



August 9, 2016

Timing is Everything

A [front page feature](#) in Friday's *Wall Street Journal* caused quite a stir within the investor relations community. And for good reason. The story asserted that some public companies urge sell-side analysts to lower their estimates just prior to earnings releases in order for these companies to beat lowered consensus estimates.

Analyst relations and communications are part of the fabric of our profession. But it is a part that has come under intense scrutiny in the past for practices ultimately determined to represent selective disclosure. Those who have been involved in investor relations prior to and since the tech-bubble of the late 1990s undoubtedly remember the SEC's reaction – Reg FD.

NIRI was involved in shaping that regulation based on the standards our organization already had been advocating. Here, for example, is a passage from a 1999 NIRI Executive Alert, "The proposed new Regulation FD (Fair Disclosure) embodies NIRI's Standards of Practice with respect to handling full and fair disclosure of material information." The Alert goes on to note that after NIRI visited the SEC, the Commission codified NIRI's guidelines in Reg FD. Finally, the Alert points out, "Therefore, for those who follow NIRI's guidelines, disclosure practices should not change in any significant way."

This advice is as good in 2016 as it was in 1999. Friday's WSJ story should be taken as an opportunity to review the cautions provided in the [NIRI Standards of Practice for Investor Relations-Disclosure](#) around one-on-one calls, and the recommendation for a pre-earnings quiet period defined in a disclosure policy, a practice that we know roughly 91 percent of you follow based on the findings of our Earnings Process research that we will release soon.

Many of the Reg FD court cases and SEC enforcement actions referenced in Chapter 9 of the Standards resulted from one-on-one calls with analysts. The context associated with these calls is critical, and companies should take great care regarding the type of information disclosed, when it is disclosed, and the manner in which it is disclosed to ensure that they don't run afoul of the spirit and letter of Reg FD.

Best regards,
Matt

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