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# Regulation Fair Disclosure and its Effect on Corporate Information: a Checkup on a Controversial Rule & Content Analysis of Hewlett- Packard News Release Habits

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Running head: REG FD

Regulation Fair Disclosure and Its Effect on Corporate

Information:

A Check Up on a Controversial Rule

& Content Analysis of Hewlett-Packard News Release Habits

Michael E. Maguire

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Strategic Communication

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*Abstract*

On October 23, 2000, the Securities and Exchange Commission (SEC) instituted Regulation Fair Disclosure (Reg FD), which mandated that all public companies give stock-moving information to all investors simultaneously.

What seems simple in concept has actually been difficult for many companies to interpret and has resulted in some falling victim to sanctions from the SEC.

Siebel Systems, ImClone Systems, Tyco International, Adelphia Communications and Raytheon are some examples of companies who have recently engaged in corporate fraud that has misled investors. Reg FD is in existence today to stop companies from hand-picking who gets their news first.

This study will provide background on Reg FD and what effect it has had on disclosure for publicly held companies, analysts and investor relations professionals.

Reg FD is just over six years old - what are the differences since the implementation over the last three years compared with the first three years? Is disclosure of stock-moving news happening with more frequency? This author will take a look at the news release practices of Hewlett Packard and compare what it has done since the inception of Reg FD.

This author is in charge of a newsroom in New York for Business Wire - a company that distributes hundreds of news releases on a daily basis. It is that involvement in news distribution over the last 18 years which has motivated the author to focus on this topic.

*Acknowledgments*

The author would like to acknowledge his wife Julianne, who attained her Master's Degree from Montclair State University in 1999. The educational heights Julianne attained helped motivate this author to go back to the classroom for the first time in 15 years in 2001 and start the pursuit of a higher education degree. Patrick and Kieran - the author's children - for putting up with their father when he was on deadline.

Business Wire for providing the finances for this author to reach his educational goals. Cohorts at Business Wire who have assisted the author with information and guidance include Michael Becker, Anna-Christina Cabrales, Scott Goll, Chris Marchioli, Frantascia Price, Sarah Shepard and Cathy Baron Tamraz.

Finally, Danielle MacKay, a fellow student at Seton Hall University who found the original shell to this thesis in her Blackboard account which the author misplaced during his house move in 2003, and thesis advisor Msgr. Dennis Mahon of Seton Hall University.

*BACKGROUND ON REG FD**Timeline:*

On December 15, 1999, the SEC met to consider proposing new rules to combat selective disclosure and clarify the scope of insider trading prohibitions. The proposals were designed to promote full and fair disclosure of information to the investing public and to clarify existing prohibitions against insider trading.

The SEC had become very concerned about the growing incidence of "selective disclosure" of material corporate information. In many reported incidents, companies selectively disclosed important information - such as upcoming earnings figures - in conference calls or meetings that are open only to selected securities analysts and/or institutional investors, and which exclude members of the public and the media.

People that were privy to selectively disclosed information had an unfair advantage over other investors, who learned of the information only if and when the issuer later makes full public disclosure. By that time, the information often had resulted in a significant change in the share price or higher than usual trading volume.



Five days later, On December 20, 1999 the SEC proposed new Regulation FD - for "fair disclosure" to combat selective disclosure. Selective disclosure occurs when companies or issuers release material nonpublic information about a company to selected persons, such as analysts or institutional investors, before disclosing the information to the general public. This practice could undermine the integrity of the securities markets and reduces investor confidence in the fairness of those markets. Selective disclosure also may create conflicts of interests for securities analysts, who may have an incentive to avoid making negative statements about an issuer for fear of losing their access to selectively disclosed information.

On August 10, 2000, the SEC approved Reg FD. Its adoption followed a period during which the Commission solicited the views of a wide range of parties who would be affected by the proposed rule - including issuers, Wall Street firms, investors, attorneys, and the media. Individual investors expressed overwhelming support for the proposal in the form of approximately 6,000 comment letters urging its adoption.

The first public hint of the SEC's concern with selective guidance came in a speech by then-Chairman Arthur Levitt on February 27, 1998 and later in the year on September 28, 1998

when he described the practice as follows: "Through conference calls or embargoed press releases, analysts and institutional investors often hear about material news before it is made public. In the interval, there is a great deal of unusual trading."

The SEC was troubled by reports of selective disclosure and the potential impact of this practice on market integrity. The SEC viewed the current practice of selective disclosure posing a serious threat to investor confidence in the fairness and integrity of the securities markets. The SEC recognized that benefits may flow to the markets from the legitimate efforts of securities analysts to "ferret out and analyze information" (*Raymond L. Dirks*, 47 S.E.C. 434, 441 (1981) based on their superior diligence and acumen.

The SEC cited the Supreme Court's decisions in *Dirks v. SEC* (445 U.S. 222 (1980) and *Chiarella v. United States* (463 U.S. 646 (1983) as two cases it considered important when adopting Reg FD.

In *Dirks*, the Supreme Court addressed the disclosure, or "tipping" of material nonpublic information by an insider to an analyst. The Court rejected the idea that a person is prohibited from trading whenever he knowingly receives material nonpublic information from an insider. Instead, it stated that a recipient of inside information is prohibited from trading only when

information has been made available to him "improperly" - that is, in breach of the insider's fiduciary duty to shareholders.

In *Chiarella*, the Court rejected the "parity of information" approach, which considered trading to be fraudulent whenever the trader possessed material information not generally available. The Court instead held that there must be a breach of a fiduciary or other relationship of trust and confidence before the law imposes a duty to disclose information or refrain from trading.

After *Dirks*, the SEC saw some cases where selective disclosure was motivated for personal benefit (*SEC v. Philip J. Stevens* - allegation of corporate official's desire to protect and enhance his reputation), however there were some cases where the evidence to support the "personal benefit" under *Dirks* was less clear. The result was many viewed *Dirks* as affording considerable protection to insiders who made selective disclosures and received selectively disclosed information.

The SEC proposed to use their authority to require full and fair disclosure from issuers, primarily under Section 13(a) of the Exchange Act, as a basis for proposed Regulation FD. The Regulation was designed as an issuer disclosure rule - similar to the existing Commission rules under Exchange Act Sections 13(a)

and 15(d) - and the SEC believed the approach would further the fair and full disclosure of material information.

The rule reads as follows: "Whenever an issuer, or any person acting on its behalf, discloses any material, non-public information regarding that issuer or its securities to (certain enumerated persons), the issuer shall make public disclosure of that information... simultaneously, in the case of an intentional disclosure; and promptly, in the case of a non-intentional disclosure."

October 23, 2000, was the start of Regulation FD and the dawn of a new era in investor relations.

Selective disclosure has a very close resemblance to insider trading and ordinary "tipping." In each case, a select few gain an information edge - and the ability to use that edge to profit - from their access to corporate insiders. Similarly, selective disclosure has an adverse impact on stock market integrity that is like the illegal insider trading: investors lose confidence in the fairness of the markets when they know that other participants may exploit "information advantages" derived not from hard work or insights, but from their access to corporate insiders (U.S. vs. O'Hagen, 521, 642 658 (1997) citing Victory Brudney, *Insiders, Outsiders and Informational Advantages Under the Federal Securities Laws*).

Reg FD is also designed to address another threat to the integrity of markets: the potential for corporate management to treat material information as a commodity to be used to gain or maintain favor with particular analysts or investors. For example, analysts may feel pressure to report favorably on a company or otherwise slant their view in order to have continued access to selectively disclosed information. The SEC was concerned with reports that analysts who publish negative views of a company are sometimes excluded by that company from calls and meetings to which other analysts are invited (Laderman, 1998).

Reg FD requires that, when a firm's management intentionally discloses material information to select market participants, the firm must simultaneously make public that information. When a firm's management unintentionally discloses material information to select market participants, it must make that information public as soon as practical, but no later than 24 hours after the initial disclosure.

According to the SEC, "Issuers could meet Regulation FD's 'public disclosure' requirement by filing a Form 8-K, by distributing a press release through a widely disseminated news or wire service, or by any other non-exclusionary method of disclosure that is reasonably designed to provide broad public

access—such as announcement at a conference of which the public had notice and to which the public was granted access, either by personal attendance, or telephonic or electronic access.”

The argument analysts have made against Reg FD is that direct communication between management and analysts is a primary means by which corporations communicate performance-relevant information to capital markets. The analyst community suggests FD has actually *impaired* information available to investors, in part because FD prohibits firms from privately guiding analysts' earnings forecasts (positive information would result in a forecast of beating a previous year or quarter earnings; negative information would cause an earnings estimate to be below a previous year or quarter), which have been the basis for investors' earnings expectations. Additionally, FD may reduce the amount of detailed, performance-relevant information firms provide analysts, which also may impair their ability to forecast earnings and make buy-sell recommendations (For example, 72 percent of analysts responding to a Securities Industry Association (SIA 2001) survey and 56 percent of analysts responding to an Association for Investment Management and Research (AIMR 2001) survey indicate the “overall quality” of information companies disseminate has declined as a result of FD).

The stated idea behind restricting guidance is to refocus analysts on long term rather than quarterly results (Calabro, 2003).

Several factors may prevent deterioration in the information environment after the implementation of FD. First, analysts may be able to substitute information gathered from private search for information previously obtained directly from firms. Second, companies may increase the quality and quantity of information dissemination through public disclosures. Finally, if private communication between firms and analysts cannot be adequately monitored, FD may not successfully curtail selective disclosure to analysts. Therefore, the effect of FD on corporate news reporting is based on experiment and observation rather than theory.

#### *Problems Encountered By Some Companies with Reg FD*

When discussing Reg FD, it is important to make note of The Sarbanes-Oxley Act of 2002 (SOX). The legislation came into force in 2002 and introduced major changes to the regulation of financial practice and corporate governance. Named after sponsors Senator Paul Sarbanes (D-Md.) and Representative Michael G. Oxley (R-Oh.), the Act was approved by the House by a vote of

423-3 and by the Senate 99-0. The legislation is wide ranging and establishes new or enhanced standards for all U.S. public company boards, management, and public accounting firms. The Act contains 11 titles, or sections, ranging from additional Corporate Board responsibilities to criminal penalties, and requires the SEC to implement rulings on requirements to comply with the new law.

The first and most important part of SOX established a new semi-public agency, the Public Company Accounting Oversight Board, which is charged with overseeing, regulating, inspecting, and disciplining accounting firms in their roles as auditors of public companies. SOX also covers issues such as auditor independence, corporate governance and enhanced financial disclosure.

Regulation FD bars public companies from selectively disclosing information to certain shareholders or investors. It was passed primarily to level the playing field between individual and institutional investors - previously companies would often disclose information on earnings in conference calls with a select group of investors (Calio, 2005).

Sarbanes-Oxley shores up the integrity of company accounts and many report better profits because they have a better



understanding on their operations and save money because of more elaborate accounting controls (Baker, 2007).

In discussing where companies went wrong, this author will be noting the shortcomings in regards to Reg FD and not Sarbanes-Oxley.

Probably the most important provision of SOX is holding top executives accountable for everything that is reported by the company. Public companies are required to disclose the effectiveness of their internal controls as they relate to financial reporting, and that independent auditors for the companies "attest" (vouch, agree or qualify) the disclosures. SOX requires that CEO's certify financial reports, bans certain types of work for audit clients and says that companies listed on the stock exchanges must have fully independent committees that oversee the relationship between the company and its auditor.

The provisions just noted were put in place after major public accounting and corporate scandals involving Enron, Tyco International, Peregrine Systems and Worldcom. The resulting decline of public trust in reporting practices and accounting set the stage for the SEC to adopt SOX.

Since Reg FD was passed, the SEC has charged eight companies with violations. Six of the companies settled the allegations

and paid fines - including Flowserve Corp., Motorola Inc. Raytheon Corp., Schering-Plough Corp., and Secure Computing Corp.

In one of the cases, the SEC pursued Siebel Systems Inc. (which in September, 2005, was sold to Oracle Corp. for \$5.85 billion). On a public earnings conference call in 2002, then-CEO Thomas Siebel said the company's fourth-quarter prospects looked "quite tough." But three weeks later, he told attendees at a private technology conference that results for the period would be in line with 2001, rather than the "nightmare" they could have been (Marcus, 2005).

The comment sent the company's stock up 20% on double its normal volume. The SEC entered a cease-and-desist order against Siebel and filed a civil suit that it simultaneously settled for \$250,000. (Marcus, 2005).

Seibel gained a little bit of revenge against the SEC in 2004, when the company litigated the case rather than settle. The SEC claimed that Siebel Chief Financial Officer Kenneth Goldman made comments that the software maker had roughly \$5 million of deals in its sales pipeline in the second quarter; the new deals were coming into the pipeline; that the pipeline was "growing" or "building"; and that sales and business activity was "good" or "better" to an institutional investor and to those attending an invitation-only dinner hosted by Morgan Stanley.

The comments were not released to the investing public (Rubin, 2005).

The day after the April 30, 2003 meeting, the SEC says traders acted on the information, raising the stock up 8% and the daily volume to double its normal level.

In September, 2005, federal judge George Daniels tossed out the SEC's case against Siebel (which was the first company to contest the government's allegations). Judge Daniels ruled that statements Goldman made were equivalent in substance to information disclosed by the company's chief executive officer in its earnings conference call with analysts the week before.

Daniels wrote that the SEC scrutinized 'at an extremely heightened level, every particular word used in the statement, including the tense of verbs and the general syntax of every sentence. (AFX News Limited, 2005).

Daniels said there was an 'unreasonable burden on a company's management and spokespersons to become linguistics experts, or otherwise live in fear of violating Regulation FD' (AFX-Asia, 2005).

In the case of Raytheon Company Chief Financial Officer Franklyn Caine, a Reg FD infraction cost him his job.

In February 2001, Caine selectively disclosed semi-annual and quarterly earnings estimates to selected analysts - the type of

things Reg FD aimed to stop. The disclosures of Caine centered around Raytheon's estimate of its expected quarterly distribution of earnings per share (EPS) for 2001 overall, and for the first quarter in particular. Specifically, Caine indicated to analysts that their first quarter EPS estimate were too high.

In November, 2002, the SEC issued a cease-and-desist order against Raytheon and Caine for committing and causing any violations of Reg FD in the future. Caine resigned as CFO shortly after the ruling.

In May 2005, Flowserve and its Chief Executive Officer C. Scott Greer agreed to pay penalties of \$350,000 and \$50,000, respectively in settling SEC charges that the company violated Reg FD through a private disclosure to analysts in 2002. In a related action, the Director of Investor Relations (IR) Michael Conley was charged with aiding and abetting the violations.

Without denying or admitting to the allegations, Flowserve and its CEO consented to the settlement requiring them to pay the civil penalties. The director of IR also agreed to a settlement by consenting to the cease-and-desist order.

In November of 2002, Greer and Conley met privately with analysts 42 days before the end of Flowserve's fiscal year. At that meeting, one of the analysts asked about the company's earnings guidance for the year. Conley didn't caution Greer

before he answered the analysts' questions and he remained silent as the CEO reaffirmed the previous public guidance, issued several weeks earlier, "and thus providing additional material for nonpublic information," the SEC said. (Taub, 2005)

An analyst who attended the meeting issued a report on November 20, saying that the company had reaffirmed its earnings guidance. The next day, Flowserve's closing stock price was approximately 6% higher and trading volume increased by 75% over the previous day.

The SEC said it also penalized the two men for not fully cooperating with its investigation, noting that both Greer and Conley denied that a reaffirmation occurred at the private meeting with the analysts.

The case of Schering-Plough Corp. is noteworthy because it was the first time the SEC levied an individual Reg FD penalty.

During the week of September 30, 2002, former Schering-Plough Chairman and Chief Executive Officer Richard Kogan met privately in Boston with portfolio managers of four institutional investors - three of which were among Schering's largest investors. At each of these meetings, Kogan through "spoken language, tone, emphasis, and demeanor," disclosed negative and material, nonpublic information that analysts' estimates on Schering's 2002 third quarter earnings were too high, and that

the company's earnings estimates in 2003 would decline significantly (Calabro, 2003).

Immediately after hearing the information, portfolio managers for three of the firms heavily sold Schering stock and analysts at two of the firms spoken to downgraded their rating on the stock. The price of Schering's stock declined over 17 percent on volume more than four times normal.

A few days later, in the midst of the sell-off on October 3, Kogan held a previously scheduled private meeting with approximately 25 analysts and portfolio managers at Schering's Kenilworth, N.J. headquarters. He said during the meeting that Schering's earnings would be "terrible." Later that day, Schering issued a press release providing earnings guidance for 2002 and 2003 that was significantly below analysts' estimates and, with regard to the full 2002 fiscal year, materially below Schering's own prior earnings guidance.

On September 9, 2003, the SEC made Schering pay a \$1 million civil penalty and Kogan a \$50,000 penalty for violations of Reg FD. It was the first time an individual Reg FD penalty was assessed.

*Purpose/Need of This Study*

Some of the companies previously mentioned had conveyed market-moving information - which moved the stock price as much as 20 percent in a day - either in one-on-one conference calls with analysts and investors, or at a conference with a group of institutional investors, without providing it simultaneously to the public.

Selective disclosure can be harmful to everyday investors and when companies such as those mentioned leak information to a choice set of analysts or others, Wall Street often acts on the data before it becomes more widely disseminated. Individual investors are often denied the information because they don't have the contacts or clout to tap into such market-moving information and can miss major gyrations in stocks.

With Reg FD in full swing now, is there any trend towards releasing news at certain times of the day or week? What happens when a company releases an earnings projection - is the stock flat, does trading spike one way or the other based on the projection? Is the investing public taking advantage of the Fair Disclosure rules and truly acting on the information it is presented?

This author will study the release habits of Hewlett-Packard in Palo Alto, CA over the last six years and see how Reg FD has affected the news release habits of the company.

From an investor relations perspective, the author will be discussing changes with professionals to see what has affected them most and if FD has really changed the way they are doing business.



## CHAPTER 2

*Review of Previous Studies That Relate to Reg FD*

A study conducted by Frank Heflin of Purdue University and K.R. Subramanyam and Yuan Zhang of the University of Southern California in 2001 titled *Regulation FD and the Financial Information Environment: Early Evidence* analyzed changes in various aspects of the financial information environment after the implementation of FD for a large sample of companies.

Their test period compared three post-FD quarters (the fourth quarter of 2000 and the first two quarters of 2001) to the latest like pre-FD quarters (the fourth quarter of 1999 and the first two quarters of 2000, respectively). They examined the effect of FD on the speed and extent to which stock prices anticipate information in the upcoming earnings announcements.

Specifically, they measured the "information gap" at various days prior to earnings announcements as the absolute deviation between the price on the day and the post-earnings-announcement stock price, after controlling for market-wide movements. A smaller information gap suggested the market has more information about the upcoming earnings announcement. The weight in results suggested a *smaller* information gap over almost entire the quarter prior to earnings announcements, after FD.

Also investigated was the effect of FD on various aspects of analysts' forecasting performance. The tests suggested that, on average, forecast accuracy declined and forecast dispersion increased after FD, regression analyses controlling for non-FD related factors suggest FD had little effect on either forecast accuracy or forecast dispersion.

The trio then examined the effect of FD on the frequency of firms' voluntary public disclosures and **found a significant increase in voluntary earnings-related disclosures after FD.** This author expects to find similar disclosure habits with Hewlett-Packard.

The increase in the number of firm-quarters with at least one disclosure announcement was very high - a fact this author can attest to due to his involvement with Business Wire.

This study found no evidence that Reg FD impaired the quality and quantity of investors' information prior to earnings announcements. Additionally, the authors found a marked increase in companies' voluntary disclosure frequency - which is consistent with firms substituting public disclosure for private communication through analysts.

This study was selected for inclusion because it is among the first early evidence on the cross-sectional average effects of FD on a broad range of issues related to the financial environment.

A survey conducted by Erdos & Morgan in the first quarter of 2002 provided a scenario on the differing views of Reg FD.

The firm surveyed over 18,000 professional managers identified by Thompson Financial and 4,000 retail investors by using *Barron's Online* or *World Investor Link*, inviting participants by email. Nearly 12,000 investment professionals (two-thirds on the buy side of stocks) and 670 retail investors responded.

The investors and analysts who responded to the survey also expressed strong opinions about the state of investor relations. While 20 percent of investment professionals saw an improvement due to increased responsiveness during the market downturn and more effective use of technology such as webcasting, 21 percent condemned companies for staying quiet in the face of both the SEC's Reg FD and volatility.

Some companies - most notably Coca-Cola - went the route of not providing any earnings estimates following Reg FD's inception. The company is still not providing an earnings estimate.

The survey showed that some investment professionals felt the implementation of Reg FD had a significant impact on how investor relations programs operated. Both institutional and retail investors were asked to assess the impact of Reg FD on

four factors in 2001: corporate disclosure, market volatility, the amount of private research done by the investor or analyst themselves and access to senior management. Nearly 60 percent of institutional investor respondents stated that the increase in market volatility was in part due to Reg FD. A similar percentage also stated that Reg FD decreased their access to senior management. Just over half of the institutional sample saw Reg FD as the cause for decreased corporate disclosure and 44 percent declared that Reg FD led them to increase their own primary research.

Conversely, the retail market viewed Reg FD more passively. While a substantial portion of the retail market (44 percent) did attribute an increase in market volatility to Reg FD, nearly half (48 percent) felt it had no impact at all. The retail market perceived Reg FD as slightly improving corporate disclosure.

An April, 2002 study by Eric Zitzewitz of the Stanford Graduate School of Business titled *Regulation Fair Disclosure and the Private Information of Analysts* reported that Reg FD did reduce selective disclosure of information about future earnings to individuals without reducing the total amount of information disclosed.

Zitzewitz found that multi-forecast days, which generally follow public announcements or events, accounted for over 70 percent of the new information about earnings, up from 35 percent

before Reg FD. Zitzewitz obtained his result by measuring the information content of individual forecasts. The results were strongest for the fourth quarter of 2000, when former SEC Chairman Arthur Levitt was still in office. When analysts issue earnings forecasts on the same day, it is generally to incorporate some new public information. When a single analyst updates a forecast for a well-covered company, it likely is doing so based on information that was not available to other analysts.

Zitzewitz said that since Reg FD appeared to be having its intended effect of reducing selective disclosure, it should have benefited individual investors and capital-raising firms at the expense of analysts and their clients and employees.

A June, 2005, study by Anup Agrawal, Sahiba Chadha and Mark A. Chen titled *Who is Afraid of Reg FD? The Behavior and Performance of Sell-Side Analysts Following the SEC's Fair Disclosure Rules* focused on changes by analysts in accuracy and dispersion of earnings' forecasts.

The authors performed an analysis of the two consequences of FD just mentioned using fixed effects panel regressions that allowed them to abstract from forecast seasonality and from analyst and company characteristics. They also analyzed both early and late earnings' forecasts - unlike earlier studies that only looked at the latest forecasts issued just before an earnings release. Additionally and most importantly to this

paper, investigated were the differences across sub-samples such as small firms and companies in certain industries, where earnings guidance was more likely pre-FD.

This study found that analyst forecasts became less accurate following the adoption of fair disclosure rules. This effect was found to be significantly larger for early forecasts than for late forecasts and for smaller companies than larger companies. Second, analyst forecasts became more dispersed following Reg FD. This effect was also larger for early forecasts than for late forecasts. The effect was fairly small in the first year following Reg FD's adoption, but it increased significantly over the next three years. The findings suggested that there was a reduction in both the quality of analyst forecasts and selective guidance post-FD.

With the adoption of Reg FD, the job of predicting earnings may have become harder for analysts because the rules prohibit companies from making pre-announcement disclosures to analysts. The authors said that this implied that analysts' forecast errors should increase post-FD unless SEC enforcement of rules is ineffective, companies increased disclosure via channels such as a press release or conference call or analysts developed alternate information sources (such as customers, employees, industry groups or suppliers). They examined the issue at both the level of the consensus forecast and the individual analyst.

A November, 2003, study conducted by Brian J. Bushee, Dawn A. Matsumoto and Gregory S. Miller titled *Managerial and Investor Responses to Disclosure Regulation: The Case of Reg FD and Conference Calls* found a negative impact by Reg FD on managers' decisions to continue hosting conference calls and on their decisions regarding the optimal time to hold the call. They said the significance of the changes were not big. There was no evidence found that Reg FD decreased the amount of information disclosed during the call period, however, they did find that price volatility increased on companies that previously restricted access to conference calls.

Traditionally, conference calls were held primarily for the benefit of financial analysts and large investors - with companies often selecting who was on the call. Reg FD restricts disclosing material information to select groups and BMM (the authors) focused on managers and investors responses by investigating whether the increased access to information imposed by Reg FD affects the timing, information content and use of the calls as well as the trading level during the period. Closed conference call firms had a significantly greater increase in price volatility, which supports this authors' belief that broad dissemination of news increases the level of comfort by investors in the market. The results of BMM were consistent with

arguments made by critics of Reg FD that increased access to information will raise price volatility, possibly because professional analysis isn't available to less informed investors.

In terms of price volatility in companies, BBM found that the increase for the closed call group was not statistically greater than the increase for the open call group. Those results provide some support for the notion that equal access allows small investors to capitalize on the information in the same way as larger investors.

Later in the research project, this author will display graphs of trading during a tumultuous news day for Hewlett-Packard and show what type of volatility and trading volume is occurring during.



## CHAPTER 3

## METHODOLOGY

The cases discussed earlier where companies went wrong with Reg FD occurred early during the rule's inception period. This author will examine the release habits of Hewlett-Packard Corp. in Palo Alto, CA.

A content analysis will be presented that researches the amount and frequency of the release habits of Hewlett-Packard from 2001-2003 and from 2004-2006 - changes in release habits, frequency/volume and timing. Has Hewlett-Packard done anything differently since the inception of Reg FD? What effect, if any, did the early cases of Reg FD infractions have on these companies? In particular focus during this content analysis will be releases before the quarterly earnings reports and the frequency and content of these releases.

The author will utilize the websites of each company, their company news centers on *Business Wire* and the Securities and Exchange Commission database to study each of the periods outlined above.

Additionally, the author will interview a contact at Hewlett-Packard to gain his perspective on Reg FD and what it has meant for the company since its inception.

Finally, the author will submit questions to the president and chief executive officer at Business Wire and gain her views on Reg FD and if this rule is doing what it was intended to do.

*Hewlett-Packard Company*

Hewlett-Packard Company (HP) is traded on the New York Stock Exchange (NYSE) under the symbol HPQ. The company provides products, technologies, solutions and services to consumers, large enterprises and small and medium-sized businesses. Hewlett-Packard's offerings cover personal computing and other access devices, imaging and printing-related services and products, enterprise information technology and multi-vendor customer services.

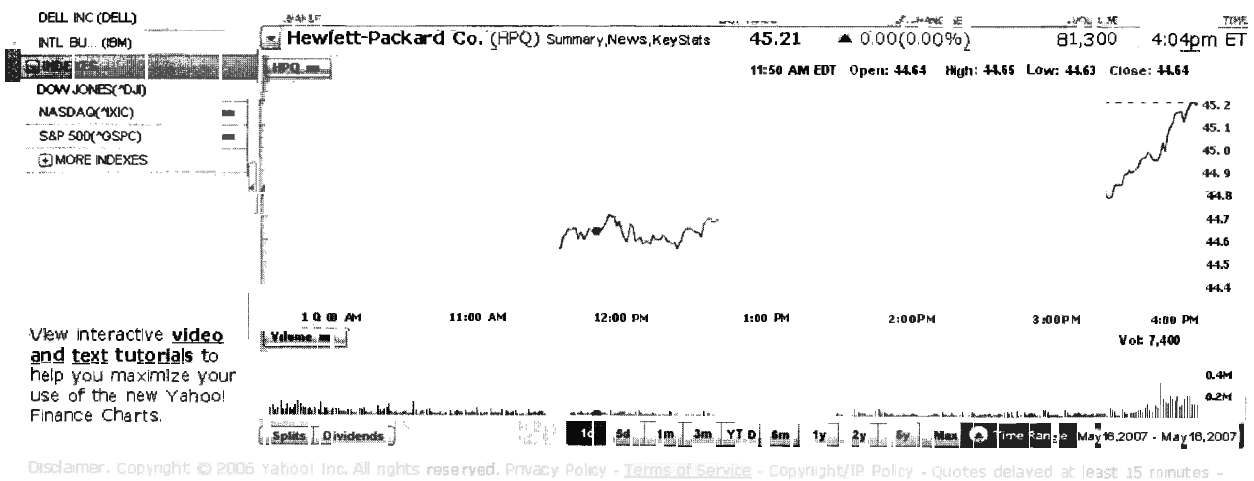
During the fiscal year ended October 31, 2006, HP's operations were organized into seven business segments: Enterprise Storage and Servers, HP Services, Software, the Personal Systems Group, the Imaging and Printing Group, HP Financial Services and Corporate Investments.

In December 2005, HP acquired Peregrine Systems Inc. (a company that accounting scandals pre-SOX) and in November 2006, the company completed its acquisition of Mercury Interactive Corp. - an information technology management services and software company.

CHAPTER 4

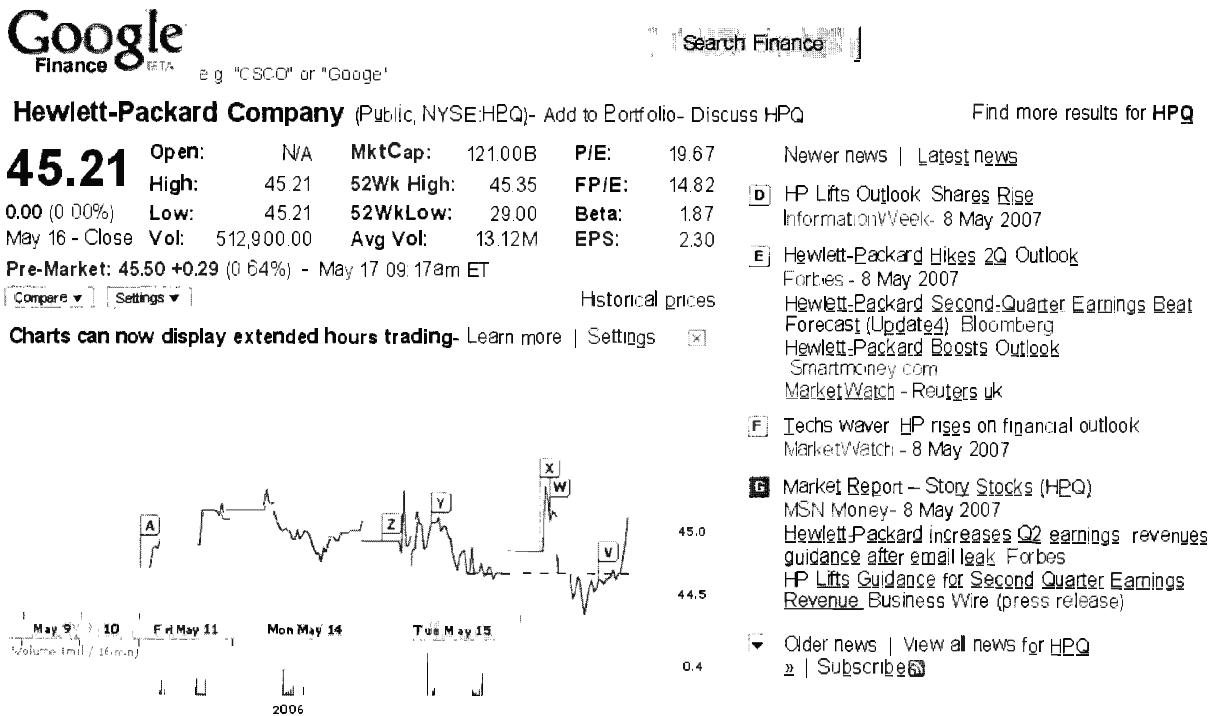
RESEARCH RESULTS

The below chart displays Hewlett-Packard's price range on May 16, 2007, when the company reported its earnings. At 4 p.m., HP reported \$1.8 billion in profits (down from the previous year) and 13 percent sales growth in its release.



Hewlett-Packard released its first quarter 2007 results on Feb. 20, 2007. In between this release and the second quarter results, HP issued a premature financial update on May 8, after

an "inadvertent disclosure of financial information" in an internal email sent May 7 to a "single outside party." After the leak and until the earnings release, HP's stock price increased by \$1.41.



In 2001, HP issued 216 news releases that are still available on their home page for viewing. The breakdown of releases is as

follows, first quarter: 64; second quarter: 59; third quarter: 44, fourth quarter: 49.

January-	April-	July-	October -	
March	June	September	December	<b>Total</b>
64	59	44	49	216

Of the 216 releases issued, HP filed 21 as 8-K's with the SEC. Form 8-K is the "current report" companies must file with the SEC to announcement major events that shareholders should know about.

The instructions for Form 8-K describe the types of events that trigger a public company's obligation to file a current report. See Appendix A for types of events.

The below chart illustrates the day/date, page number and headline of HP's 8-K Filings in 2001:

By more than a two-to-one margin, Thursday was the most popular day for an 8-K filing - with eight filings over the course of 2001.

<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
1	4	4	8	4

While Monday was the lowest day for 8-Ks, it was the most popular day for news releases by HP in 2001.

<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
65	61	42	32	16

#### 2002

In 2002, HP issued 416 news releases that are still available on their home page for viewing. The breakdown of releases is as follows, first quarter: 79; second quarter: 103; third quarter: 111, fourth quarter: 123.

January- March	April- June	July- September	October - December	<b>Total</b>
79	103	111	123	416

While the news release volume rose for HP in 2002, the amount of 8-Ks filed decreased to 17.

The below chart illustrates the day/date, page number and headline of HP's 8-K Filings in 2002:

Date	Pages	Headline
Th- 02/14/2002	52	Other Events-Compaq
02/14/2002	32	HP REPORTS FIRST QUARTER RESULTS
W- 02/27/2002	5	OTHER EVENTS - Exhibit Slides At Analyst Meeting
F- 03/15/2002	16	Other Events - HP Balance Sheet
F- 03/29/2002	5	HP ANNOUNCES FINAL TABULATION AND PRORATION CALCULATIONS IN CONNECTION WITH ITS EXCHANGE OFFER FOR INDIGO
W- 04/03/2002	75	OTHER EVENTS - INDIGO - CONTINGENT VALUE RIGHTS
M- 04/15/2002	3	Other Events - HP/Compaq Merger
Th- 04/18/2002	6	HP SHAREOWNERS APPROVE COMPAQ MERGER PROPOSAL, ACCORDING TO PRELIMINARY VOTE TALLY
Th- 05/02/2002	8	HP ANNOUNCES CERTIFIED VOTE TALLY ON COMPAQ MERGER PROPOSAL - NEW HP EXPECTED TO LAUNCH ON MAY7
T- 05/07/2002	14	ACQUISITION OR DISPOSITION OF ASSETS-COMPAQ
W- 05/15/2002	18	HP REPORTS SECOND QUARTER RESULTS
T- 06/18/2002	21	OTHER EVENTS - MERGER/NO MORE COMPAQ STOCK
Th- 06/27/2002	34	OTHER EVENTS - GLOBAL NOTES OFFERING
F- 09/13/2002	6	OTHER EVENTS - STATEMENT UNDER OATH OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER REGARDING FACTS AND CIRCUMSTANCES RELATING TO EXCHANGE ACT FILINGS (A)
Th- 11/14/2002	3	OTHER EVENTS - On November 11, 2002, Hewlett-Packard Company ("HP") announced that Michael D. Capellas will be leaving his post as president of HP and as a member of the HP board of directors to pursue other career opportunities
W- 11/20/2002	12	HP Reports 4th Quarter 2002 Results
W- 12/11/2002	81	Other Events - Notes Offering Financial Statements & Exhibits

Thursday was the most popular day for HP to release an 8-K filing in 2002, while Monday was the again the lowest day for 8-Ks and the most popular day for news releases by HP in 2002.

*8Ks:*

<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
1	2	5	6	3

*Releases:*

Monday	Tuesday	Wednesday	Thursday	Friday	Sunday
114	109	92	69	29	3

*2003*

In 2003, HP had significantly less 8-K Filings than it did the previous two years with only six. The below chart illustrates the day/date, page number and headline of HP's 8-K Filings in 2003:

<b>Day/Date</b>	<b>Pages</b>	<b>Headline</b>
T- 01/21/2003	5	HP Terminates Stockholder Rights Plan
W- 02/26/2003	17	HP Reports First Quarter 2003 Results
F- 03/14/2003	46	Global Notes/Financial Statements Exhibits HP Reports Second Quarter 2003 Results
T- 05/20/2003	11	



T-			
08/19/2003	3		HP Reports Third Quarter 2003 Results
W-			
11/19/2003	8		HP Reports Fourth Quarter 2003 Results

With the exception of earnings, there were only two other occasions when HP issued an 8-K in 2003.

Press release volume was nearly identical to the prior year, with 414 being issued and still available via HP's website. The breakdown of releases is as follows, first quarter: 113; second quarter: 164; third quarter: 72, fourth quarter: 65.

January-	April-	July-	October -	
March	June	September	December	<b>Total</b>
113	164	72	65	414

Early in the week (Monday & Tuesday) continued to be a day when HP issued the majority of their news releases in 2003.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	108	106	89	67	42	1

*2004:*

In 2004, HP followed the same path with 8-K Filings, with seven for the year. The below chart illustrates that the company did seven of their eight filings on a Tuesday or Thursday.

Day/Date	Pages	Headline
Th-2/12/2004	2	HP Expects to Report Revenue of \$19.5 Billion and Non-GAAP EPS of \$0.35 for First Fiscal Quarter
Th-2/19/2004	3	HP Reports First Quarter 2004 Results Financial table containing line items for the Enterprise Storage and Server division
F-2/20/2004	2	and the Software division within HP's Enterprise Systems Group
T-5/18/2004	3	HP Reports Second Quarter 2004 Results
Th-8/12/2004	16	HP Reports Preliminary Third Quarter 2004 Results HP Reports Fourth Quarter 2004 Results/HP also provided the GAAP condensed consolidated quarterly financial statements for the fiscal quarter and fiscal year ended October 31, 2004
T-11/16/2004	7	Costs Associated with Exit or Disposal Activities/HP expects that expenses for workforce reductions in the period will total a proximatel \$200 million.
T-11/23/2004	1	

HP issued 300 releases in 2004 - down significantly from the previous two years. The breakdown of the releases was as follows, 78 in the first quarter, 85 in the second quarter, 65 in the third quarter and 73 during the last quarter of the year.

January- March	April- June	July- September	October - December	<b>Total</b>
78	85	64	73	300

Early in the week (Monday & Tuesday) continued to be a day when HP issued the majority of their news releases in 2004.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	71	76	65	51	35	1

2005:

In 2005, HP had an increase in the number of 8-K Filings with 20 overall, including nine that were related to its board of directors. The below chart illustrates the day/date, page number and headline of HP's 8-K Filings in 2005:

Day/Date	Pages	Headline
F- 01/21/2005		Departure of Directors or Principal Officers - Sanford M. Litvack
Th- 01/27/2005	2	HP and Intergraph Settle Patent Litigation
M- 02 07/2005	1	Other Items - On Feb. 7, 2005, the Board of Directors of HP elected Thomas J. Perkins as a director
W- 02/16/2005	6	HP Reports First Quarter 2005 Results
W- 02/16/2005	7	Segment results, business unit revenue and consolidated statement of operations of Hewlett-Packard Company for fiscal 2003 and 2004
T- 02/22/2005	9	Carleton S. Fiorina has entered into a Severance Agreement and Release with HP
Th- 03/03/2005	3	Item 5.02 - Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers - Perkins
T- 03/22/2005	19	Hewlett-Packard Company 2005 Executive Deferred Compensation Plan
W- 03/30/2005	23	HP Names Mark Hurd of NCR to Serve as CEO and President/Mark Hurd Employment Agreement
T- 04/05/2005	33	Stock Option/\$3,000,000 to Robert P. Wayman, Executive Vice President and Chief Financial Officer
M- 05/02/2005	7	EMC and HP Agree to Settle All Outstanding Intellectual Property Litigation
T- 05/17/2005	3	HP Reports Second Quarter 2005 Results
W- 06/15/2005	6	HP Names Todd Bradley as Executive Vice President of Personal Systems Group/Bradley Compensation
F- 07/15/2005	8	HP Names Randy Mott as EVP, Chief Information Officer/Mott Compensation
T- 07/19/2005	8	HP Unveils Targeted Program to Streamline Company, Reduce Costs, Drive Greater Customer Focus
W- 07/27/2005	18	Amended and restated the Severance Plan for Executive Officers of Hewlett-Packard Co
T- 08/16/2005	3	HP Reports Third Quarter 2005 Results

W-		Robert E. Knowling, Jr. announced his retirement from the Board of Directors of HP, administrative amendment to the Excess Benefit Retirement Plan, Amended and Restated Bylaws of Hewlett-Packard - decrease in number of directors
09/28/2005	2	
Th-		HP Reports Fourth Quarter 2005 Results, updated charges relating to HP's restructuring plan announced in July 20
11/17/2005	3	
W-		John H. Hammergren Elected to Board, Hewlett-Packard Company 2005 Executive Deferred Compensation Plan, Hewlett-Packard Company 2005 Pay-for-Results Plan
11/23/2005	76	

HP issued 275 news releases in 2005 that are still available on their home page for viewing. The first quarter had 70 releases, followed by 81 in the second quarter, 67 in the third quarter and 57 in the last three months of the year.

January-	April-	July-	October -	
March	June	September	December	<b>Total</b>
70	81	67	57	275

HP issued half of their releases on Monday and Tuesday during 2005.

Monday	Tuesday	Wednesday	Thursday	Friday
76	73	49	41	36

*2006:*

HP's news release volume went up slightly from the previous year with 285 in 2006. During the first quarter of the year, HP issued 67 releases, followed by 79 in the second quarter, 66 in the third quarter and 73 during the last three months of the year.

January-	April-	July-	October -	
March	June	September	December	<b>Total</b>
67	79	66	73	285

By a wide margin, Tuesday was the most popular day of the week for HP to issue a release in 2006.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday
1	63	78	55	55	33

HP issued 18 8-Ks in 2006, four of which were devoted to its investigation of a leak of confidential information from meetings of its board of directors.

The below chart illustrates the day/date, page number and headlines of HP's 8-K Filings in 2006:

Day/Date	Pages	Headline
W- 02/15/2006	5	HP Reports First Quarter 2006 Results
F- 03/17/2006	30	election of Sari M. Baldauf as a director of Hewlett-Packard Company, Bylaws of Hewlett-Packard Company, as amended and restated
T- 05/16/2006	3	HP Reports Second Quarter 2006 Results
M- 05/22/2006	32	Thomas J. Perkins announced his resignation as a director of Hewlett-Packard Company, Amended and Restated Bylaws of Hewlett-Packard Company
T- 06/06/2006	18	HP Revises Upward Second Quarter Earnings Following Tax Settlement; HP updated its financial results for its fiscal quarter ended April 30, 2006
F- 06/23/2006		HP filed an amendment to its registration statement on Form 8-A to include a consolidated, updated description of the rights, preferences and privileges associated with its common stock
T- 07/25/2006	87	HP To Acquire Mercury Interactive Corp. -Acquisition positions company as a market leader in IT management software
W- 08/16/2006	4	HP Reports Third Quarter 2006 Results
W- 08/16/2006	4	Other Events - Perkins notified HP that he had concerns with the HP Board's

09/06/2006		handling of investigations that had been conducted into leaks of confidential HP information from meetings of the HP Board of Directors
T-		Patricia C. Dunn resigned as non-executive Chairman of the Board of Directors of Hewlett-Packard Company , Dr. George A. Keyworth II resigned as a director of HP, Amendments to Articles of Incorporation or Bylaws
09/12/2006	32	
Th-		
09/21/2006	28	HP Announces Press Briefing on Board Leak Investigation
F-		
09/22/2006	33	Mark Hurd Named HP Chairman, in Addition to His Roles as President and CEO, In-depth review of the events surrounding the investigation of the board leaks in order to obtain a more comprehensive understanding of the underlying facts.
W-		This Form 8-K supplements the disclosures from September 6th
09/27/2006	6	
Th-		
09/28/2006	17	HP General Counsel Resigns - Ann O. Baskins Benefits Package
Th-		
11/16/2006	3	HP Reports Fourth Quarter 2006 Results
F-		
11/17/2006	31	HP Names Wachovia's Thompson to Board of Directors/Amendment to Bylaws
Th-		HP Reaches Resolution with California Attorney General of Claims Arising from Board Leak Investigation
12/07/2006	7	
M-		HP CFO Bob Wayman to Retire After 37 Years at HP, to be Succeeded by Treasurer Cathie Lesjak
12/11/2006	6	

*The Totals*

*2001-2003:*

The first three years after Reg FD, HP issued 1046 releases that can still be found on their home page. Of these releases, 326 were issued during the second quarter of the year (April-June). 8K Filings by HP totaled 44 - with a high of 21 in 2001.

Monday and Tuesday were by far the most popular days of the week to issue a release with 563.

The below chart illustrates the totals of the above findings for the first three years after Reg FD was established with yearly, quarterly and daily totals: The fourth chart details the 8K filings for 2001-2003.

<u>2001</u>	<u>2002</u>	<u>2003</u>
216	416	414

1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr
256	326	227	237

Monday	Tuesday	Wednesday	Thursday	Friday	Weekend
287	276	223	168	87	5

<u>2001</u>	<u>2002</u>	<u>2003</u>
21 8Ks	17 8Ks	6 8Ks

*2004-2006:*

Over the last three years, HP has issued 860 news releases which are still archived on their home page - a 20 percent decrease from the initial three years after Reg FD went into effect. The second quarter of the year was again the prime period for release distribution with 245 and HP issued close to 50 percent of their news on Monday and Tuesday the last three years with 437 releases.

The number of 8Ks released were nearly identical to prior three years with 45.

The below charts illustrate the totals of the above findings for the second three year period after Reg FD was established with yearly, quarterly and daily totals: The fourth chart details the 8K filings for 2004-2006.

<u>2003</u>	<u>2004</u>	<u>2006</u>
300	275	285

1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr
215	245	197	203

Monday	Tuesday	Wednesday	Thursday	Friday	Weekend
210	227	169	147	104	3

<u>2004</u>	<u>2005</u>	<u>2006</u>
7 8Ks	20 8Ks	18 8Ks

*Length of Press Releases:*

Since the inception of Reg FD, Hewlett-Packard has definitely made their press releases longer.

This author contacted Business Wire's head of billing in San Francisco and had her run a report on the total words in each of HP's releases over the last six years. From 2001-2003, the



number of words in HP's releases increased. The trend continued in 2004-2005, with the first drop in word count occurring in 2006.

The below chart illustrates the average word count in HP's releases in the first three years after Reg FD and during the last three years of the law:

Years	2001	2002	2003	2004	2005	2006
Word Count	774	838	841	954	989	903

*A Closer Look At Six Earnings Releases*

A company's earnings releases is generally the most anticipated news announcement it will distribute during the year. An earnings press release for a company occurs quarterly and usually consists of four main statements (1) balance sheet; (2) income statement; (3) cash flow statements; and (4) statements of shareholders' equity. While all of these are distinctly different, they do have one thing in common - money and where it is being spent or dispersed.

Balance sheets show what a company owns and what it owes at a fixed period in time. Income statements show how much money a company made and spent over a period of time. Cash flow statements show the exchange of money between a company and the outside world also over a period of time. The statement of shareholders' equity, shows changes in the interests of the company shareholders over time.

Broken down earnings are revenues minus cost of sales, operating expenses and taxes over a given period of time. Earnings are the reason corporations exist and are often the single most important determinant of a stock's price. Earnings are important to investors because they give an indication of the company's expected future dividends and its potential for growth and capital appreciation.

The author will present an analysis of the six fourth quarter earnings announcement Hewlett-Packard has made since Regulation FD and will show if anything is significantly different below by notating in *italics* anything different from the previous year:

**November 14, 2001: HP Reports Fourth Quarter Results**

**Sub headlines** (Subheads): - Sequential Revenue and Pro Forma EPS Grow

Sequential Pro Forma Expense Reduction

Operating Cash Flow of \$1.8 Billion

Six paragraphs before the first quote of the release from Carly Fiorina, former chairman and chief executive officer.

The release then goes into Business Segment Results and breaks down the following: Imaging and Printing Systems, Computing Systems, IT Services, Asset Management, Workforce Reduction, 2002 Outlook and Accounting Changes. The text portion of the release closes with a boiler plate about Hewlett-Packard, forward-looking statements and a section of information regarding the merger between HP and Compaq.

The tabular information for this release was as follows:

- Consolidated Condensed Statement of Earnings for the three months ended Oct. 31 (two footnotes in table)

- Consolidated Condensed Statement of Earnings for the twelve months ended Oct. 31 (three footnotes in table)
- Pro Forma Consolidated Condensed Statements of Earnings for the three months ended Oct. 31
- Pro Forma Consolidated Condensed Statements of Earnings for the twelve months ended Oct. 31
- Consolidated Condensed Balance Sheet
- Segment Information
- Restated Consolidated Condensed Statement of Earnings (three footnotes)
- Restated Pro Forma Consolidated Condensed Statement of Earnings (three footnotes identical to the prior tabular information)

*Total word count for this release was 5,073 words.*

**November 20, 2002: HP Reports 4th Quarter 2002 Results**

- Subheads:**
- Revenue of \$18 billion, up 9% sequentially
  - All businesses and regions post sequential revenue growth
  - Strong gross margin improvement
  - Significant sequential operating profit in Enterprise Systems, Personal Systems, HP Services and Imaging and Pricing

Solid sequential improvement in channel inventories overall

Pro Forma EPS \$0.24; GAAP EPS \$0.13

- Meeting or exceeding integration targets
- Affirms current Q1 consensus estimates

*HP had five more subheads in 2002 than the previous year.*

Four paragraphs before the first quote of the release from Fiorina.

*After seven more paragraphs, HP has a table of Summary of Combined Company Financial Results which was not present in the previous year.*

The release then goes into Business Segment Results and breaks down the following: Imaging and Printing Systems, *Personal Systems, Enterprise Systems, Services, Financial Services*, Asset Management and Outlook. The text portion of the release closes with a boiler plate about HP, a footnote on the merger with Compaq and forward-looking statements.

The tabular information for this release was as follows:

- Consolidated Condensed Statement of Earnings for the three months ended Oct. 31 (seven footnotes in table)
- Pro Forma Consolidated Condensed Statements of Earnings for the three months ended Oct. 31 (*three footnotes in table*)
- Consolidated Condensed Balance Sheet

- Consolidated Condensed Statement of Cash Flows
- Segment Information (five footnotes)

In this earnings, HP did not include a Consolidated Condensed Statement of Earnings for the twelve months ended Oct. 31.

Total word count for this release was 5,073 words.

**November 19, 2003: HP Reports fourth quarter 2003 results**

**Subheads:** - Revenue of \$19.9 billion, up 10% year-over-year; compares to analyst consensus estimates of \$19.0 billion

Non-GAAP operating profit of \$1.4 billion, up 63% year-over-year; compares to analyst consensus estimates of \$0.35

GAAP operating profit of \$1.1 billion, up 152% year-over-year; GAAP EPS \$0.28, up 115% year-over-year

Cash flow from operations totals \$2.4 billion

- All businesses and regions post strong revenue growth and record shipments
- All businesses profitable, Enterprise Systems returns to profitability with \$106 million operating profit

*HP had six subheads in 2003, two less than the previous year, changed the word sequential to year-over-year and mentioned analyst estimates for the first time.*

This release started with three paragraphs of text and then a short table comparing Q4 Fiscal Year 2003 against Q4 Fiscal Year 2002. *This table had one less column of financial information than the previous year.*

Next were seven paragraphs of quotes from Fiorina.

The release then goes into areas of focus for Hewlett-Packard (*not doing a separate subhead for Business Segment Results as in the previous two years*). Enterprise Systems, Services, Personal Systems, Imaging and Printing, Financial Services, Asset management and Outlook are discussed. The text portion of the release closes with a boiler plate about Hewlett-Packard, *information about Use of Non-GAAP Financial Information* and forward-looking statements.

The tabular information for this release was as follows:

- Consolidated Condensed Statement of Earnings for the three months ended Oct. 31 - comparing 2003 against 2002 and also the previous quarter of July 31, 2003 (one footnote in table)
- Consolidated Condensed Statement of Earnings for the twelve months ended Oct. 31 (*HP included this in 2001, not in 2002 - two footnotes in table*)

- *Non-GAAP Consolidated Condensed Statements of Earnings for the three months ended Oct. 31 (HP referred to this table as Pro-Forma the previous two years - one footnote in table)*
- *Non-GAAP Consolidated Condensed Statement of Earnings for the Twelve Months Ended Oct. 31 (two footnotes in table)*
- *Consolidated Condensed Balance Sheet*
- *Consolidated Condensed Statement of Cash Flows*
- *Segment Information (one footnote)*
- *Segment Information (HP added an extra table for the 12 months ended Oct. 31 which was not present in 2002 but was included in 2001 - two footnotes)*

*Total word count for this release was 4,605 words.*

**November 16, 2004: HP Reports fourth quarter 2004 results**

**Subheads:** - Record quarterly revenue of \$21.4 billion, up 8% year-over-year

- Non-GAAP operating profit of \$1.5 billion, \$0.41 earnings per share

- GAAP operating profit of \$1.3 billion, \$0.37 earnings per share

Record revenues achieved in every business

- Imaging & Printing operating margin of 16.6%;

Personal Systems operating margin of 1.2%;



Enterprise Storage & Servers operating margin of 2.6%, up \$315 million sequentially; HP Services operating margin of 10.0%; Software approaches breakeven

*HP had one less subhead in the fourth quarter 2004 release than it did the previous year, with a focus on segment businesses.*

*HP decided this year to do six columns of tabular information in the text of the story - comparing the fourth quarter of fiscal year 2004 and fiscal year 2003 against the full year of fiscal year 2004 and fiscal year 2003. There were also year over year percentage comparisons for the quarter and year totals.*

*Four paragraphs of quotes followed from Fiorina.*

The release then goes into areas of focus for Hewlett-Packard. Enterprise Storage and Servers, HP Services, Software, Personal Systems Group, Imaging and Printing Group, Financial Services, Asset management and Outlook are discussed. The text portion concludes with the same information as the previous year.

The tabular information for this release was as follows:

- Consolidated Condensed Statement of Earnings for the three months ended Oct. 31 - comparing 2004 against 2003 and also the previous quarter of July 31, 2004 (one footnote in table)

- Consolidated Condensed Statement of Earnings for the twelve months ended Oct. 31 (*one footnote in table*)
- Non-GAAP Consolidated Condensed Statements of Earnings for the three months ended Oct. 31 (*one footnote in table*)
- Non-GAAP Consolidated Condensed Statement of Earnings for the Twelve Months Ended Oct. 31 (*one footnote in table - two previous year*)
- Consolidated Condensed Balance Sheet
- Consolidated Condensed Statement of Cash Flows
- Segment Information - Three Months Ended Oct. 31
- Segment Information - Twelve Months Ended Oct. 31 - (*one footnote*)

*For the first time since the inception of Reg FD, HP had the same amount of tables in a press release for the fourth quarter reporting period.*

*Total word count for this release was 3,598 words.*

**November 17, 2005: HP Reports fourth quarter 2005 results**

**Subheads:** - Net revenue of \$22.9 billion, up 7% year-over-year

Non-GAAP operating profit of \$1.7 billion, \$0.51 earnings per share

GAAP operating profit of \$232 million, \$0.14

earnings per share

*Cash flow from operations of \$1.9 billion*

HP reduced the number of its subheads to *four and also went back to a sub on cash flow from operations which it did in 2003.*

After a one paragraph start to their earnings, HP delivered a quote from Mark Hurd, the new chief executive officer and president of the company.

Following the quote was a three column table comparing the fourth quarter of fiscal year 2005 with the fourth quarter of fiscal year 2005 in two columns followed by a column that showed the percentage gain year over year.

The release then goes into areas of focus for Hewlett-Packard that are identical to what was in place in 2004 - *this is the first time since Reg FD that this was the same as the previous year - although presented in a different order.* The text portion concludes with the same information as the previous two years.

The tabular information for this release was identical to 2004, with two tables added as follows at the end:

*- Segment / Business Unit Information for the Three Months ended Oct. 31, comparing 2005 against 2004 and*

*also the previous quarter of July 31, 2005 (one footnote)*

*- Segment / Business Unit Information for the Twelve Months ended Oct. 31, comparing 2005 against 2004 (one footnote)*

*Total word count for this release was 4,041 words (first time HP's word count has increased in the fourth quarter earnings since the inception of Reg FD.*

**November 16, 2006: HP Reports Fourth Quarter 2006 results**

**Subheads:** - Net revenue of \$24.6 billion, up 7% year-over-year, or 6% when adjusted for the effects of currency

- Non-GAAP operating profit of \$2.2 billion, or \$0.68 earnings per share, up from \$0.51 in the prior year period

Cash flow from operations of \$3.2 billion, up \$1.4 billion year-over-year

*For the first time since its initial post Reg FD fourth quarter earnings, HP starts their release with three subheads - GAAP operating profit isn't included like it was in 2005.*

*The first paragraph of this earnings notates the exchanges HP trades on - NYSE and Nasdaq along with the HPQ ticker symbol. This had not been done in their previous fourth quarter earnings.*

*The third paragraph contains quotes from Hurd, before*

six columns of tabular information in the text of the story that compares the fourth quarter of fiscal year 2006 and fiscal year 2005 against the full year of fiscal year 2006 and fiscal year 2005. There were also year over year percentage comparisons for the quarter and year totals.

The release then goes into areas of focus for Hewlett-Packard that are identical to what was in place the previous two years - with an added section titled: *Full year fiscal 2006*

The text portion concludes with the same information as the previous three years.

Preceding the tables is a note to editors that indicates HP news releases are available via RSS feed at [www.hp.com/hpinfo/rss.html](http://www.hp.com/hpinfo/rss.html). See Appendix B for definition.

The tabular information was more in-depth for this release, with the additional information included from 2005 on segment businesses but also the inclusion of five tables dealing with the use of non-GAAP financial methods:

- *Comparison of Diluted Non-GAAP Earnings Per Share*
- *Calculation of Net Earnings Per Share for the Three Months Ended Oct. 31, comparing 2006 against 2005 and also the previous quarter of July 31*
- *Calculation of Net Earnings Per Share for the Twelve Months Ended Oct. 31, comparing 2006 against 2005*

- Calculation of Non-GAAP Net Earnings Per Share for the Three Months Ended Oct. 31, comparing 2006 against 2005 and also the previous quarter of July 31

- Calculation of Non-GAAP Net Earnings Per Share for the Twelve Months Ended Oct. 31, comparing 2006 against 2005

After the tables, HP follows with subheads:

Use of Non-GAAP Financial Measures

Use and Economic Substance of Non-GAAP Financial Measures Used by HP

- Material Limitations Associated with Use of Non-GAAP Financial Measures

Compensation for Limitations Associated with Use of Non-GAAP Financial Measures

Usefulness of Non-GAAP Financial Measures to Investors

In the usefulness section, HP says the new information "provides investors with greater transparency to the information used by HP's management in its financial and operational decision-making and allows investors to see HP's results "through the eyes" of management. The last paragraph of the earnings release goes on to say, "HP further believes that providing this information better enables HP's investors to understand HP's operating performance and to evaluate the efficacy of the methodology and information used by management to evaluate and

measure such performance. Disclosure of these non-GAAP financial measure also facilitates comparisons of HP's operating performance with the performance of other companies in HP's industry that supplement their GAAP results with non-GAAP financial measures that are calculated in a similar manner.

*Total word count for this release was 7,366 words - the highest for HP's fourth quarter earnings since Reg FD was adopted.*

*Interviews*

The author interviewed Business Wire President and Chief Executive Officer Cathy Baron Tamraz and Hewlett-Packard Senior Editor, Corporate Communications, Gary Rainville to gain their insights into Regulation Fair Disclosure.

Tamraz oversees Business Wire's day-to-day operations, long-term strategic planning, international expansion and global branding. She participates in conferences and seminars in the investor relations and public relations industries and has published articles on financial disclosure and new technology. She was the main architect in selling Business Wire to Berkshire Hathaway. Her November 2005 letter to Warren Buffett detailing the synergies between the two firms resulted in the company being acquired on March 1, 2006.

Rainville has worked for HP for over a decade and is a key figure in the company's news distribution process to media and investors. He is part of a three-person team that edits corporate content, including news releases, prior to distribution to journalists; provides operational support for the company's worldwide public relations team and tracks media output both in print and broadcast regarding HP, its competitors and its partners.

**Maguire:** *In your opinion has Regulation FD achieved the goals it was set out for?*



**Tamraz:** Yes. I think Reg FD has helped level the playing field by making information available to all market participants. Specifically, I think some of the "whisper" or tipping on Wall Street was curtailed due to Reg FD. The goal of Reg FD was "to promote full and fair disclosure of information by issuers and enhance the fairness and efficiency of our market." That goal has been accomplished.

**Rainville:** I don't think I can comment broadly, but in my experience companies are very concerned about ensuring communications are not delivered on an exclusive basis.

**Maguire:** *Has Reg FD significantly altered the landscape of financial news reporting by companies for the better or worse?*

**Tamraz:** I think that most companies were already following the spirit of Reg FD. But the research did show that too much "tipping" was going on, thus creating spikes in stock prices, so there seemed to be an advantage for insiders in some cases. Initially, when the Regulation was put into effect, there was some confusion as to what needed to be disclosed, so I think there was some over-reporting at the onset because no one wanted to come under scrutiny. But as the rules became clear to IR professionals, companies quickly settled in. I think there is more transparency as the result of Reg FD, which is positive news

for the investing public. Further, more information is much preferable to less.

**Rainville:** At the least, it appears to have changed it by adding rigor to the process companies undertake. Some legal departments recommend companies report only what is required, so perhaps that means less information than otherwise would've come out. Whether all of this is better or worse depends on the seat you're sitting in.

**Maguire:** *Has the investing landscape changed for people looking to invest in companies since Reg FD was adopted?*

**Tamraz:** I think the internet has changed the investing landscape for people in that information is more widely available than it was prior to the advent of the internet. Largely due to the internet, there are more investors out there and, aided by Reg FD, information is available to everyone and at the same time. So these two 'events' are intertwined. Reg FD's timing was quite good in my view because it further endorsed the concept of Full and Fair Disclosure to all market participants. Concurrently, the internet was growing as a communications tool for all investors. The stars lined up here.

**Maguire:** *Do you think companies are more inclined to release negative news now than prior to Reg FD?*

**Tamraz:** Probably, because Reg FD is very specific about what needs to be disclosed--and when (immediately). In the past, we used to notice negative news tended to go out after the market closed. That doesn't happen anymore under Reg FD. With global markets open at all hours and information instantly available, you cannot "bury" bad news anymore.

**Rainville:** My impression is "yes".

**Maguire:** *Are you surprised that more companies haven't come under sanction since Reg FD and if so do you attribute this to an increased due diligence on the corporate governance of companies.*

**Tamraz:** Again, most companies were doing what their stock exchanges required of them (full and fair disclosure). However, I think Reg FD got even more companies in step with how to properly disclose material information. So yes, increased due diligence was a positive by-product of Reg FD.

**Rainville:** I'm not an expert in Reg FD, but my impression is enforcement is more cooperatively focused than one might first assume in a regulatory environment.

**Maguire:** *We are six years into Reg FD, what will the next four years bring as the rule gets ready to celebrate its 10th anniversary?*

**Tamraz:** I think technology will play an even bigger role in information dissemination.

**Rainville:** I think Reg FD's brand, if you will, is fairly positive now. Today or in four years, most people and the media would probably look back at Reg FD as being a positive overall. I think this especially with the prevalence of individual investors using self-service (discount) brokers now. Institutional investors probably had the most to lose from Reg FD, but they're still around and no doubt profitable. They're small enough in number that I don't think they'll define the Reg FD "retrospective."

**Maguire:** *If you could change one thing about Reg FD what would it be and why?*

**Tamraz:** I don't think an 8k alone satisfies full and fair disclosure because it is not instantly and widely available to all investors.

**Maguire:** Did Reg FD factor into HP's decision to include extra tables in its earnings in 2006?

**Rainville:** I don't think so, I think there were issues around GAAP vs. non-GAAP reporting that likely caused this change.

**Maguire:** I noticed an increase in the amount of subheads used by HP immediately after their standard headline the first four years of release, but decreases the past two years? Did HP mean to provide more detail in an easier to read fashion at the outset of Reg FD?

**Rainville:** No, this is a style issue that we adopted wherein we want to hook readers with a headline and get right into the body of the text if at all possible. Subheads don't usually appear on yahoo et al, so when people make a jump from the headline on one page, to the full text after clicking, we felt subheads would often get missed. Subheads usually don't say much of interest anyway, in my experience. I think in the lawyers' minds, they just want the content presented; they're not so concerned where or in what spot.

**Maguire:** Do you think Reg FD has had more of an affect on smaller companies than those the size of HP?

**Rainville:** My impression is the dividing line is whether a company is publicly traded or not.

**Maguire:** Did the approval process for a release change after Reg FD? Has the amount of people involved in the signoff of an earnings changed?

**Rainville:** I don't believe so. I think the legal department has always been intimately involved.

**Maguire:** In one of the most important findings from this analysis, Hewlett-Packard has issued slightly less releases the last three years of Reg FD, but more detail and content - is this by design?

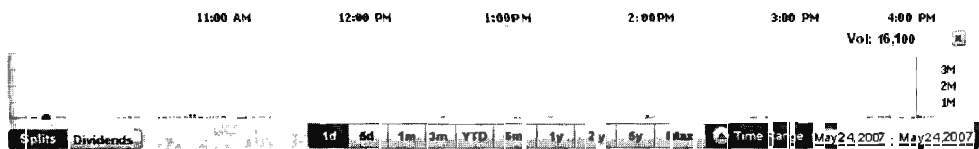
**Rainville:** Legal is on their own schedule with 8K and other filings so that's probably why there's little difference there. For releases, although not all of them to be sure, it's more of a marketing decision. Spring is a hot time to make product announcements. Monday and Tuesday are considered the primo days to go out with news and reach journalists. HP has swung from issuing lots of releases to striving for fewer, and we've been better at having fewer the last couple years. But it's hard because the company is so diverse in its product lineup. Higher word count I ascribed at least partly to longer forward-looking statements, which is dictated by legal. We're also more frequently including it in releases to make sure we're accounting for any forward-looking wording.

This chapter was started with a display of what can occur when news is released inadvertently by a company like Hewlett-Packard. To close the chapter, the following displays what can happen when a company settles a dispute with the Securities Exchange Commission.

The below chart displays HP's trading range on May 24, 2007 the day after it settled with the SEC on charges of not disclosing a director's resignation amid a board-level investigation into company leaks in 2006. The SEC said HP was required to disclose why board member Thomas Perkins, who had objected to a decision to ask another board member to resign, stepped down from the board. The SEC said HP agreed to an order that it no longer violate the disclosure requirement. HP did not admit or deny the commission's findings.

45.40 ▲ 0.00 (0.00%) B00 4:02pm ET  
 9:47 AM EDT Open: 45.54 High: 45.54 Low: 45.52 Close: 45.537  
 45.8  
 45.7

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HP's stock price went over \$45.80 early in the day and then closed below \$45.40 after news of the settlement was released.



## CHAPTER 5

*CONCLUSION*

It has been six years since Regulation Fair Disclosure reached the investing world and brought a level playing field to those privileged with access to investing information and everybody else.

Have companies gotten through and understand Reg FD? I would have to say yes.

All of the cases of enforcement actions against violators of Reg FD came in the first four years after the rule took effect. In the last two years, the SEC hasn't brought one case for a violation of Reg FD.

While the SEC may have been overly aggressive in pursuing cases in the first four years, the pause in enforcement does coincide with a 2005 case in which a federal judge threw out an SEC lawsuit against Siebel Systems, which is now part of Oracle Corporation. This case was detailed in the above section *Problems Encountered By Some Companies with Reg FD*.

The content analysis of Hewlett-Packard Company shows that press releases are getting more informative - with a greater length/word count and I definitely see this trend with other companies. As to why there has been a decrease in the total number of releases over the last three years, I would say that

Hewlett-Packard has grouped certain product announcements in one release instead of doing a release for each new product. This also applies to other companies basically being more direct with their releases and not putting out as much as in the past because they don't want to flood the media. The word counts increase because HP and other companies are trying to get multiple announcements into one release - quite possibly with the hope that some of the negative news is getting lost. Is this good practice - absolutely not because any good journalist will dissect a release in its entirety and follow through no matter how much or how little information is in it or what time of day it was sent.

The far-reaching effects of Reg FD are not only being felt in the United States. As the U.S. economy becomes more global, rules and regulations are expected to expand that apply to all. An example of this is the recently passed Transparency Directive.

In January, 2007, European Union member states finalized implementation plans that established minimum requirements on periodic financial reporting. In addition, the Transparency Obligations Directive (TOD) covers the disclosure of major shareholdings by issuers whose securities trade on a regulated market in the EU and it deals with how this information should be stored and disseminated.

All information disclosed under TOD must be disseminated on a pan-European basis as well as centrally stored. Shareholders also have obligations under the directive and must notify their holdings when they move across certain thresholds. Corporate issuers must distribute financial information simultaneously and in "timely" fashion to all potential EU investors. The TOD stipulates that companies should disseminate financial statements to newswires, financial data vendors, major financial newspapers and websites. The EU strongly recommends the use of "professional information providers" for disclosure purposes and all disclosures in the EU must be made via a secure, electronic network.

Additionally, the TOD seeks to increase the exposure of European countries to the global financial markets by broadening the scope of corporate data made available and integrating the information in closely monitored delivery platforms.

Does this sound familiar? It should because Regulation Fair Disclosure definitely laid the groundwork for this.

From Reg FD and TOD, we have seen the creation of disclosure vehicles in countries such as Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Sweden, Switzerland and the United Kingdom.

Would disclosure rules be possible in those countries without Reg FD? Absolutely no chance - the rule laid the groundwork for a worldwide practice of no early access no matter how important you are to a company.

The reason Hewlett-Packard was chosen for this analysis was the fact that it is one of the top-ranked computer hardware companies for sales and in this age of high tech we are living in, the author wanted to focus on a computer company. Cisco Systems, Inc., Apple Inc. and International Business Machines Corp. rank ahead of HP for computer hardware sales and the author wanted a company on the west coast with which he had a good contact.

For the next author that undertakes FD, it would be useful to see what is happening internationally - specifically with the Transparency Obligations Directive.

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Appendix A

Events That Trigger a Public Company's Obligation to File a  
Current Report

**Section 1 Registrant's Business and Operations**

Item 1.01 Entry into a Material Definitive Agreement

Item 1.02 Termination of a Material Definitive Agreement

Item 1.03 Bankruptcy or Receivership

**Section 2 Financial Information**

Item 2.01 Completion of Acquisition of Disposition of Assets

Item 2.02 Results of Operations and Financial Condition

Item 2.03 Creation of a Direct Financial Obligation or an  
Obligation under an Off-Balance Sheet Arrangement of a Registrant

Item 2.04 Triggering Events that Accelerate or Increase a Direct  
Financial Obligation or an Obligation under an Off-Balance Sheet  
Arrangement

Item 2.05 Costs Associated with Exit or Disposal Activities

Item 2.06 Material Impairments

**Section 3 Securities and Trading Markets**

Item 3.01 Notice of Delisting of Failure to Satisfy a Continued  
Listing Rule or Standard; Transfer of Listing

Item 3.02 Unregistered Sales of Equities Securities

Item 3.03 Material Modification to Rights of Security Holders

**Section 4 Matters Related to Accountants and Financial Statements**



Item 4.01 Changes in Registrant's Certifying Accountant

Item 4.01 Non-Reliance on Previously Issued Financial Statements  
or a Related Audit Report or Completed Interim Review

**Section 5 Corporate Governance and Management**

Item 5.01 Changes in Control of Registrant

Item 5.02 Departure of Directors of Principal Officers; Election  
of Directors; Appointment of Principal Offices

Item 5.03 Amendments to Articles of Incorporation or Bylaws;  
Change in Fiscal Year

Item 5.04 Temporary Suspension of Trading Under Registrant's  
Employee Benefit Plans

Item 5.05 Amendment to Registrant's Code of Ethics, or Waiver of  
a Provision of the Code of Ethics

**Section 6 Reserved (for future use)**

**Section 7 Regulation FD Disclosure**

**Section 8 Other Events**

Item 8.01 Other Events (The registrant can use this item to  
report events that are not specifically called for by Form 8-K,  
that the registrant considers to be of importance to security  
holders.)

## Appendix B

**RSS: Rich Site Summary**

RSS is a format for delivery regularly changing web content. Many news-related sites, weblogs and other online publishers syndicate their content as an RSS Feed to whoever desires it.

RSS solves a problem for those who regularly use the web by allowing people to easily stay informed by retrieving the latest content from the sites you are interested in. You save time by not needing to visit each site individually and ensure your privacy by not needing to join each site's email newsletter.