February 24, 2000

Jonathan G. Katz
Secretary, Securities and Exchange Commission
450 Fifth Street NW
Washington, D.C. 20549

Re: Proposed Regulation FD, File No. S7-31-99

Dear Mr. Katz:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on the SEC's proposed new corporate disclosure regulation. SIA strongly supports open communications between companies and the investing public. Information is the life-blood of our markets, and impediments to the flow of quality information should be eliminated whenever possible. Regrettably, while proposed Regulation FD purports to improve the flow of information by barring "selective disclosure" of material corporate information, in our judgment it will act as a significant chokepoint, discouraging companies from divulging important information. Therefore SIA strongly opposes Regulation FD.

SIA is in the process of drafting a comment letter that will lay out our concerns extensively. However, for the benefit of other market participants that may wish to comment on the proposal, we would like to offer this preliminary comment letter outlining some of our concerns. The substance of this letter is taken from a letter that we wrote to the SEC's Office of General Counsel last fall in response to discussions that we had with the SEC staff about the proposed regulation that they were then in the process of drafting. At that time we listed the following concerns, all of which still pertain:

"1. We fear that the proposal will severely undercut the flow of high quality information to investors. One principal function of securities analysts is to screen, distill, and evaluate "raw" information. Without an opportunity to digest and interpret news before it becomes public, investors have less guidance on the possible significance of corporate announcements when they are made (and firms have less reason to pay analysts to perform this valuable function). Without the opportunity for analysis to create a context for the public to assess news, far greater volatility is likely to result when news is disclosed. In short, we are concerned that a "chat room" environment may come to prevail, where

objective and professional analysis will be drowned out by self-serving, uninformed, or confused reactions to new information.

"2. The SEC has never before tried to regulate routine communications between issuers and third parties. We believe that this effort would be widely seen as a substantial intrusion into issuers' everyday business affairs. In addition to hurting the quality of information available to investors, the rule could diminish the respect with which the disclosure requirements and insider trading prohibitions of the federal securities laws are held.

"3. As an important illustration of point 2 above, the rule could have a substantial commercial impact going well beyond communications between issuers and analysts. It would be difficult to fashion a rule that would not affect communications between corporations and vendors, suppliers, strategic partners, or customers on issues such as research and development, sales and marketing, supply contracts – in short, almost every aspect of commercial life. The rule would hamper legitimate "business talk" in which issuers float ideas, discuss strategies, and seek new markets. At a minimum, the rule could create uncertainty as to how much nonpublic information an issuer could share with third parties in the normal course of its business affairs.

"4. We do not know how such a rule can be made compatible with First Amendment concerns, as well as with the Supreme Court's analysis in Dirks v. SEC, 464 U.S. 646 (1983). While the Dirks decision did not expressly rest on concerns about commercial free speech, First Amendment concerns were implicit in the Court's decision. The rule would raise similar Constitutional issues. Dirks involved claims against the analyst under Section 17 of the Securities Act of 1933 and Section 10(b) of the Exchange Act, while the contemplated rule would shift the burden to issuers under a different provision of the Exchange Act. However, we think that shifting the "disclose or abstain" obligation from analysts to issuers does little to avoid the strength of the Supreme Court's analysis in that case. As Dirks noted, "it is the nature of this type of information, and indeed of the markets themselves, that information [provided to analysts] cannot be made simultaneously available to all of the corporation's stockholders or the public generally." Id. at 659. "[I]t may not be clear – either to the corporate insider or to the recipient analyst – whether the information will be viewed as material nonpublic information." Id. at 662. Therefore, imposing a duty to disclose or abstain, whether on the analyst as in Dirks, or on the issuer as the Staff now contemplates, "could have an inhibiting influence on the role of

market analysts, which the SEC itself recognizes is necessary to the preservation of a healthy market." Id. at 658.

"5. The philosophy underlying the contemplated proposal – parity of information among all market participants – is not a statutory goal of the federal securities laws. Although well intentioned, the goal of information parity is also fundamentally misguided because it destroys all incentives for ferreting out information. It is likely to have the exact opposite effect of that goal, in that liability concerns would lead issuers to avoid any disclosure rather than risk a later finding that a matter disclosed required simultaneous global dissemination. All investors, from retail investors to pension funds, mutual funds, and other institutions, would be adversely affected in a world where equal access to information is the formally and legally mandated objective. Many securities analysts have years of postdoctoral academic work in the disciplines underlying the industries that they cover, as well as direct career experience in those industries. Parity of knowledge and understanding among these professionals and all other market participants will never be achievable. The ideal that the rule seeks is inherently unattainable.

"6. In the absence of high-quality analysis of corporate news, the benefits of investing on the basis of economic "fundamentals" will be eroded, while "momentum" trading and similar strategies designed to benefit from volatility, and which themselves likely contribute to volatility, would be likely to increase.

"7. In crafting a safe harbor for forward-looking information as part of the Private Securities Litigation Reform Act of 1995, Congress expressed a public policy preference for encouraging companies to release forward-looking information. (The Commission has also expressed such as policy preference on many occasions.) A rule that bars companies from sharing earnings information with analysts unless they simultaneously disclose it broadly to the public would create incentives running in exactly the opposite direction. Companies would be more reluctant to disclose forward-looking information outside of required 10-K and 10-Q reports.

"8. We have questions about whether the SEC has the authority under Section 13 to promulgate a rule constraining nonpublic issuer communications in this manner. In addition, as most of the points above indicate, we believe that such a rule would have an enormous range of pernicious consequences. It may be enormously difficult for the Commission to conduct a cost-benefit analysis sufficient to satisfy statutory requirements.

"9. The regulation of "inadvertent" release seems to present special difficulties. Under what circumstances is some utterance attributed to the issuer's knowledge and at what point would the issuer's obligation to disclose be triggered? To what extent is an issuer expected to make disclosure when it may be ruinous to an important corporate opportunity, because of such a misstep?

"In light of these and other significant issues, we recommend that the Commission reconsider proposing rules on selective disclosure. We agree with Chairman Levitt's observation that 'edict can never replace ethic,' and respectfully suggest that such an edict would create more problems than it would solve."

We hope that this excerpt from our earlier letter to the SEC staff is helpful to other market participants as they consider the SEC's proposal. We look forward to providing a more detailed account of our concerns in a separate comment letter to follow later.

Sincerely,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Senior Vice President and
General Counsel

Cc: The Honorable Arthur Levitt, Chairman
The Honorable Norman S. Johnson, Commissioner;
The Honorable Isaac C. Hunt, Jr., Commissioner;
The Honorable Paul R. Carey, Commissioner;
The Honorable Laura S. Unger, Commissioner;
David Becker, General Counsel;
Meyer Eisenberg, Deputy General Counsel;
Richard Levine, Assistant General Counsel;
Sharon Zamore, Senior Counsel;
Elizabeth Nowicki, Attorney;
David Martin, Director, Division of Corporation Finance;
Harvey J. Goldschmid, Special Adviser to the Chairman;
Gregg W. Corso, Counsel to the Chairman.