FINANCIAL EXECUTIVES INSTITUTE

April 24, 2000

Jonathan G. Katz
Secretary, Securities and Exchange Commission
450 5th Street NW
Washington, D.C. 20549-0609
Email: rule-comments@sec.gov

File No. S7-31-99

Dear Mr. Katz:

The Committee on Corporate Reporting (CCR) of Financial Executives Institute appreciates the opportunity to provide comments on the release “Proposed Rule: Selective Disclosure and Insider Trading”.

The members of CCR include CFOs, Controllers, and Treasurers with direct responsibilities for public financial reporting. As such, we are deeply involved with issues relating to materiality and with corporate practices and controls relating to disclosure of information to investors and other parties.

Within our committee membership, there are mixed views as to whether the proposed rules will have a chilling effect on the release of information to analysts and others. Some members have noted that they have procedures in place that are very similar to what is being proposed as a rule; others believe, that even in companies with significant procedural controls, the rules will sharply heighten legal concerns and have a negative effect on what is in place, further retarding and reducing the flow of information. It is clear that the effects could vary significantly from company to company.

Our remaining comments in this letter will relate to aspects of the release with which we are familiar and for which we have unified views, principally selected questions raised in the proposal for Regulation FD (Fair Disclosure).

CCR agrees with the Commission that selective disclosure is inappropriate and that it can serve to undermine investor confidence in both fairness and integrity of the securities market. We support codification in SEC requirements of a concise

and clear set of Rules that state explicitly the obligations for disclosure of material information to the public. We also believe it is important that the new rules not be overly restrictive or permit ambiguity in interpretation and enforcement.

For the most part, the proposed Regulation FD appears to be appropriate and workable. However, we do have a number of concerns and suggestions, as follows.

We understand the Release's concept of "intentional" and "unintentional disclosure" of material nonpublic information and the Commission's intention to have different reporting interval requirements for each type. However, we believe the 24-hour requirement to publicly disseminate information that is discovered to have been unintentionally released to a selective audience is too stringent a time period for all circumstances.

We also think the concept of "unintentional" disclosure should be broadened to include not only accidental disclosures of information known to be material, but also intentional disclosures that were not intended to convey material information (i.e., you made the statement on purpose but didn't think it was material.)

For obvious cases of unintentional disclosure, where it becomes immediately obvious in a business-day meeting that an executive has just given material non-public information to a selective audience, a 24-hour requirement for corrective action could be reasonable. But many cases are not likely to be so obvious - the significance and materiality of the information might not come to light until post-meeting reflection, reviewing of notes, and consultation with legal or financial staff.

The clock should not begin to run until management knows or is reckless in not knowing that (a) a disclosure has been made (b) of nonpublic information (c) that is material. We think this is a critical point in today's volatile stock market, where dramatic (some would say irrational) swings on little or no news are common, making materiality judgements harder than ever before. The concept of "reasonable investor" is more elusive than ever. Management should not be put into the position where, by the time they know that their prior statement is material, they're already in violation of the regulation.

We believe a more appropriate requirement would be "within two business days". Registrants should be encouraged to make public disclosure "immediately or as soon as practicable", with two business days being set as the outside limit.

As to the Release's definition of "person acting on behalf of an issuer", we believe that the proposed definition is appropriate. It encompasses persons the registrant has held out as agents regardless of title or position. We do not think

this definition should be extended to include “all employees”, as this would be extremely difficult or impossible to execute in practice.

We also support the Release’s approach to rely on existing standards for the term “material nonpublic information.” Materiality is inevitably a judgement call, easy to make at the extremes, and often difficult inside the range. We do not believe definition beyond what is already in the release would change this circumstance.

In regard to the Release coverage of “to any persons outside the issuer”, we feel that the proposed regulations cover the appropriate category of persons. While we believe that written confidentiality agreements are often useful and desirable, we would not like to see a requirement established that would stipulate that all such agreements be written. We believe valid confidentiality agreements can be reached in discussions leading to a mutual understanding, as well as by ongoing and customary business practice.

Concerning the definition and requirements for “public disclosure”, we have three comments:

1.) We urge the SEC to be more proactive and exert leadership with respect to use of websites and the Internet. While we would not argue today that information published prominently on a corporate website should be accorded equal status to corporate release of information through press releases and established print and wire service distribution channels, we believe a way should be found to achieve this in the future. Ideally, publication on a corporate website should someday be recognized as “notice to the world.”

    The rapid growth of the internet as an information delivery and research resource should lead to development of some type of service that will capture information released on corporate websites for broad availability and reporting to the investing public. It should not be necessary for investors to make a practice of checking individual corporate websites frequently. Perhaps the SEC can be helpful in investor education and in encouraging the further development of vehicles in the market that will monitor website changes and channel information to the investing public. A few such services already exist, but their availability and use is not widespread.

    Ultimately, as technology moves forward, more investors are likely to identify significant information via use of the internet than from 8-K’s filed with the Commission.

2.) We believe that it would be preferable to expand the use of Item 5 on the 8-K for all non-routine corporate information disclosures, rather than creating a

new item specifically for Regulation FD. This will encourage disclosure of information more broadly.

3.) We do not think the SEC should require 8-K and 6-K filing for information that has already been released by one of the other "public disclosure" means. To file an 8-K for every material press release in a company would be very cumbersome. We understand the apparent simplicity and perhaps seeming desirability of requiring all voluntary public disclosure occurring between regular reporting intervals to be submitted on SEC 8-K reports. However, the proliferation of 8-Ks that could arise from such an approach could become a burden for both company filers and financial data users, as well as the SEC. We would prefer to see the SEC use the time that would be consumed in processing and reviewing expanding numbers of 8-Ks instead invested in finding ways to use the Internet more effectively.

    Having a variety of means for public disclosure, as described in the Release, meets the obligation to inform the public without creating undue burdens.

With respect to Regulation FD for foreign issuers filing to sell securities in the U.S. capital market, our view is that they should be subject to the same requirements that U.S.-owned companies must follow, including the filing of 6-K reports on EDGAR when needed.

Any questions regarding this response may be addressed to me or to Roger Trupin, Chairman of CCR's SEC Subcommittee, via the FEI staff on 973-898-4670.

Sincerely,

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