# RECORD, Volume 27, No. 2*

Toronto Spring Meeting
June 20–22, 2001


## Session 31PD
## Who Let The Info Out? Financial Statement Disclosures: Practices And Requirements

**Track:** Financial Reporting

**Moderator:** ALLAN W. RYAN


**Panelists:** ALLAN W. RYAN
LILLA RUNCO†



*Summary: Effective November 2000, the SEC requires that the same material information provided to analysts in private meetings must also be available to the general investing public. The intent is to level the playing field, but there is concern that this requirement reduces the information available to investors and leads to a more volatile and less efficient market. The Ontario Securities Commission has similar concerns.*

*Given the unique nature of GAAP for life insurance companies, this issue affects the information that actuaries prepare for analysts to clarify performance results.*


**MR. ALLAN RYAN:** I'm with PricewaterhouseCoopers. I just joined them a few months ago. Before that, I was with Deloitte & Touche for 12 years. My specialty is financial reporting and related topics.

My co-speaker, Lilla Runco, is a CPA and a chartered accountant, originally from Toronto, and has been with PricewaterhouseCoopers for approximately 12 years. Lilla is a senior audit manager and works in the insurance audit practice.

---



†Ms. Lilla Runco, not a member of the sponsoring organizations, is a CPA and a chartered accountant with PricewaterhouseCoopers in New York, NY.

**MS. LILLA RUNCO:** We're going to be covering both U.S. and Canadian perspectives.

**MR. RYAN:** First, we should discuss what the SEC Regulation FD (fair disclosure) is. This regulation became effective in November 2000. It requires that when a public company discloses material nonpublic information to securities market professionals and/or holders of the company's securities, it must make public disclosure of that information. Nonpublic and material are the two key words. In other words, there's no more selective disclosure. It was fairly common for companies to sit down with an analyst and go over things knowing that this would not be released to the general public, but we'll get into the pros and cons later.

This is a generic requirement that effectively applies to all public companies. This means a company that's listed on an American exchange. That includes public life insurance companies, but it's not specific to our industry.

**MS. RUNCO:** With regard to factors that motivated the SEC to implement the FD regulation, I think the biggest concern of the SEC was to insure that they created a level playing field for the individual investor as well as the institutional investor. I think the view of the SEC has been that the individual investors were not getting information as quickly as the analysts. Also, the analysts were in with the issuers and people who were representing large companies and getting a lot of information that people were saying was like insider information. If you're analyst getting information from the CEO or president of an organization, you're getting that information ahead of the public, and that's like insider information. I think what the SEC was trying to get at is: Yes we have insider trading rules that deal with that kind of thing, but what's happened historically is that information has been released through analyst calls and that's never been considered insider trading information. The purpose of the regulation was to specifically address information that was getting released through analyst calls and one-on-one meetings with analysts. A lot of analysts would call their contacts at large corporations and basically ask them questions and get answers that the average investors wouldn't have access to.

The rule was definitely designed to address the issuer's conduct, meaning the company's conduct; they weren't really after the analyst. This means the issuers are the ones who are on watch right now as to what kind of information they give out, when they give it out, and making sure that they give it out all at the same time and not specifically to the analyst ahead of time.

The SEC definitely thought that this was needed in addition to current insider trading rules and not to replace them. There has been significant public comment during the exposure period. There were over 6,000 comment letters in response to this regulation and there were definitely opposing views, I think, even before it came out. There were mixed views on the benefits of the regulation.

There was definitely strong support from the investing public. I think the individual investors like the rules because they get better and quicker access to information. Obviously, the analysts are the biggest opponents to the rule. They now have to work harder because they're not getting that information easily any more. They have to work for it and work to analyze the pieces of information that they're getting, to come to conclusions about the outlook for a company.

It's interesting to note that law firms were opponents to the rule as well. I thought that if lawyers have a chance of making some money here they would be interested in it, because it's going to create lawsuits and legal liability and all these great things for lawyers. Some opponents argued that there was insufficient evidence of a widespread problem. They wondered why we need a regulation to help deal with this if it really isn't a big problem in the first place.

There were 6,000 comment letters that were written in response to the regulation. Some of the more significant changes that they made in the initial draft included narrowing the scope of the regulation. They narrowed it in the sense that it did not apply to all communications that were made. For example, it excluded communications where you had an express agreement with the analyst not to share information; that is, both parties agreed that it would stay confidential.

They also narrowed the type of issuer personnel to only senior personnel in an organization who deal regularly with analysts and shareholders. Initially, when they drafted this proposal, they said they wanted all employees of an issuer to be covered. That didn't make sense because they said that middle management and lower level staff who share information innocently shouldn't be accused of wrongdoing under the new regulation.

They also changed the regulation so that there is generally no private liability. They put in words to say that, in order for an individual to be liable, that individual would have to show knowing or reckless conduct. Basically, you're your violation has to be intentional, it has to be reckless, and it has to be a very severe case in order for the SEC to start action against you. I think that alleviated a lot of concerns that lawsuits would start and everybody would be exposed to personal liability. That wasn't the intent of the regulation.

Another modification that was made was to exclude communications on securities offerings. Securities offerings already have their own laws and rules that they have to follow with respect to disclosure. Initially one of the comments made by the Ontario Securities Commission (OSC) and the Canadian Securities Association (CSA) was that they had concerns about implementing a similar requirement in Canada because they thought that disclosure would actually decrease, rather than increase. They were worried about what they called the chill effect—that people would be afraid to disclose things because of the new rule. They were also concerned that it would create a more volatile market. Because less information would be disseminated to the analysts, they were concerned that the analysts wouldn't be able to do their earnings projections as well. This was based on the idea that limited information might create surprises as the earnings releases come out.

The actual regulation is a thick document of about 100 pages. There's a lot of discussion in it, but the rule is basically one thing—whenever you have an issuer (i.e., a public company or a person who is acting on behalf of that company, for example, a senior official who regularly communicates with analysts and shareholders) that discloses material, nonpublic information to any analysts or shareholders who may trade on that information, the issuer has to make public disclosure simultaneously. It's not just that they're disclosing the information to analysts or to shareholders or individuals, but that it's reasonably possible that those individuals will trade on the information that is being shared. If it's intentional disclosure, then it has to go out to the analysts and the public at the same time. Now individual investors are allowed to call in on the analysts' calls and webcasts. In the past that didn't happen, but this rule actually helped to implement that. If it was unintentional disclosure, for example the president of the organization said something to somebody by mistake, not realizing that it was actually material, nonpublic information, the rule says to promptly disclose that information. Promptly is defined as no later than 24 hours or the next trading day.

You might be asking the question, "What's material in this case?" There are rules out there that you can use to help guide you as to what to consider material. For example, SAB 99 issued by the SEC provides companies and auditors and accountants with a lot of guidance on what is material. Basically, material is anything that will move your share price or will affect your decision on whether you should buy or sell a share. I think there's been a lot of discussion as to whether there's enough guidance on what material is, but the SEC argument is that we've been dealing with the issue or concept of materiality for ages, and there are many examples of what's considered material.

In Canada, the guidelines don't specifically address what material is, but the SEC has provided examples that include information regarding mergers and acquisitions, that would be considered material. Any information on earnings forecasts is a matter that the courts and the SEC have long held to be material. Any new product launches would be considered material. Developments regarding customer suppliers, changes in control of a company, changes in auditors, defaults or bankruptcies are all examples that have been listed as material by the SEC in the guidelines.

Regarding recipients of information covered, we're talking about individuals who are outside of the issuer, for example, the analysts and shareholders. It's not meant to cover middle management or employees of an organization. As I mentioned for exclusions, certain parties that are excluded are people who agree to keep information confidential. You don't have to sign any kind of document that says you agree to keep this information confidential. The fact that you have an expressed oral agreement to keep it confidential is enough. This covers accountants, consulting actuaries, and lawyers who have access to confidential information in the course of their work. That's good news for the actuaries. Securities offerings, as I mentioned, are also generally excluded from the regulations, as well as foreign government and foreign project issuers.

The next thing I want to talk about is the position of the CSA on regulation disclosure. David Brown, chair of the OSC, is significantly in favor of Regulation FD and has gone to great lengths to give speeches about the benefits of the regulation and to try to implement similar things in Canada. Interestingly enough, on May 25, 2001, the CSA published guidelines on disclosure standards to address the same concerns that the SEC has. In Canada, one of the objectives in coming out with recommendations and guidelines is to help restore investor confidence. There's been a concern in Canada that the confidence in the integrity of capital markets is at a new low. I think with recent issues, Nortel and other companies have had some similar problems.

Canada decided to do something that's a little different than what the U.S. did. The U.S. issued a regulation that was basically law in the U.S., whereas Canada decided that it wasn't necessary to actually make new laws and they didn't want to bring out a new regulation. They said that because there are already insider trading laws in place that are effective, they would provide guidance to issuers and come out with some recommendations as best practices that people should abide by.

Companies that are listed in both Canada and the U.S. need to be aware of the fact that the rules are somewhat different. If they are listed and have traded on the U.S. stock exchanges, they probably should be following the U.S. regulations. The Canadian guidelines give you a little more leeway and they're just guidance, not a rule.

The Canadians argued against fair disclosure because they thought less information would be disclosed, and because people would be afraid of the rules and would be accused of not complying with the regulation. They also thought that people would be trying to hide behind the new regulation, using it as an excuse not to deal with tough questions by the analysts. If the analyst has a tough question and they don't want to answer it, they might say, "Sorry, under Regulation FD I can't answer that question," which is not the intent of the regulation.

I think this was a big issue for Canadians because a lot of Canadian companies have listings in the U.S. This has been an important issue for Canadian issuers as well as for the U.S. issuers. The CSA is in favor of providing guidance, especially since statistics say that 71 percent of companies don't actually have any written disclosure policies in place. That's a high number of companies that don't have any sort of written policy. They said that 81 percent of companies are still conducting one-on-one meetings with analysts, even though all this attention has been brought to the subject.

Another argument for the CSA to come out with some standards is that there are already some standards in the Regulation FD template that they can build upon. They also held the argument that they should come out with something to harmonize the rules in Canada and the U.S. They came out with 10 recommendations and I'm going to talk to you about the top three.

The first one was to limit the number of people authorized to speak to analysts. That may be a good thing to do, but it goes against the spirit of making sure that middle management and lower level people can actually share information innocently, to give people an idea of how the company's doing. You could argue that maybe the U.S. approach is a little better. The U.S. approach limits the number of people who are actually subject to the fair disclosure regulation. The Canadians thought this recommendation would help improve the accuracy and consistency of information.

The second recommendation they had was to observe a quiet period just before earnings releases. That might be good because you want to be very careful about what information gets leaked out, but it goes against the spirit of Regulation FD which means disclosing information as it comes up and not waiting for quarter end. As significant material items come up in the business, you should be regularly communicating to the public. By encouraging a quiet period, one could argue that you only want information to come out every quarter and that's what creates swings in the market. If you have regular information, you don't get this huge surprise when the end of quarter earnings releases come out.

The third was that they adopted a no comment policy on market rumors. You could argue that's a good thing and you don't want to comment on market rumors, but at the same time, if you know the market rumor is wrong, you want to say so as soon as you hear it. Again, encouraging the no comment policy goes against the spirit of trying to get more information and more timely, regular access to that information.

Finally, I want to talk a little bit about survey results. I'll focus on two surveys with opposing views. One survey was conducted by PricewaterhouseCoopers and it examines public tech companies as well as other large, small, and mid-size public companies. The other was a survey of analysts, so you can imagine what the views are going to be on the analyst side, but I want to show you what the opposing views are.

The PricewaterhouseCoopers survey on the impact of Regulation FD indicated that there was very little impact as a result of the regulation. The only thing that we see now is that instead of having the analysts' calls private, they're open to the public. There's only a small percentage of people who are likely to take advantage of that and actually listen to the analysts' calls. It's interesting that the statistic shows that only 18 to 20 percent of the people actually took advantage of the fact that they can now listen into these calls.

The sampling that they took was from small to large companies. Sixty-nine percent of public tech companies said there was no impact on their stock prices as a result of the regulation. That was an interesting statistic because they were worried the stock prices would be affected by this new regulation becoming effective. Fifty-four percent said there was an impact on the amount of information disclosed, where 31 percent of that 54 percent said there was more information disclosed and 23 percent said there was less information disclosed. Thirty-six percent said there was an increase in the fairness of the information being disclosed and 44 percent said there was no change. With those numbers, you're not really seeing a huge change as a result of Regulation FD from the viewpoint of the issuer. Forty-seven percent said the risk of litigation is the same, so the opinion is split about 50-50. Overall, the findings assert that the new requirements have evened out the playing field for analysts and investors although some still argue that you may have increased the market volatility. Some are using Regulation FD as an excuse for the increased volatility that's been happening.

The survey opposed to Regulation FD was done by the Association for Investment Management and Research. It was released in April 2001 and it showed that 71 percent said that FD increased market volatility and decreased the amount and the depth of information. Sixty-six percent said there was a decrease in oral communications, and 52 percent said the quality of the information provided by word of mouth has decreased. Sixty-nine percent of the sell side analysts say that Regulation FD adversely affected the advice that they provided clients. Only 14 percent of individual investors are actually making use of the new access to the Webcasts and conference calls. Fifty-seven percent said the volume of the standard information released by public companies has come down since FD was put in place. Eighty-one percent felt that companies can more effectively minimize communication with investors if they want to, given FD.

**MR. RYAN:** As far as the life insurance industry is concerned, the regulations are generic and not specific to a particular industry. All public companies are affected. I guess one question is, "Are there unique issues with respect to life insurance?" Certainly the actuaries like to think that life insurance companies are far more complex than most from an accounting perspective and I think there's a lot of truth to that, but these issues are there whether the regulation is or not.

One effect of this may be an increase in the scrutiny of financial reporting and other related topics that would come under this regulation. This would make people aware of disclosure in general and what they're disclosing. It is also to make sure that what is disclosed is appropriate and accurate and to make sure you've done what you're supposed to do if you're contributing to that information.

Obviously, the long-term nature of the liabilities of a life insurance company adds special complexity and sometimes we like to think that analysts don't really understand the business. The emergence of earnings is a complicated thing. One example of what I'm talking about here is volatility of earnings; for example, deferred acquisition cost (DAC) amortization, particularly with products like variable annuities. Depending on how you interpret FAS 97 and how you report it, you can have swings in earnings that seem illogical from a business perspective. Trying to explain that to the investing public or to analysts can be a challenge. Again, these are things that you have to report anyway and I'm not sure whether Regulation FD changes that or not.

Another good example with life insurance companies might be proprietary product information. It's thought that this may have an effect where a life insurance company was comfortable dealing with an analyst they felt understood the business, talking about a new product and its implications. Now that they have to make that information public at the same time, I have a feeling that maybe they won't talk about it. It is difficult to measure where that's happened, unless somebody can give an example, but it's a possibility and it's one of the arguments that Lilla talked about.

I know some of you may have been aware, especially with the market the way it is, that in the first quarter of 2001 there were some significant earnings releases by life companies (these are public documents) where they actually announced that they wrote off DAC and took a multi-million dollar hit to earnings because of the declining markets. As an actuary, you know you're not sure exactly what that means. You know what it means in general, but you don't know exactly what kind of methodology they use for amortization. It does make sense, intuitively, that when the market goes down, you're going to take some kind of a hit. Again, I think this disclosure would have been made with or without the regulation, certainly with respect to earnings. There's a requirement that you have to release earnings and there are accounting requirements to disclose significant material events.

This implies not only things you can put a number on, but as Lilla mentioned before, merger and acquisition (M&A) activity is the type of thing that is a material event where this disclosure rule is in effect, it may be difficult to quantify.

Some of the other implications include materiality. Lilla mentioned briefly SAB 99, which is a bulletin that the SEC issued fairly recently. I wrote an article for *The Financial Reporter* in December 2000 dealing with this topic, and there is information on materiality in the new GAAP textbook.

The SEC has said materiality is not necessarily a numeric threshold, but rather it's a qualitative one. The SEC is very much against companies consistently making earnings estimates by one cent. If you think of the life insurance industry, there's a great ability to change DAC, for example. It doesn't take much to tweak you're a model and get just where you want to get, but that's a real issue with respect to following standards of practice and doing things according to the Code. I don't think it's going to change fundamentally the way you do things. Again, the nature of life insurance company estimates is somewhat unique. The potential to manipulate earnings is a real issue.

Again, the potentially material events we've talked about may not be numbers per se, but just things that have happened.

The financial reporting actuary who is part of senior management or is part of investor relations specifically, or is an individual who regularly interacts with market professionals and stockholders, is specifically covered by this regulation. An actuary who's not covered would be any actuary in the company that doesn't fall under those categories, but there may be a little bit of a gray area here. Regardless you're still going to be bound by professional standards, insider trading rules, and materiality judgments in general. I think I would claim that Regulation FD has not changed the overall responsibility of the actuary.

Liability concerns for the covered actuary is an interesting topic. As Lilla mentioned, the law tries to protect people and is not going to open you up to liability unless you act really recklessly or negligently. I think that's a fair statement, but with the lawyers, you never know. That's just one of many concerns of the actuary. The valuation actuary has concerns about liability, and the illustration actuary certainly has, or should have, concerns about liability, but that's another subject.

I want to briefly touch on professional standards. The Code of Professional Conduct applies to anyone who is a member of any of the organizations that recognize the Code, which is all of the actuarial organizations in North America. Precept 1 states, "An actuary shall act honestly with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession." Certainly that's going to be foremost in your mind if you're disclosing information to analysts. That's there and it's always been there. I think another one that is very applicable is Precept 7, which talks about potential conflict of interest. Any time you do something that has a potential for conflict of interest, and you can get into that when you're talking or disclosing information, you want to make sure that everyone is aware of it, and disclosure again is the important thing. Precept 9 is probably the most important. It states, "An actuary shall not disclose to another party any confidential information unless authorized to do so by the Principal or required to do so by law." In this case FD does require that if you disclose confidential information, you have to make public disclosure. Then it's no longer confidential, but it is disclosure. The point is you have to make sure if you're involved in that disclosure that it's done in accordance with the regulation.

Another issue is qualification standards. The Code says you don't do anything you're not qualified to do, and there also are specific qualification standards for various tasks. That, I don't think, has really changed.

As far as Actuarial Standards of Practice (ASOPs) go, they obviously apply to the extent you're doing any actuarial work. They certainly would apply to a financial reporting actuary or an actuary who might come under Regulation FD. Number 10 deals with GAAP, Number 21 deals with the actuary's responsibility to the auditor, and Number 23 deals with data quality, which is virtually everything we do. Other things, such as Interpretative Opinion Number 3, deal with communications. There is currently an exposure draft that would update that and make it into a formal standard.

Lilla mentioned exclusions from coverage before, and I'm going to go back to that because I think this is of interest to actuaries. Temporary insiders are what they're called in the rule. This would include any advisors. If you're a consulting actuary and you're working with a client, you're going to have access to confidential information. For example, investment bankers, attorneys, and accountants are going to have access to confidential information with an M&A transaction, but clearly they are not going to go out and disclose this, so they're exempt from the rule. Again, Precept 9 of the Code is going to apply to an actuary who meets one of these exclusions in and is not disclosing confidential information.

I know a couple of companies have made public statements that I think are pretty consistent with the survey results that we have discussed. One was the St. Paul Company, which is a property casualty company. They disclosed information that didn't affect them. An oil rig sank off the coast of Brazil and they made an announcement that they were not insuring it, just so people didn't get the impression that they were going to be hit by this catastrophe. This is pretty much unique to the property and casualty (P&C) industry, but that's just one example. Another one was Nationwide, which is, I guess, a mutual P&C company, but there's a downstream company that's a public issuer—Nationwide Financial Services, which is effectively a life company. Its conclusion was to put the information out in more places, like on its Web site, which is consistent with this rule of making things available to everybody. But I think they feel that perhaps there's less actual information, or they're being a little more careful about disclosing information.

**MS. RUNCO:** I agree. They actually said they really didn't see a huge difference from what they were doing before, other than they're providing the information in different locations.

**MR. RYAN:** Another company I'll bring up is Sun Life. Sun Life demutualized fairly recently, I believe in 2000, and their stock trades on the U.S. exchanges and the Canadian Ontario exchange site. They're under FD, so I guess if somebody is in Canada and talking to an analyst, I think they would be bound by the rules because their stock is on both exchanges, although this may be a legal issue.

I think it's hard to say how this relates to perfect markets and so forth, at this point. First of all, it's difficult to blame FD for anything since it came out, because it's difficult to prove that any volatility or effect on stocks is caused by it, or not caused by it, or would have been better without it. Interesting too, I think, is that the analysts now are coming under fire again. As Lilla pointed out, they're the ones who probably most unanimously oppose this rule. Now, suddenly the SEC is saying, "Wait a minute, these analysts who promote a stock, often own the stock." This is outrageous, and to me, this is an obvious conflict of interest. An auditing firm has to put up with all these rules and then it suddenly dawned on people that maybe this is a conflict too. Maybe they're going to be under siege again. Maybe that's a good thing.

**MR. SCOTT L. FITZPATRICK:** (Standard Insurance Company) This question is for Lilla. You said, with regard to market rumors, you have to answer or say they're false if asked a question. If I ask a question and you answer "no comment" or "true," then I know it's true. So, in the future, do rumors always have to be immediately dispelled?

**MS. RUNCO:** I didn't say that they have to say it's false. You can actually choose to say "no comment" if you want to say "no comment." I just think the purpose of the regulation was to get people to disclose information in a more timely fashion and get people better access to information. If you know that something isn't true and a rumor is out there, I think your responsibility under FD is to say that it's not true, and that would be in the spirit of giving better disclosure and better information.

**MR. BRUCE R. DARLING:** (Aon Consulting) I have some questions about the scope of this regulation and how a company should deal with some things that come up in the ordinary course of business. One of them is, how do you deal with somebody like A.M. Best coming in annually and getting your attention for a couple of days or a week while you bring people together? You want to work with them and you want to give them the information; you're happy to share it, but how do you make that same information available to others?

**MS. RUNCO:** I forgot to mention that in the presentation. A.M. Best is excluded. Any rating agency is excluded from the regulation because they don't want to prevent the rating agencies from getting the kind of information that they need in order to rate a company. The SEC's view was, because the rating agency is actually using it to rate the company and then provide the information to everyone, that they get excluded, because it will be public once they do the rating.

**MR. DARLING:** Otherwise, it actually would be impossible for them to do their jobs or for you to talk to them. I have a question about the media. There's some statistical information that just isn't available from our public financial statements, for example, the volume of variable annuity deposits for the year or variable life premiums. We just don't have that reported, but we're happy to share the information. Say somebody from *National Underwriter* calls us and wants to present a listing of our company along with 50 other writers. Is that also excluded from any problem in terms of timeliness in sharing that information with anyone else?

**MS. RUNCO:** Yes, the media has also been excluded. If it's related to the media or giving that kind of public information, it's allowed because the media is not using this information for their own personal benefit, it's to provide public information to everyone.

**MR. DARLING:** Here's another one. I used to work with Ernst & Young in their national office and I would do surveys of companies. I would ask for information about things that ended up being shared with the people who participated in the survey. I'm sure the Life Insurance Marketing and Research Association and other firms do that kind of thing. Is any of that limited-use information restricted by FD in the sense that results would probably be published confidentially? As long as it's confidential or anonymous, is it going to be excluded?

**MS. RUNCO:** The regulation doesn't talk to surveys. If it's published and the survey results are considered public information, then it's public, but if it's confidential, then it should be caught. I guess in the sense that they've agreed to keep that information confidential…

**MR. DARLING:** Or anonymous. Suppose they shared that information using company names, just within the group of people who participated.

**MS. RUNCO:** I think if they all agreed to keep that information confidential amongst themselves, they'd be okay.

**MR. DARLING:** So contributions of lapse information, expense information, and mortality information to the Society of Actuaries could be shared in this way?

**MR. RYAN:** It's sort of like antitrust. In a way you have to be careful of antitrust, but a lot of the information that insurance companies share is excluded. I don't want to get beyond our field. Some of these might be legal questions that you'd want an attorney to answer.

**MR. DARLING:** It sounds like we have a lot of scope limitations that are making our lives easier.

**MR. RYAN:** I agree. It would be normal, just like the temporary insiders and the people who are doing work that is confidential.

**MR. DARLING:** I invest in a Janus mutual fund. They have TV ads and they heavily promote the claim that they get deeper into companies than anybody else. I've heard complaints from them and in fact, they've dropped their analyst staff by hundreds since FD came out. It's hard to determine cause and effect. Suppose Janus calls up and you want them to promote your stock as part of their mutual funds, and you're happy to share the information with them. How exactly do you go about sharing that so that you don't breach the rule?

**MS. RUNCO:** You have to keep in mind whether or not it is material nonpublic information. If so, and if you're disclosing it to them, you have to disclose it to everybody else at the same time.

**MR. DARLING:** How do you actually do that?

**MS. RUNCO:** You can do it through webcasts, provide information on the Web sites, or put together a press release. There are various avenues that you can take. The SEC has stated, though, that you just can't put it on your Web site and say it passes FD—it doesn't. You actually have to tell people you're going to have a conference call and give them adequate notice of the call. There are a lot of things you have to make sure you do.

**MR. DARLING:** So the old-fashioned conversations in which you're sharing information and getting in-depth are pretty much impossible?

**MS. RUNCO:** You can't do that.

**MR. DARLING:** It can't be done in that format because there's no way you could release that same body of information to everyone else in a prompt way?

**MS. RUNCO:** That is correct. I think companies have reacted to it. They're being very cautious, especially in the first year of implementing FD. I think it's going to take a few quarters before companies actually start to get comfortable with it and realize if it is or isn't okay to say something. Right now, they're asking for legal advice often because they don't know what is or isn't okay. I think it's a temporary issue. Companies will get used to it and will see that it's not a big deal. The only thing that has really changed is that now calls are opened up to everybody.

**MR. CHARLES R. WILLIAMS:** (Tillinghast-Towers Perrin) Is this being monitored, or does someone have to complain before it's looked into?

**MS. RUNCO:** I think the SEC is monitoring it, but they don't want people to fear them in the sense that they didn't implement this new regulation to start lawsuits or to start investigations on companies. They really are only dealing with severe cases at companies where people are intentionally having one-on-one calls with analysts and releasing the insider information to them without disclosing it to everybody. I think the monitoring is there, but they're not actively doing it, because they don't want people to think that is the purpose of this. That's my view on it based on all the reading that I've done about it.

**MR. GLENN T. ELSEY:** (ING Investment Management) I was wondering if you could clarify how the information analysts received before FD was used and how it disadvantaged the individual investor?

**MS. RUNCO:** Before FD, when the analysts received the information, they would think through it. They're considered to be sophisticated investors, so they have the advantage of understanding the business, the accounting, and various things about the company a bit better. They would then disseminate that information through their investor analyst reports and would try to give you some context around the information that they were getting. That was what they viewed to be the value that they were providing investors. Now, with FD, the investor is getting that information right away and making his or her own interpretations of the information. It may be misinterpreted because the person is not as sophisticated an investor as the analyst. That may disadvantage the investor who is out there now saying, "I've got the Internet so I don't need the analyst and I'm smart enough to make my own decisions based on the information that I'm now getting on a conference call." That's fine for a lot of individual investors who are as sophisticated as an analyst and can actually do that. But people who have relied heavily on an analyst and are picking up this information quickly and then trying to act on it without actually getting the proper advice they need could be at a disadvantage by making decisions that aren't well informed.

**MR. ELSEY:** Why would the SEC have a problem if the analyst was taking the information and writing up a public report?

**MS. RUNCO:** The SEC didn't have a problem with them releasing the information through some kind of public report. The problem they were having was that they heard of cases where the analysts were using the information to their benefit, if not personally, by giving it to somebody else, such as a friend, and that information was coming out before the official earnings releases came out.

**MR. RYAN:** You're with ING, which may not be covered by FD. Is your stock traded on the U.S. exchanges?

**MR. ELSEY:** Yes, on the New York Stock Exchange.

**MR. RYAN:** Maybe it would be covered by FD. It's interesting that you have variable products that are registered, but are not issuers per se.

**MS. RUNCO:** You can't take any risks these days.