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Executive Summary

This report has been prepared by the staff of the Ontario Securities Commission to present the findings of the Corporate Disclosure Survey. The Survey was sent to 400 randomly selected reporting issuers in the autumn of 1999. One hundred seventy responses were received, a 43% response rate. The purpose of this report is to bring to Issuers' attention the findings of the Survey.

In quantitative terms, the more significant results of the Survey can be summarized as follows:

- 71% of the respondents do not have written corporate disclosure policies (respondents were divided into two groups based on their market capitalization: of those with market capitalization less than $500 million only 20% have written corporate disclosure polices, while 45% of those with a market capitalization greater than $500 million have written corporate disclosure policies);

- 81% of respondents have one-on-one meetings with analysts;

- 98% of the respondents do not refrain from commenting on draft analyst reports;

- 26% of respondents do not have a 'black-out' period prior to scheduled earnings releases during which no market sensitive information is provided by the company to the public; and

- only 18% of respondents broadcast their quarterly conference calls via Internet or by other means.

Staff Report on Corporate Disclosure Survey

I. Introduction

This report has been prepared by the Staff of the Ontario Securities Commission ("Staff") to present the findings of the Corporate Disclosure Survey (the "Survey").

The Survey was conducted by the Continuous Disclosure Team as part of its initiative to examine the practice of "selective disclosure." This practice arises when a company discloses material information to select groups or individuals that has not been disclosed to the public. The disclosure of non-public material information to these recipients gives them a potential advantage over other investors that do not have access to this information. Unequal access to information undermines the 'fairness' of the capital markets and results in an uneven playing field. This practice, and merely the perception that it is occurring, threatens the public's confidence in the integrity of the capital markets and, so, is a primary concern for regulators and users of capital alike.

As a first step in addressing the issue of selective disclosure Staff has conducted a survey of disclosure practices of public companies. The Survey was not intended to identify companies that are selectively disclosing information. Rather the objective of the Survey was to seek input from Reporting Issuers ("Issuers") on current practice, and to identify areas where additional guidance from the OSC would be appropriate.

The Survey was sent to 400 randomly selected Issuers. One hundred and seventy responses were received, a 43% response rate. The purpose of this report is to summarize the findings of the Survey.

II. Results of Corporate Disclosure Survey

(a) Methodology

The Survey was mailed to 400 randomly selected Issuers. In addition, Issuers that were not selected as part of the random sample were encouraged to complete the Survey that was available on the OSC web site. As demonstrated in Figure 1, the classifications of respondents covered a broad range of industry categories.

(b) Findings

The following presentation is organized according to general themes and significant findings that emerge from the results.

An overview of the composition of the sample provides context for the results. Respondents' practices with respect to written disclosure policies, the designation of authorized spokespersons, conference calls, communication with analysts, 'black-out' periods and one-on-one meetings are outlined. Finally, the procedures that respondents have in place in case of inadvertent selective disclosure of material information are discussed, as well as additional guidance sought by respondents from Staff.

Characteristics of Respondents

A broad spectrum of industries and company size were represented by respondents. Figure 1 illustrates that 65% of respondents belong to Industrial & Consumer Products, Oil & Gas, and Mining industries. The remaining 35% fall under the categories of Communications & Media, Financial Services, Technology, Manufacturing and Real Estate. As represented in Figure 2, respondents were distributed by market capitalization as follows: 34% were under $75 million, 41% were between $75 million and $1 billion, and 25% were at $1 billion and above.

The vast majority of respondents (97%) are listed on the Toronto Stock Exchange. However, 48% of respondents are listed on two or more exchanges. For instance, 14% of respondents are listed on the New York Stock Exchange, and 10% of respondents are listed on NASDAQ.

Figure 1

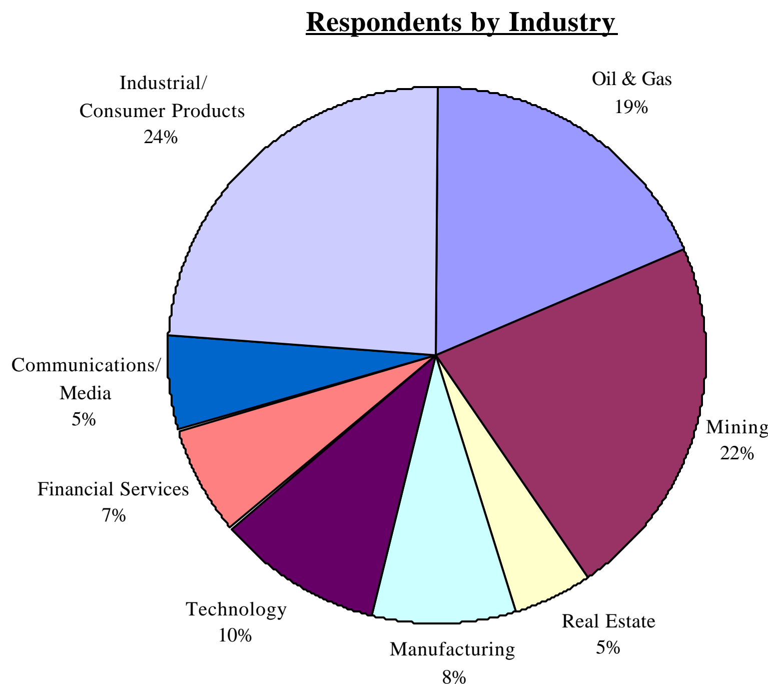
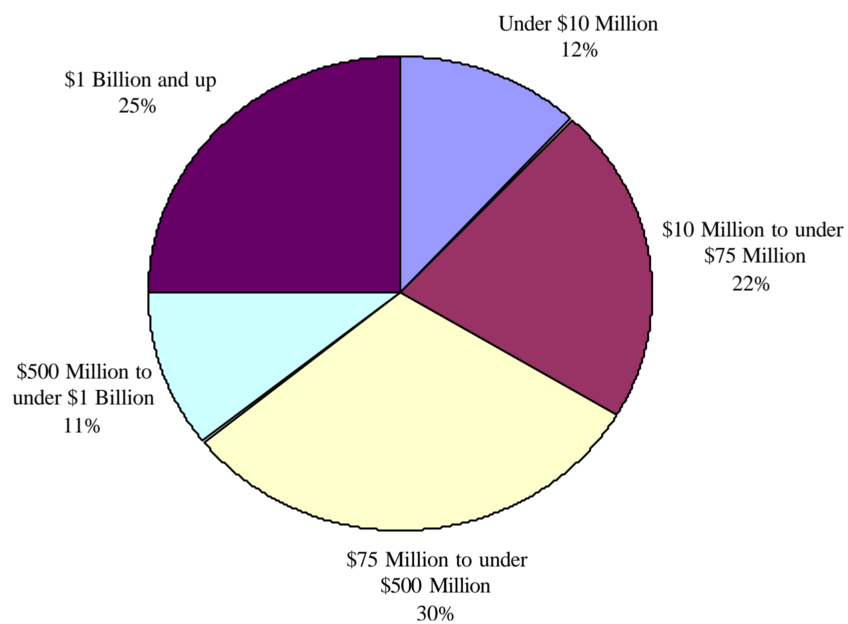


Figure 2



Written Corporate Disclosure Policies

Seventy-one percent of all respondents do not have written corporate disclosure policies. Of those with market capitalization less than $500 million, only 20% have written corporate disclosure polices, while 45% of those with a market capitalization greater than $500 million have written corporate disclosure policies.

Twenty-nine percent of respondents do have written disclosure policies, and these are plotted in Figure 3 according to market capitalization. The percentages of each category of Market Capitalization that have written disclosure policies are contrasted to show that among respondents, the larger the company, the more likely it was to have a policy in place. Fifty percent of respondents with market capitalization of $1 billion or more have written disclosure policies, as opposed to only 5% of respondents with market capitalization under $10 million.

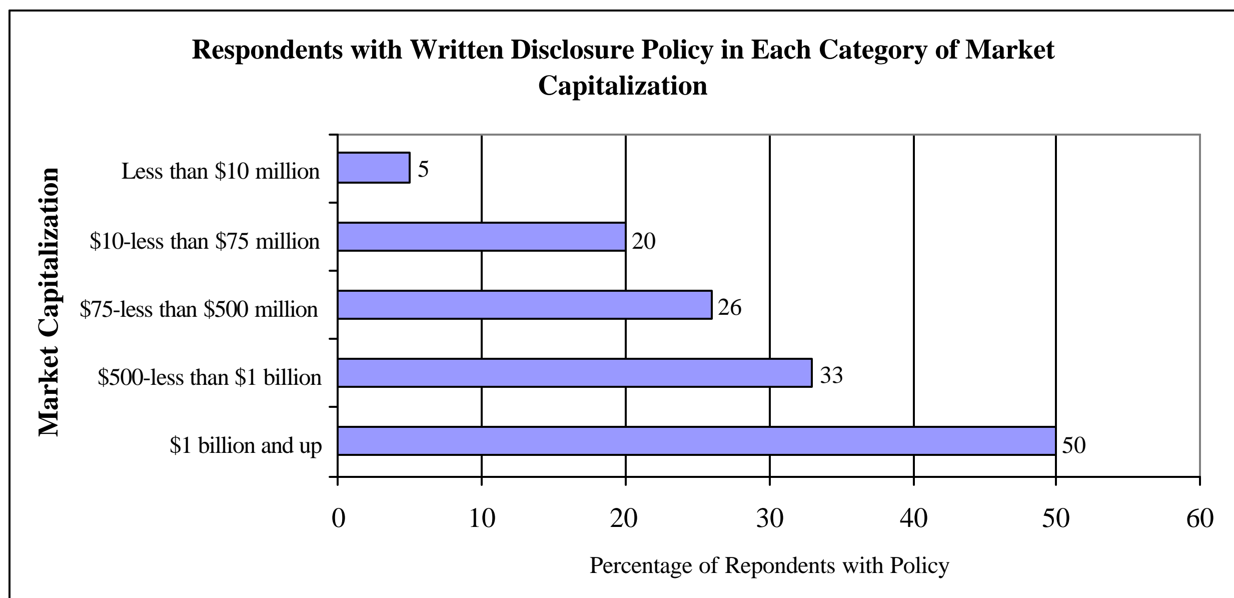


Figure 3

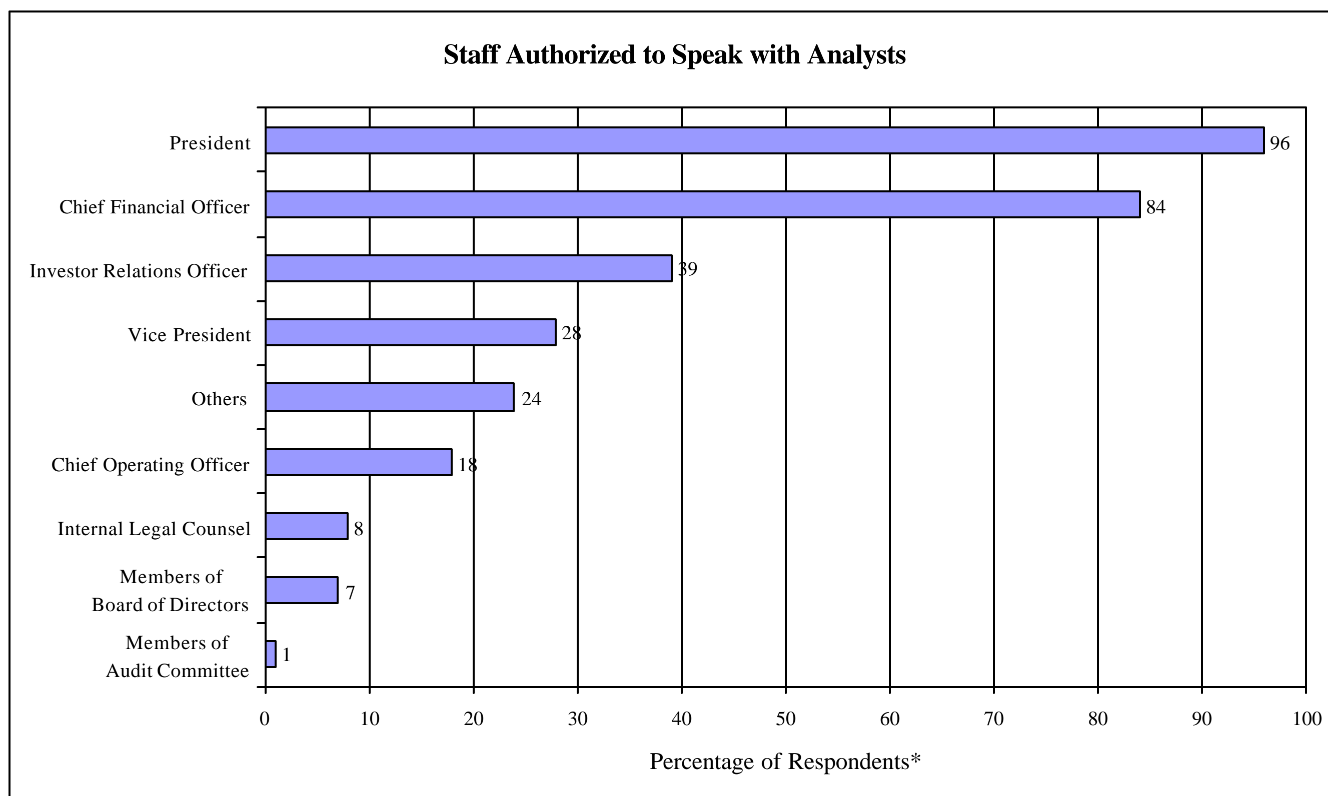
Some of the 71% of respondents that indicated having no formal disclosure policy in place described alternative methods that they employ, the most common of these is leaving discretion to the judgment of experienced senior officers. In these cases, methods for ensuring that material non-public information is not disclosed include directing inquiries to the company web-site and "on-going media training for

senior executives."

Authorized Spokespersons

Sixty-nine percent of respondents indicated that all communications are handled through three or less key officers, such as the President or the Chief Financial Officer. Figure 4 illustrates the percentage of respondents that cited the named officer as one of the company's designated spokespersons.

Figure 4



**Percentages do not add to 100 because respondents were able to choose more than one answer.*

Respondents with larger market capitalization were less likely to limit the number of spokespersons to three or less: 80% of respondents with market capitalization under $500 million have three or less spokespersons while only 52% of those with market capitalization over $500 million have three or less spokespersons.

The officers that were identified in the "Other" category were mostly chairpersons, controllers and treasurers.

In situations where companies have several contact points, some respondents said that all information is first reviewed by legal counsel or senior management. In some cases, information is scripted and conversations are monitored.

Conference Calls

Few respondents reported inviting retail investors and the media to regularly scheduled quarterly conference calls:

- 19% of respondents invite retail investors,
- 21% of respondents invite the media.

In order to ensure that non-public information is not inadvertently disclosed during conference calls:

- 41% of respondents script calls as well as expected questions and answers,
- 14% of respondents have in-house/external counsel monitor the calls.

Only 18% of respondents broadcast quarterly conference calls by the Internet or by other means. Moreover, market capitalization affects the respondents' propensity to broadcast quarterly conference calls:

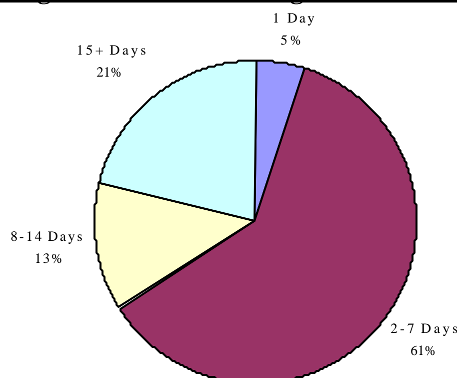
- only 9% of respondents with market capitalization under $500 million broadcast quarterly calls,
- while 36% of respondents with market capitalization over $500 million broadcast quarterly calls.

Recording of analyst calls:

- 43% of respondents record analysts calls,
- 78% of those that record the calls provide public access to the recordings.

The length of time that the recording can be accessed after the event varies among respondents. Figure 5 demonstrates that among respondents who record conference calls and provide public access to the recordings, 66% limit accessibility to 7 days or less.

Figure 5



Communication with Analysts

As would be expected, the data show that the larger a company's market capitalization, the more analysts follow the company. Sixty-two percent of respondents with market capitalization of $500 million or more have more than 10 analysts that follow the company. Conversely, only two percent of respondents with market capitalization under $75 million have more than 10 analysts that follow the company (see Table 1). Similarly, all respondents with market capitalization of $500 million or more had a following of analysts, whereas 35% of respondents with market capitalization under $75 million had no analyst following whatsoever.

Table 1

	Number of Analysts Following the Company			
Market Capitalization	None	1-5	6-10	11+
under $75 Million	35%	57%	6%	2%
$75 - 499.999 Million	----	51%	37%	12%
$500 Million and up	----	13%	25%	62%

It was also noted that the more analysts that follow a company, the more likely the company is to have a written disclosure policy. Only 10% of respondents with no analyst following reported having a written disclosure policy in place, while 51% of respondents with at least 11 analysts following the company have such a policy (see Table 2).

Table 2

	Number of Analysts Following the Company			
	None	1-5	6-10	11+
Respondents with Written Disclosure Policy in Place	10%	20%	26%	51%

Meetings with Analysts

Seventy-six percent of respondents meet with analysts at least on a quarterly basis, while 8% meet with analysts semi-annually or annually. Figure 6 demonstrates that the vast majority of respondents (81%) indicated that they hold one-on-one meetings with analysts, and 52% of respondents hold conference calls, while only 46% of respondents have group presentations with analysts.

While 81% of respondents reported conducting one-on-one meetings with analysts only, an additional 13% of respondents reported having one-on-one meetings or discussions with analysts, as well as institutional investors and/or retail investors. The overwhelming majority of these respondents indicated that only key officers, such as the Chief Executive Officer and President, and senior management are authorized to conduct these one-on-one meetings and discussions.

Of the total respondents conducting one-on-one meetings and discussions (94%), 49% indicated that employees are not counselled prior to attending these meetings or engaging in discussions.

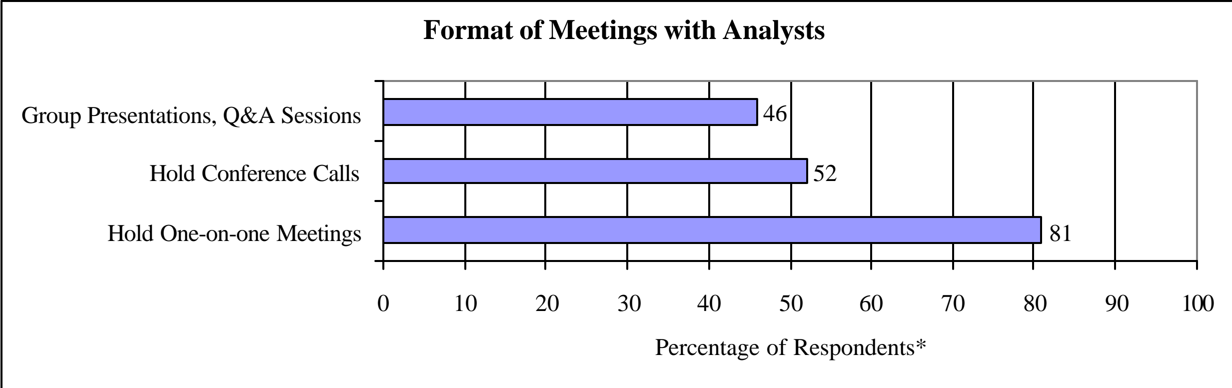


Figure 6

**Percentages do not add to 100 because respondents were able to choose more than one answer.*

Draft Analyst Reports

Respondents reported taking a variety of actions upon receiving draft analyst reports. Virtually all respondents (98%) indicated that they comment on draft analyst reports in some fashion. Eighty-seven percent of respondents indicated that they review the reports for accuracy, and many of these also bring errors to analysts' attention. Furthermore, 27% of respondents actually express a level of comfort on earnings projections (see Figure 7).

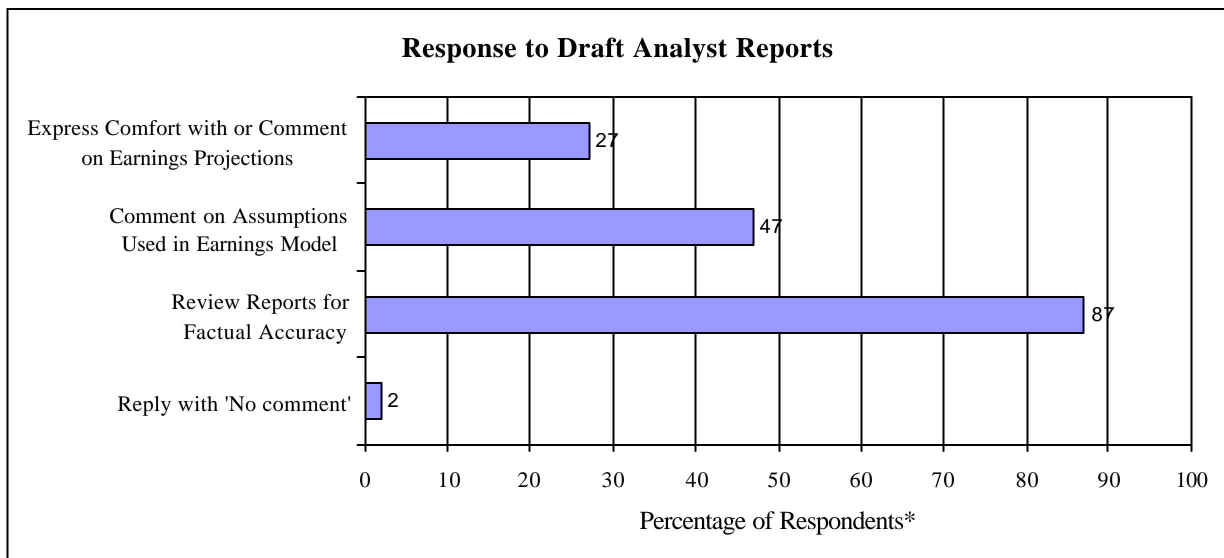


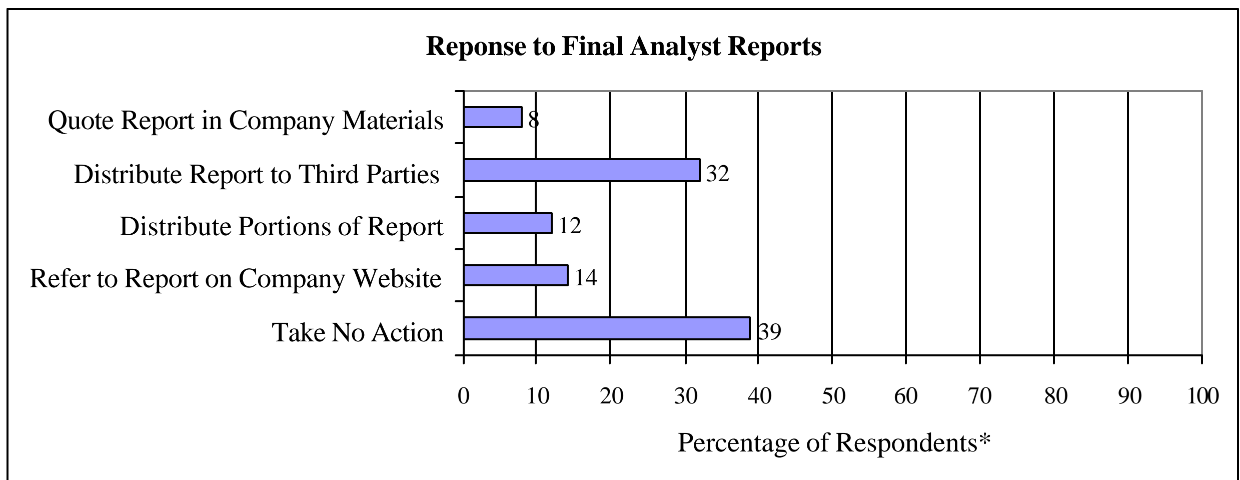
Figure 7

**Percentages do not add to 100 because respondents were able to choose more than one answer.*

Final Analyst Reports

Respondents also react in a variety of ways to final analyst reports. Thirty-nine percent of respondents indicated that they take no action whatsoever upon receiving a final analyst report. The remaining 61% reported carrying out at least one of the first four actions cited in Figure 8.

Figure 8



**Percentages do not add to 100 because respondents were able to choose more than one of the first four answers.*

Guidance Given to Analysts

The majority of respondents initially indicated that the guidance they give to analysts is restricted to information that is already in the public domain. They discuss the industry and general market trends and do not divulge any confidential or selective information. With regards to company-specific information, respondents said that they refer analysts to annual reports and other published materials. Some said that they review analysts' reports for factual accuracy and may correct errors. However, some inconsistency was noted in this section of responses, in that some of these respondents later described circumstances in which they reveal more. Some comment on analysts' assumptions, and many indicated that they would express their level of comfort with earnings projections, or would offer a range of estimates. Some respondents stated that they restrict discussions to an established set of comments that is used with all analysts. Many said that they do not give analysts any forecast of earnings, though some believe it is necessary to give some guidance regarding costs, expenditure forecasts, and future cash-flow forecasts with disclaimers, "to ensure that analysts do not publish unrealistic estimates or have unrealistic expectations."

When any financial guidance is provided to analysts, 68% of respondents make this information available to the public. This information is made available in a variety of ways from posting information on the Issuer's web site to providing information only when requested. Prior to communication with analysts, 62% of respondents consult either in-house or external counsel and 23% of respondents have legal counsel review the scripts for analyst presentations and question and answer sessions.

Respondents listed a wide range of practices in dealing with analysts' questions, from not answering them at all to "answering any and all questions that analysts may have," but most said that they formulate their responses in a way that offers a big picture and avoids specificity. Other recurring comments include:

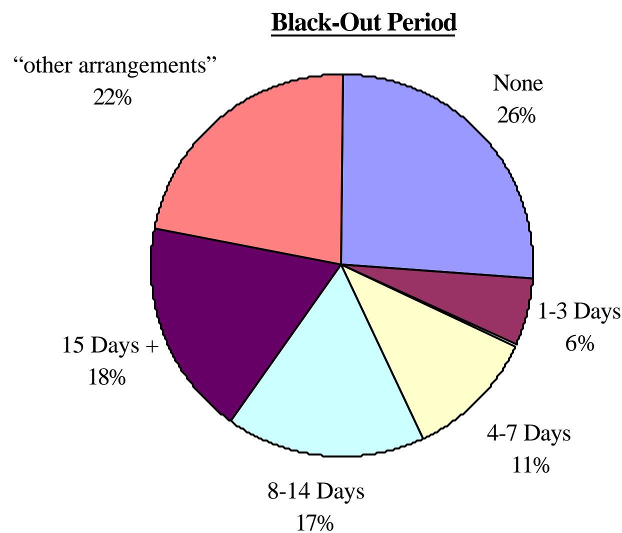
- "guidance given within a range of estimates, such as 'too conservative' or 'too optimistic' - no projections given"
- "company provides guidance to avoid misleading info"
- "we would indicate if the analyst's assumptions should be revisited"
- "make analysts aware if they have any erroneous statements"
- "provide clarification of technological developments"
- "provide broad assumptions on sales"
- "discuss marketplace trends"

Black Out Periods

Prior to scheduled earnings releases, Issuers may impose a "black-out period." This is a designated time-frame during which the company does not meet with or provide any information to the public, including analysts, institutional investors, retail investors and the media.

Twenty-six percent of all respondents stated that they impose no black-out period prior to earnings releases (see Figure 9). However, this varied with market capitalization: 24% of respondents with less than $500 million in market capitalization have a black-out period, while 77% of respondents with market capitalization greater than $500 million have a blackout period. Twenty-two percent of respondents indicated that they have "other arrangements" in place, such as alternative black-out periods (for example, a black-out period that begins at quarter-end and remains in effect until the date of the earnings release), or judgment is left to an investor relations officer.

Figure 9



Procedures that Companies Follow in case of Inadvertent Selective Disclosure of Material Information

The vast majority of respondents indicated that if material non-public information was inadvertently disclosed, they would immediately issue a press release, and "would make every reasonable effort to provide disclosure to the public." Many added that they would also notify the relevant stock exchanges. Others stated that they would consult with external legal counsel for advice on how to proceed. Other measures included requesting a trading halt, reporting the matter to the regulatory authorities, and requesting that the analysts keep the information confidential. Some indicated that they would investigate the cause of the leak and review disclosure procedures, while a small number stated that they would take no action whatsoever.

Additional Guidance Sought by Respondents

Thirty-nine percent of respondents offered suggestions with respect to guidance available from the Commission. Two main themes emerge in the type of guidance sought by respondents. The first involves improving the quality of guidance regarding how to comply with the OSC's rules and regulations. A call for clarity, specificity and practicality resounds throughout the responses. Many suggested that a policy manual with clear standards and definitions of terms such as materiality and confidentiality be distributed. Some expressed the need for more explicit guidance in the areas of dissemination of earnings results, legal ramifications for rule violations, and most importantly, how to interact with analysts. Some respondents requested that the type and amount of information that is suitable to relay to analysts be specifically stipulated, including examples of language that should be used when refusing requests for information. Appropriate conduct with regards to the internet and chatrooms was another recurring topic. Some felt that best practices guidelines should be industry- or market cap-specific to increase relevance, particularly for smaller cap companies.

On the other hand, 52% of respondents expressed concern regarding over-regulation and how "very specific rules and sanctions would cause companies to reduce the amount and frequency of information that flows to the public domain." It was felt that this would also undermine the professional and ethical judgment of officers involved.

The second theme pertains to the regulation of analysts. Nineteen percent of suggestions revolved around the conduct of analysts, particularly with regards to "aggressive analysts' pursuit of inside information." They felt that rules for acceptable conduct should be enforced, including how they deal with insider information, and that analysts should be held responsible if they provide non-public information. However, respondents sought guidance on ways to engender analysts' support and to maintain good relationships with them.