

Raytheon SEC Probe May Test New Disclosure Rules, Analysts Say

Washington, March 14 (Bloomberg) -- Raytheon Co. may become a test case for how the Securities and Exchange Commission enforces a regulation that prohibits companies from selectively disclosing information, legal analysts said.

The SEC is investigating to see if Raytheon gave information to analysts in the past month about its profit outlook without making it public, people familiar with the matter said. Analysts started cutting first-quarter profit estimates for the third-largest U.S. defense company soon afterward.

Companies are using Web broadcasts and providing more information in press releases to comply with Regulation FD, for full disclosure. The rule was enacted in October to make sure investors are given equal access to information. Private briefings by Raytheon and other companies suggest that some companies are having a hard time adjusting to the change, analysts said.

"The enforcement staff is looking for a poster-child case" to prosecute a violator of Regulation FD, said Jack Coffee, a professor of law at Columbia University.

The SEC hasn't taken enforcement action against any company for violating the rule. The SEC could issue a warning or levy fines for each violation of up to \$100,000 per individual and \$500,000 for companies, said John Heine, a spokesman.

Most companies are opening access to their conference calls and many are giving more details than ever about their outlooks. Intel Corp. departed from its previous practice of using language such as "up" or "flat" to give guidance on sales soon after the regulation went into place and gave specific projections.

Guidance on earnings is being distributed by press releases by about 67 percent of

companies, according to a recent survey by the National Investors Relations Institute. And 33 percent of companies are filing the information with the SEC, said Louis Thompson, the president of NIRI.

Mixed Messages

Cisco Systems Inc. and other companies have struggled with the changes, giving information in increments that tended to confuse rather than inform investors, analysts said.

"They used to just call you," said Paul Sagawa, an analyst at Sanford C. Bernstein & Co. "Now they're having to find different channels in order to deliver financial news broadly without spooking investors too much."

In January, Chief Executive John Chambers called the company's fiscal second quarter "a little bit more challenging" than expected because of a slowdown in customer spending only to see the company's shares rise. Cisco then reported lower-than-expected results, and said sales may decline for the first time.

General Electric Co. took another approach yesterday, coming right out and saying 2001 profit will rise by at least 10 percent even as the economy slows. The company didn't go much beyond saying earnings are ensured by an order backlog of more than \$44 billion and service contract revenue.

Revisions Rise

Companies are trying to comply with the guidelines for releasing information as the U.S. economy slows. The number of companies cutting profit forecasts for the latest quarter rose to 187 in the period beginning Feb. 26 from 125 in the same period before the fourth quarter.

The practices of other companies are still raising questions. Motorola Inc. analysts cut

profit and sales estimates last week after talking with officials from the cellular-telephone maker. Motorola said it didn't tell analysts to revise forecasts.

Raytheon, the third-largest defense contractor, is being investigated because the company privately briefed analysts about first-quarter earnings. The SEC probe will be followed closely, analysts said. The SEC declined to comment about Raytheon.

"The SEC is very interested in establishing Regulation FD in the minds of corporations," said Geoffrey Miller, a law professor at New York University. "The first highly publicized investigation is crucial. It's the one that everyone is going to watch."

Raytheon said last week the information it disclosed to analysts didn't violate SEC rules. David Polk, a spokesman, declined to comment yesterday.

Political Considerations

It's far from certain how the SEC will proceed in the investigation of Raytheon, legal experts said.

Laura Unger, acting chairman of the SEC, was the only commissioner who voted against Regulation FD. She said in August that the measure could cause companies to "say nothing at all" or release "every piece of information" that might be considered news. Unger later pledged to scrutinize in advance any efforts by the SEC staff to file cases under the rule.

"The staff has to be sensitive to the diplomatic and political realities of bringing a case without the support of the chairmen," said Columbia's Coffee.

Unger would have one of three commission votes on whether to take enforcement action if SEC staff were to recommend it.

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