

Statement of Congressman John LaFalce, Ranking Member

Committee on Financial Services

Hearing on Fair Disclosure Regulation Before the Capital Markets Subcommittee

May 17, 2001

I would like to welcome our distinguished witnesses today to this important public discussion of the Fair Disclosure Regulation or, as it has come to be known, Regulation FD.

Regulation FD was adopted to confront a serious problem: companies making selective and important disclosures of material, non-public information to analysts, institutional investors, but not to the public at large. This practice disadvantaged the small retail investor and other market participants who did not have the access, or the privileged relationships, of analysts and powerful institutional investors. It undermined the fundamental premise that the market is both efficient and fair because of the broad dissemination of meaningful information to all investors at the same time.

The rule requires that when a senior official of a company discloses material non-public information to a shareholder or market professional, then the company must: (1) make all intentional disclosures public simultaneously, or (2) “promptly” for non-intentional disclosures. In my view, FD is an important and needed step to level the playing field for investors. The Regulation has gone a long way in ending the practice of selective disclosure to industry analysts and powerful institutional investors.

It is possible that FD over time may, in fact, encourage companies to communicate directly with their investors in a more fair and transparent way. In addition, although FD was not

precisely designed to do so, it may also help ensure that analysts remain a truly independent source of information for investors. The Regulation should encourage analysts who have sometimes inappropriately become cheerleaders for the investment banking industry to return to the work of real objective analysis of company fundamentals, and not rely on the privileged access that permeated the pre-FD environment.

At the same time, I am concerned about claims that FD may contribute to market volatility, and I am interested in hearing the panelists' views on this point. The argument, as I understand it, is that the market is often surprised by results in the absence of analysts' guidance ahead of official information by companies. One could also argue that the price effect of an announcement may simply be compressed into a shorter time period, rather than the several days typical under the old regime of analyst guidance.

I am also eager to hear from not only the SEC, but our other guests as well, about the possible chilling effects FD may have produced. Perhaps the SEC should consider some specific guidance on what is "material" to assist companies in their disclosure decisions. It will also be important for companies to understand the SEC's enforcement posture as they evaluate their own risk profile.

As we confront claims that the quality of disclosure has suffered, we also must consider that this disclosure framework is in its infancy and there is much data yet to be gathered. Companies, analysts and investors are clearly adjusting to the important changes FD has brought. In many ways companies are learning how to communicate in an unfiltered way with their investors. This will take time. Over the coming months we will look to the SEC, the securities industry and the investors themselves to guide us on the effects of FD.

I believe this hearing today is an important first step in this direction. I would like to

thank Congressman Baker and Congressman Kanjorski for bringing this important and distinguished panel together as we attempt to do our part in protecting investors and enhancing the efficient operation of the United States capital markets. I look forward to your testimony.

Thank you.

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