yes
No

(If you do not provide earnings guidance, Skip to Q15. Otherwise, proceed with Q11.)

Q11 In which of the following ways do you currently provide earnings guidance? *(Select all that apply)*

In the quarterly news release
In a quarterly conference call that is conducted by telephone and/or webcast and is open to all interested parties and the media
In a quarterly conference call that is not fully accessible to interested investors and the media
In an 8K
In a 10Q or 10K

Q12 Do you make any public commitment to update earnings guidance should it change materially?

Yes
No

Q13 If you provide earnings guidance early in the quarter, how do you respond to analysts' questions later in the quarter related to whether the guidance is still on track? *(Choose one)*

We do not update guidance during the quarter **(Skip to Q14b)**
If facts or circumstances cause the guidance to change, we issue a news release before responding to such questions **(Skip to Q14b)**
We plan to routinely issue a mid-quarter review of guidance **(Go on to Q14a)**
Uncertain **(Skip to Q14b)**

Q14a In which of the following ways do you plan to disseminate the mid-quarter review of guidance? *(Select all that apply)*

News release
Fully accessible, non-exclusionary conference call

Q19 As a senior IR officer, do you have someone else accompany you or listen in when you conduct one-on-one discussions with members of the investment community?

Yes, always
Yes, sometimes
No

Section 3: Internal Company Policies

Q20 Does your company have a policy designed to prevent employee participation in the Internet chat rooms or any unauthorized discussions with analysts and reporters?

Yes
No, but we plan to establish one
No, not aware of any plans to establish one

Q21 Does your company have a written disclosure policy?

Yes
No, but we plan to establish one
No, not aware of any plans to establish one

Thank you very much for your time and cooperation