

SEC to File First Fair Disclosure Case, Pitt Says (Update1)

(Adds information on Raytheon, Motorola and Abercrombie in 13th to 15th paragraphs.)

Washington, Dec. 24 (Bloomberg) -- The Securities and Exchange Commission plans to soon file its first case against a company for violating a 14-month-old rule that gives all investors equal access to important news, Chairman Harvey Pitt said.

"There's little doubt in my mind that there will be some enforcement action" under Regulation Fair Disclosure, Pitt said in an interview. He wouldn't name the company that he expects will be charged.

Raytheon Co., the third-biggest U.S. defense contractor, and Motorola Inc., the No. 2 mobile-phone maker, are among companies under investigation by the SEC for possible disclosure violations. A case to enforce the so-called Reg FD may answer questions about whether Pitt, who criticized the rule when he was a private-sector lawyer representing brokerages, will go easy on companies that violate fair disclosure standards.

"An enforcement case will increase compliance by companies and brokerages because it will show that this is a real law, and not just an abstract law on the books," Columbia University law professor John Coffee said.

The SEC has been investigating at least a half dozen cases of possible violations of Reg FD, then-SEC enforcement director Richard Walker said last May. Raytheon and Motorola both have denied any rule violations, which can lead to fines.

Raytheon, based in Lexington, Massachusetts, declined to comment Friday. Schaumburg, Illinois-based Motorola didn't respond to a request for comment.

'Sooner Rather Than Later'

The SEC also has been investigating Abercrombie & Fitch Co., a clothing retailer, for a possible selective release of a sales forecast in 1999, the company has said. That probe began before Reg FD took effect in October 2000. A company spokesman declined to comment Friday.

In previous comments as SEC chairman, Pitt, a Republican, has said broad reconsideration of Reg FD was not high on the agency's agenda as it moves to address financial irregularities at Enron Corp. and other problems. While not advocating an overhaul of the rule, Pitt had not made clear when or whether the SEC under his leadership would bring an enforcement case.

"It's likely there will be a case in the FD area sooner rather than later," Pitt, who has headed the SEC since August, said in an interview Friday.

'Stain' on Markets

Reg FD was intended to clean up a system that let companies parcel out important information to curry favor with select analysts or big investors. Former SEC Chairman Arthur Levitt championed the rule, saying selective disclosure was "a stain on U.S. markets" that often left small investors to learn about company developments only after others had traded on the news.

Nortel Networks Corp. shares, for example, fell 12 percent on Sept. 29, 1998, after the company told some shareholders and analysts that revenue growth in Asia and Europe would be disappointing. When Nortel made the news public four hours later, its market value had dropped by \$3.2 billion.

Since Reg FD took effect, scores of companies, including Bristol-Myers Squibb Co. and Colgate-Palmolive Co., have opened

quarterly earnings conference calls to all investors, or provided access to discussions through the Internet.

After leaving the SEC, Levitt became a director of Bloomberg LP, the parent company of Bloomberg News.

Raytheon drew the attention of SEC investigators early this year, after Chief Financial Officer Franklyn Caine, in private telephone calls last February, talked with analysts about the company's first quarter outlook. After those talks, analysts cut profit forecasts, with the average estimate falling to 27 cents per share from 33 cents in early February.

Chilling Information?

Motorola disclosed in March that the SEC was investigating discussions between analysts and Motorola executives. At least six securities firms cut estimates for Motorola on March 9, a day after analysts talked with company officials.

Abercrombie & Fitch said in November 1999 that the SEC was examining the retailer's release of a sales forecast the previous month after news reports that an Abercrombie executive privately warned a Lazard Freres & Co. analyst of sluggish third-quarter sales.

Some companies and brokerages have said the threat of sanctions for violating Reg FD chills the flow of information from firms about profits, new products and mergers.

SEC Commissioner Laura Unger, the most vocal agency critic of the rule, earlier this month recommended modest refinements to Reg FD. Her 37-page report urged the SEC to "speak more clearly about the types of information the regulation seeks to make public." She also proposed allowing greater use of the Internet for public disclosures.

No Fear

Walker, who left the SEC in August, tried to assure companies that the government wouldn't use Reg FD as "a trap for the

unwary."

"There is no need for fear or hysteria," the then-SEC enforcement director said last year. Walker said the SEC would look for cases in which companies are "providing a wink or nod, or a coded response calculated to convey indirectly information that cannot be disclosed directly."

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