european corporate governance institute

Managers' Private Communications with Analysts: The Effect of SEC v. Siebel Systems Inc.

Finance Working Paper N° 635/2019
Revised August 2025

Ashiq Ali
University of Texas at Dallas
Michael T. Durney
University of Iowa
Jill E. Fisch
University of Pennsylvania and ECGI
Hoyoun Kyung
University of Missouri at Columbia

© Ashiq Ali, Michael T. Durney, Jill E. Fisch and Hoyoun Kyung 2025. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

This paper can be downloaded without charge from:
https://doi.org/10.67929/ecgi-fin-635-2019

european corporate governance institute

ECGI Working Paper Series in Finance

Managers' Private Communications with Analysts: The Effect of SEC v. Siebel Systems Inc.

Working Paper N° 635/2019

August 2025

Ashiq Ali
Michael T. Durney
Jill E. Fisch
Hoyoun Kyung

We thank Francois Brochet (editor) and two anonymous reviewers for their valuable comments. For helpful comments, we also thank Sudipta Basu, Bill Cready, Dain Donelson (discussant), Rebecca Files, Jere Francis, Seil Kim, Jagan Krishnan, Jayanthi Krishnan, Inder Khurana, Ningzhong Li, Jihwon Park, Raynolde Pereira, Elaine Mauldin, Suresh Radhakrishnan, Gil Sadka, Amy Zang, Jieying Zhang, and Yuan Zhang and workshop participants at the University of Texas at Dallas, University of Missouri-Columbia, Temple University, HKUST, and the 2021 FARS Midyear Meeting. We also thank Jacob Busse for excellent research assistance. An earlier version of this study was titled, "Implicit Communication and Enforcement of Corporate Disclosure Regulation."

© Ashiq Ali, Michael T. Durney, Jill E. Fisch and Hoyoun Kyung 2025. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

Abstract

In 2005, the SEC suffered a high-profile loss in its first court case, SEC v. Siebel Systems Inc., in effort to enforce Regulation Fair Disclosure (Reg FD). We examine the impact of this loss on managers' selective disclosure to sell-side analysts. Using a variety of tests, we provide evidence that the information content of analyst reports increased after the Siebel decision, especially for observable instances of private meetings. This finding suggests that such selective disclosure increased significantly after the court's decision. Our results also suggest that the increased selective disclosure faded as the SEC resumed enforcement actions related to Reg FD in 2009. In exploratory analyses, we survey and interview law firm partners to investigate possible mechanisms for our results; their responses suggest that the Siebel outcome reduced manager concern about liability from selective disclosure. Collectively, our results highlight how the anticipated costs of regulatory enforcement affect private information flow from managers to analysts in particular.

Keywords: Corporate Disclosure Regulation, Managers' Private Communications, SEC Enforcement Threat, Siebel Systems Case, Regulation Fair Disclosure

JEL Classifications: M40, M48, K22, K42

Ashiq Ali*
Charles and Nancy Davidson Distinguished Professor
University of Texas at Dallas, Naveen Jindal School of Management
800 West Campbell Road
Richardson, TX 75080-3021, United States
phone: + 1 972 883 6360
e-mail: ashiq.ali@utdallas.edu

Michael T. Durney
Assistant Professor of Accounting
University of Iowa, Tippie College of Business
341 Schaeffer Hall
Iowa City, IA 52242-1097, United States
e-mail: mdurney@uiowa.edu

Jill E. Fisch
Saul A. Fox Distinguished Professor of Business Law
University of Pennsylvania, School of Law
3501 Sansom Street
Philadelphia, PA 19104, United States
phone: +1 215 746 3454, fax: +1 215 573 2025
e-mail: jfisch@law.upenn.edu

Hoyoun Kyung*
Assistant Professor of Accountancy
University of Missouri at Columbia
344 Cornell Hall
Columbia, MO 65211, United States
e-mail: kyungh@missouri.edu

*Corresponding Author

Final Version of Manuscript with Title Page (PDF)

Managers' Private Communications with Analysts: The Effect of *SEC v. Siebel Systems Inc.*

Ashiq Ali*
University of Texas at Dallas
ashiq.ali@utdallas.edu

Michael T. Durney
University of Iowa
mdurney@uiowa.edu

Jill Fisch
University of Pennsylvania
jfisch@law.upenn.edu

Hoyoun Kyung
University of Missouri-Columbia
kyungh@missouri.edu

January 2023

Accepted by Francois Brochet. We thank Francois Brochet (editor) and two anonymous reviewers for their valuable comments. For helpful comments, we also thank Sudipta Basu, Bill Cready, Dain Donelson (discussant), Rebecca Files, Jere Francis, Seil Kim, Jagan Krishnan, Jayanthi Krishnan, Inder Khurana, Ningzhong Li, Jihwon Park, Raynolde Pereira, Elaine Mauldin, Suresh Radhakrishnan, Gil Sadka, Amy Zang, Jieying Zhang, and Yuan Zhang and workshop participants at the University of Texas at Dallas, University of Missouri-Columbia, Temple University, HKUST, and the 2021 FARS Midyear Meeting. We also thank Jacob Busse for excellent research assistance. An earlier version of this study was titled, "Implicit Communication and Enforcement of Corporate Disclosure Regulation."
*Corresponding author.

Electronic copy available at: https://ssrn.com/abstract=3440852

Managers' Private Communications with Analysts:
The Effect of *SEC v. Siebel Systems Inc.*

Abstract: In 2005, the SEC suffered a high-profile loss in its first court case, *SEC v. Siebel Systems Inc.*, in an effort to enforce Regulation Fair Disclosure (Reg FD*).* We examine the impact of this loss on managers' selective disclosure to sell-side analysts. We provide evidence that the informativeness of analyst reports increased after the Siebel decision, especially for observable instances of private meetings. This finding suggests that such selective disclosure increased significantly after the court's decision. Our results also suggest that the increased selective disclosure faded as the SEC resumed enforcement actions related to Reg FD in 2009. In exploratory analyses, we survey and interview law firm partners to investigate possible mechanisms for our results; their responses suggest that the Siebel outcome reduced manager concern about liability from selective disclosure. Collectively, our results highlight how the anticipated costs of regulatory enforcement affect private information flow from managers to analysts in particular.

Keywords: Corporate Disclosure Regulation, Managers' Private Communications, SEC Enforcement Threat, Siebel Systems Case, Regulation Fair Disclosure

Electronic copy available at: https://ssrn.com/abstract=3440852

Managers' Private Communications with Analysts:
The Effect of *SEC v. Siebel Systems Inc.*

1. Introduction

Disclosure regulation and enforcement focus primarily on public disclosures through securities filings, press releases, and public statements made by corporate officials. Corporations and corporate officials also disclose extensive information privately, however, through communications between officials and analysts in private meetings. Private meetings offer companies unique and expansive opportunities to communicate because their specific disclosures often are not directly observable and because only a select few market participants are invited (Bowen et al. 2020; Durney 2021). A number of studies emphasize the importance of private meetings for conveying significant market-sensitive information (see, e.g., Soltes and Solomon 2015; Bengtzen 2017; Bowen et al. 2020; Cai and Qi 2021). At the same time, private meetings can cause investors to lose confidence in the integrity of the markets as "a privileged few gain an informational edge -- and the ability to use that edge to profit -- from their superior access to corporate insiders, rather than from their skill, acumen, or diligence." (SEC 2000).

To assuage such concerns, the Securities & Exchange Commission (SEC) adopted Regulation Fair Disclosure (Reg FD) to police disclosure in the private meeting context. Reg FD does so by prohibiting corporations and corporate officials from engaging in selective disclosure of material information, and imposing potential liability on those who do so. Despite the adoption of Reg FD, however, private meetings between corporate officials and analysts continue. Moreover, the SEC's efforts to enforce Reg FD have been challenged, most specifically by the high-profile 2005 Siebel Systems decision, in which a federal judge rejected the SEC's attempt to impose liability for statements by a corporate official in private meetings with investors that, according to the SEC, contrasted with the company's public statements.

The Siebel Systems case presented a critical test for the impact of Reg FD on information flow. Using this case as our empirical setting, we examine the flow of information from

Electronic copy available at: https://ssrn.com/abstract=3440852

corporations to analysts. We do so by examining changes in the informativeness of analyst earnings forecasts and stock recommendations (hereafter, analyst outputs) after the Siebel decision. We use a sample of analyst outputs issued from September 1, 2004, to August 31, 2006, the two-year period around the Siebel decision. Using Gintschel and Markov's (2004) approach, we find that the effect on absolute daily stock returns due to analyst outputs is significantly greater in the one-year period after the Siebel decision than in the one-year period before the Siebel decision. The magnitude of the difference is a 0.09 percent absolute daily stock return, which is economically meaningful given that our sample firms' public disclosures (earnings announcements, management forecasts, and 8-Ks) generate 0.76 percent absolute daily stock returns.

To mitigate the concern that our results are driven by an unspecified time trend, we perform a pseudo-event test (e.g., Kross and Suk 2012). We divide the sample period into three non-overlapping eight-month sub-periods (Sept. 1, 2004-April 30, 2005; May 1, 2005-December 31, 2005; and January 1, 2006-August 31, 2006), and use January 1, 2005 and May 1, 2006 as pseudo-event dates for the first and third sub-periods, respectively. As expected, for the pseudo-event dates, we do not observe a significant change in the informativeness of analyst outputs. However, for the second sub-period with the actual date of the Siebel decision, September 1, 2005, as the event date, we find results similar to that for the full sample.

To rule out an alternative explanation that the observed change in the informativeness of analyst outputs around the Siebel decision is due to other contemporaneous macroeconomic events, we use ADR firms as controls (Francis et al. 2006; Koch et al. 2013). ADR firms are not subject to Reg FD and, as expected, we find an insignificant increase in market response to analyst outputs of ADR firms after the Siebel decision. Further, using a difference-in-differences research design, we find that the increase in the informativeness of analyst outputs after the Siebel decision is significantly greater for U.S. firms than for ADR firms.

Electronic copy available at: https://ssrn.com/abstract=3440852

To further establish that the increased informativeness of analyst outputs after Siebel is driven by an increase in selective disclosure from managers to analysts, we conduct three cross-sectional tests and show the following. The increase in the informativeness of analysts' outputs after Siebel is (i) greater when analysts mention in their report that they recently met with management (Brochet et al. 2014), (ii) greater when analyst outputs are issued prior to Reg FD 8-K filings, which have to be made within 24 hours following managers' selective disclosure of material non-public information (Campbell et al. 2021), and (iii) smaller for firms that regularly make public disclosures, reflecting managers' preference for public disclosure (Brochet et al. 2011).

Additional analyses provide evidence that suggest several other characteristics of the increased selective disclosure to analysts in the post-Siebel period. First, the increased selective disclosure is more likely to contain positive information, consistent with the notion that corporate officials prefer to communicate positive information in private meetings because they may face potential liability for disclosing such information publicly as, for example, prior research documents that optimistic tone in public disclosures can subject officials to increased litigation risk (Rogers et al. 2011; Cazier et al. 2020). Second, the increased selective disclosure is more likely to be made to more than just one or two analysts. Third, the amount of selective disclosure after Siebel is not significantly different from that during the pre-Reg FD period, indicating the reversal of the Reg FD effect due to the Siebel decision. Finally, the effect of Siebel on selective disclosure lasts for about four years, and then fades away after the SEC's first post-Siebel Reg FD enforcement action in 2009, consistent with the notion that the level of regulatory enforcement affects selective disclosures by managers.

Although the above results suggest an increase in the informativeness of analyst outputs after the Siebel decision, they do not clearly show the mechanism for this effect,[1] because the very

[1] Currently, companies are not required to disclose publicly the discussions in their private meetings with analysts or investors (Soltes 2018). Soltes (2014), Solomon and Soltes (2015), and Park and Soltes (2019) overcome this data

Electronic copy available at: https://ssrn.com/abstract=3440852

nature of private meetings prevents us from directly documenting the information disclosed in such settings.[2] To better understand the mechanism, we survey and interview law firm partners who have both specific expertise in Reg FD and familiarity with the Siebel case. Our survey results indicate that securities lawyers perceive that the post-Siebel increase in the informativeness of analyst outputs is driven at least in part by increased information flow between managers and analysts in private meetings. Our interviews with the securities lawyers support the notion that the Siebel ruling reduced the chilling effect of Reg FD on corporate communications, increasing overall information flow.

Our study contributes to the literature by providing evidence on how a critical court decision, and its effect on subsequent enforcement efforts, affected private disclosure in the post-Reg FD environment. Specifically, our evidence suggests that the Siebel decision resulted in a significant increase in the informativeness of analyst outputs, presumably due to an increase in private information leakage to analysts. Further, our finding suggests that the increase in selective disclosure following Siebel faded away following the SEC's renewed Reg FD enforcement actions starting in 2009. In other words, the reduction in selective disclosure that Reg FD achieved prior to the Siebel decision characterizes the information environment of more recent years.

Our results corroborate a contemporaneous study by Allee et al. (2022). Allee et al. conclude, as do we, that the Siebel decision increased selective disclosure by managers. The Allee et al. (2022) paper relies on a different empirical approach, documenting increased informed trading by transient institutional investors after Siebel. Our findings complement theirs in that we show that

---

limitation to some extent by obtaining proprietary records of private meetings from one or two companies. They are able to address several interesting questions with that data. However, due to potential legal concerns with possessing records of management's responses, they could not obtain permission to analyze information that was disclosed by management (cf. Park and Soltes 2019).

[2]We note that prior studies on the effect of Reg FD also rely on indirect evidence. Studies that address whether Reg FD reduced private disclosure by firms of non-public information to analysts arrive at their conclusions by examining the change in the properties of analysts' forecasts and analysts' workload (Gintschel and Markov 2004; Mohanram and Sunder 2006; Kross and Suk 2012). Studies that address the existence of private disclosures of non-public information under Reg FD by firms to analysts, also rely on indirect evidence. For example, Green et al. (2014) examine whether access to management at broker-hosted investor conferences is associated with more informative research output by analysts.

Electronic copy available at: https://ssrn.com/abstract=3440852

informativeness of analysts' reports increased significantly after the Siebel decision, especially in the private meeting context, presumably because of an increase in selective disclosure by managers to financial analysts.[3] Also, Allee et al.'s tests explicitly suggest that the increased selective disclosure after the Siebel decision contained negative information. Additionally, we provide evidence indicating that the increased selective disclosure after Siebel likely contained positive information, albeit to analysts. Moreover, our survey results and interviews with securities lawyers provide an exploratory analysis that complements the empirical results. This analysis indicates that Siebel reduced the chilling effect of Reg FD and reduced the concern of corporate officials that information conveyed in private meetings would be subject to SEC enforcement. We further show that the effect of Siebel, in terms of increased selective disclosure to analysts, faded away after the SEC resumed its Reg FD enforcement actions starting in 2009.[4]

Our study also has implications for the literature on how SEC enforcement threats affect managers' actions. Kedia et al. (2015) show that while firms are more likely to manage earnings following the public announcement of a restatement by peer firms, the contagion is absent when the restating firm is disciplined by the SEC and its shareholders. Also, using a cross-listed foreign firm sample, Silvers (2016) shows that SEC enforcement actions against a foreign firm for financial misconduct, such as a financial misstatement, disciplines managers at non-targeted peer foreign firms. We extend this line of research by examining the effect of SEC enforcement threats in the context of private communication and Reg FD. Unlike the SEC's disciplinary actions against financial statement misstatements where the information is publicly disclosed and thus the contagion and disciplining effects take place in each of the specific account levels in financial statements (Kedia et al. 2015), information communicated in private meetings is publicly

[3] Note that prior studies that examine the effects of Reg FD also tend to focus on the effect on just one type of market participant at a time. The findings of these studies then reinforce each other's conclusions. For example, to document the effectiveness of Reg FD, a set of studies examined changes in financial analyst outputs (e.g., Arya et al. 2005; Gintschel and Markov 2004; Irani and Karamanou 2003; Mohanram and Sunder 2006) whereas others investigated changes in equity investor behavior (e.g., Ke et al. 2008; Li et al. 2011; Sinha and Gadarowski 2010).

[4] Allee et al.'s (2022) analysis focuses on the effect of Siebel over a four-year period ending in 2009 noting: "so that the pre- and post-Siebel periods have a comparable number of quarters." They do not directly examine the effect of the resumption of SEC enforcement actions in 2009.

Electronic copy available at: https://ssrn.com/abstract=3440852

unobservable and Reg FD enforcement actions rarely include hard evidence. As such, findings in Kedia et al. (2015) from the public disclosure setting may not generalize to an SEC enforcement threat in the Reg FD setting. Additionally, our empirical setting is unique because it is an SEC's enforcement failure due to a federal court's decision, thereby capturing both a reduction in the enforcement threat and an increase in uncertainty about SEC's subsequent enforcement actions. Thus, our findings can speak to the effect of change in the mean as well as the variance of SEC enforcement threat.

The rest of the paper is organized as follows. Section 2 describes Reg FD and the Siebel decision. Section 3 presents the results of our empirical analyses, Section 4 briefly discusses our survey and interviews with law firm partners, and Section 5 concludes.

2. Regulation FD and the Siebel Decision

Regulation FD

The SEC adopted Reg FD on August 10, 2000, with the goal of reducing information asymmetry in the market. The regulation was intended to respond to the Supreme Court's decision in *SEC. v. Dirks*, which held that a research analyst who received material non-public information from a corporate insider was not liable for insider trading unless the insider's tip constituted a breach of his fiduciary duty. The rule was highly controversial. Although many commentators believed the rule would level the playing field for small investors, others expressed concern that it would have a chilling effect on the flow of information from issuers to the market (Kobi 2002). One reason for this concern was uncertainty about the applicable standard of materiality. As adopted, Reg FD prohibits selective disclosure of material information. The rule did not define materiality, however; instead, it incorporated a fairly vague judicially promulgated definition that has been extensively criticized.[5] To assist firms in assessing materiality, the SEC provided detailed

[5] Case law defines information as material if "there is a substantial likelihood that the information would have been viewed by a reasonable investor as having significantly altered the total mix of information made available" based on the U.S. case laws, *TSC Industries v. Northway Inc.* (1976) and *Basic, Inc. v. Levinson* (1988).

Electronic copy available at: https://ssrn.com/abstract=3440852

interpretive guidelines, which included identifying seven categories of information that "have a higher probability of being considered material" (see, e.g., SEC 1999, 2000; Maco 2000; Walker 2000). Thus, issuers who engage in private communication with analysts and investors after the adoption of Reg FD have the difficult task of determining the extent to which the words and conduct of corporate officials during those meetings could be interpreted as conveying material non-public information.

We note that corporate officials may naturally have a preference to communicate at least some information in private meetings because they face greater potential liability for publicly communicating information, particularly optimistic information, under SEC Rule 10b-5, if that information turns out to be incorrect. This liability can be enforced by private litigants through class actions in addition to SEC enforcement actions. Indeed, studies have found that corporate officials' use of optimistic tone in public disclosures can subject them to increased litigation risk (Rogers et al. 2011; Cazier et al. 2020). In contrast, corporate officials are unlikely to be subject to 10b-5 liability for statements made *privately* both because such disclosures are made to a limited audience, rendering them unsuitable for a class-action lawsuit, and because a private claim would require proof by the plaintiffs that the private disclosures materially altered the total mix of information available, proof that would implicitly concede that the plaintiffs had received material non-public information.[6]

Reg FD has been the subject of extensive empirical study. Initial studies of its effect found that the regulation succeeded in significantly reducing selective disclosure of non-public information to analysts (see, e.g., SEC 2001; Gintschel and Markov 2004; Mohanram and Sunder 2006; Wang 2007; Kross and Suk 2012). More recent studies show, however, that private communication with management remains an important source of non-public information for analysts (see, e.g., Soltes 2014; Green et al. 2014; Solomon and Soltes 2015; Bushee et al. 2018; Campbell et al. 2021). Brown et al. (2015, 2016, 2019) report survey data documenting the

[6] If plaintiffs acknowledged receiving material non-public information and traded on that information, they would face potential liability for illegal insider trading.

Electronic copy available at: https://ssrn.com/abstract=3440852

significance of private meetings to investor relations officers, buy-side investors, and sell-side analysts. Additionally, the average investor relations officer participates in more than 230 private meetings per year (Durney 2021). Solomon and Soltes (2015) report that when investors meet privately with management, they make more informed trading decisions. Recent studies suggest ambiguity concerning the nature of the information that managers may legally disclose privately - Soltes (2018) shows disagreement among managers and regulators and Asay et al. (2022) show situational factors that affect investor relations officers' assessments of information materiality. We build on these papers by demonstrating how the Siebel ruling likely affected not just the willingness of managers to meet privately but also the informativeness of those meetings.

The Siebel Decision

Following its adoption of Reg FD and prior to the U.S. federal district court's ruling on *SEC v. Siebel Systems, Inc.* on September 1, 2005, the SEC brought six early enforcement actions (Hanley 2003; Fisch 2013). Notably, these early actions were resolved through settlement, so they did not involve judicial evaluations of the conduct at issue. The SEC's approach to addressing selective disclosure was challenged, however, when in 2005, the U.S. Federal District Court for the Southern District of New York dismissed the SEC's second lawsuit brought against Siebel Systems.[7] The SEC alleged that Siebel's CFO Kenneth Goldman selectively disclosed material non-public information in private investor meetings. The SEC noted that prior to the meetings, the company publicly provided a negative outlook about the company's business activity, whereas, at the meetings, Goldman provided an optimistic outlook, which materially contrasted with the negative tone of the company's public disclosures.

The SEC's allegations were based on two private meetings in New York between officials at Siebel Systems, Inc., Kenneth A. Goldman and Mark Hanson, a senior executive, and analysts and investors. The first was a one-on-one meeting with Alliance Capital Management. The second

[7] SEC v. Siebel Sys., Inc., 384 F. Supp. 2d 694 (S.D.N.Y. 2005).

Electronic copy available at: https://ssrn.com/abstract=3440852

was an invitation-only dinner hosted by Morgan Stanley. At these private meetings, Goldman made statements that, in the view of the SEC, more positively characterized the company's business activity and sales pipeline.

The investors that attended the meetings promptly bought the company's stock, and its price increased by 8% (see Figure 1), fueled by increased trading volume (see Figure 2) that was nearly double the average daily volume for the preceding 12 months. Immediately following the CFO's comments, two Alliance portfolio managers who attended the meeting placed orders to buy 114,200 shares of the company's stock. Prior to the meeting, the portfolio managers had not held the stock for approximately 12 months in the funds that they managed. Within 24 hours after the meeting, Alliance Capital Management's net position on Siebel stock increased by 222,400 shares. At least two of the attendees at the Morgan Stanley dinner bought the company's stock the next morning, and Morgan Stanley disseminated the CFO's positive statements to select investors. For example, a Morgan Stanley institutional sales trader called a client and said that the Morgan Stanley "analyst's take" on the dinner was "the body language was positive…the pipeline is building and expected to grow," and characterized the information as "positive data points." Morgan Stanley also communicated the CFO's positive comments by e-mail to hundreds of investors, many of whom bought Siebel stock the following morning.

On September 1, 2005, the court held that the SEC had been too aggressive in charging Siebel with violating Reg FD. The court focused on a close reading of the text of the official's statements to conclude that his private disclosures were "equivalent in substance to the information publicly disclosed [by the company]."[8] Explaining that "The regulation does not prohibit persons speaking on behalf of an issuer, from providing mere positive or negative characterizations, or their optimistic or pessimistic subjective general impressions, based upon or drawn from the material information available to the public," the court concluded that Reg FD required a material

[8] Siebel at 704.

Electronic copy available at: https://ssrn.com/abstract=3440852

difference between the company's public statements and those made in the private meetings, and that there was no material difference in the case before it.

The court's ruling in the Siebel Systems case revealed the difficulty associated with using enforcement actions pursuant to Reg FD to limit selective disclosures. First, it is difficult to seek legal action against private disclosures because there is typically no transcript or verbatim record of the information conveyed. Second, the court ruled that the SEC's approach placed an "unreasonable burden" on managers to manage the content conveyed by their private statements. Third, Siebel conveyed to market participants the message that a significant stock price reaction or trading activity by select investors following a private meeting was not, by itself, sufficient to prove that Reg FD had been violated. The court specifically held that "Although stock movement is a relevant factor to be considered in making the determination as to materiality, it is not, however, a sufficient factor alone to establish materiality."[9] The decision thus appeared to recognize that communications through private meetings could result in a level of information asymmetry without being actionable under Reg FD.

Siebel was both a high-profile decision and the first opportunity for a court to weigh in on the scope of behavior covered by Reg FD. As a result, the court case generated national attention even in its preliminary stages (Page and Yang 2005). The Chamber of Commerce of the United States filed an *amicus brief* in support of Siebel's motion to dismiss.[10] A group of 24 securities law professors filed *amicus briefs* in opposition to the motion. The court's ruling was promptly and widely publicized by major news media outlets.[11] In reporting on the decision, the Wall Street Journal described it as "closely watched" and quoted a practitioner as characterizing the decision as "a big warning shot across the bow of the SEC" (Solomon 2005). Subsequent commentary

[9] Siebel at 707.

[10] Available here: http://www.uschamber.com/nclc/caselist/briefsrtoz.htm. The Chamber and others argued that Reg FD was an unconstitutional restriction of free speech. See Norris (2005).

[11] The Wall Street Journal (Solomon 2005), the New York Times (Labaton 2005), the Washington Post (Johnson 2005), and the Financial Times (Parker 2005) featured the ruling the next day.

Electronic copy available at: https://ssrn.com/abstract=3440852

described Siebel as a "landmark" decision and noted that in the four years following the decision, the SEC did not bring another Reg FD enforcement action (Morgan 2007).

3. Empirical Analyses

Research Design

To understand the effect on U.S. firms' selective disclosure behavior due to the Siebel Systems decision, we examine changes in the flow of non-public information from managers to analysts, by following an approach that is similar to Gintschel and Markov (2004). Their study examines whether the flow of private information from managers to analysts decreases following the passage of Reg FD by estimating the change in the incremental absolute stock returns around analyst outputs. We estimate the following model to examine the change in the informativeness of analyst outputs following the Siebel decision:

$$ABS_RET_{i,t} = \alpha + \beta_1\, FIRM_PUBLIC_DISC_{i,t} + \beta_2\, ANALY_OUT_{i,t} + \beta_3\, POST_SIEBEL_t + \beta_4\, ANALY_OUT_{i,t} \times POST_SIEBEL_t + \varepsilon_{i,t} \quad (1)$$

where $ABS_RET_{i,t}$ is absolute stock returns of firm *i* on day *t*. $FIRM_PUBLIC_DISC_{i,t}$ equals one for firm *i* on day *t* if the trading day is within [0, +1] days of one or more public disclosures, specifically, earnings announcements, management earnings guidance, and 8-K filings, and zero otherwise. $ANALY_OUT_{i,t}$ equals one for firm *i* on day *t* if that day is within the [-1, +1] window of at least one analyst earnings forecast or stock recommendation that is not issued within two days, i.e. [0, +1], following the firm's earnings announcements, management earnings guidance, and 8-K filings, and $ANALY_OUT_{i,t}$ equals zero otherwise (Gintschel and Markov 2004). $POST_SIEBEL_t$ equals one if day t is after the court's ruling on Siebel Systems on September 1,

Electronic copy available at: https://ssrn.com/abstract=3440852

2005, and zero otherwise. Standard errors are two-way clustered at the firm and trading day levels in all regressions.[12]

To determine the window for measuring the informativeness of analyst outputs, Gintschel and Markov (2004) examine stock market reactions on each of -10 to +5 days around analyst outputs for their two-year sample period around the implementation of Reg FD in 2000. They find that absolute standardized stock returns are significantly positive for each of the -5, -4, -3, -2, -1, 0, and +1 days around analyst information output. Accordingly, they use [-5, +1] days window around each analyst output to measure the informativeness of analyst outputs. We carry out a similar analysis for the two-year sample period around the U.S. federal district court's ruling on Siebel on September 1, 2005. We find that the absolute standardized stock market reactions are significantly positive for each of the days -1, 0, and +1 around analyst outputs. Thus, we use [-1, +1] days window around analyst outputs to examine the change in the informativeness of analyst outputs due to the Siebel decision.[13]

In equation (1), α captures absolute daily stock returns for days without public firm disclosures and analyst outputs. β_1 captures the incremental absolute stock returns due to public firm disclosures, and β_2 captures the incremental absolute stock returns due to analyst outputs. The coefficient on *POST_SIEBEL*, β_3, captures the change from before to after the Siebel decision in the absolute stock returns for days without analyst outputs and public firm disclosures. The coefficient on *ANALY_OUT* x *POST_SIEBEL*, β_4, captures the change in the incremental absolute stock returns due to analyst outputs following the Siebel decision. If the flow of private information from managers to analysts increases after the Siebel decision, then we expect β_4 in equation (1) to be positive.

[12] Results are robust to a two-step estimation process that is used in Gintschel and Markov (2004). Results are also robust to standardizing daily stock returns to a mean of zero and a standard deviation of one of each firm's time-series of daily stock returns over the two-year sample period.

[13] The three-day window has been commonly used in the literature (e.g., Francis and Soffer 1997; Lin and McNichols 1998; and Park and Stice 2000). In any case, our results are robust to using alternate windows, [0,0] and [-2,+2].

Electronic copy available at: https://ssrn.com/abstract=3440852

Data and Sample

Panel A of Table 1 reports the sample selection procedure and panels B and C of Table 1 provide descriptive statistics. The sample includes stocks traded in U.S. stock markets with analyst earnings forecasts and stock recommendations available from September 1, 2004, to August 31, 2006, in International Brokers' Estimate System (IBES). Following Gintschel and Markov (2004), we require each stock to have at least one analyst earnings forecast and at least one stock recommendation in each of the one-year periods before and after the Siebel decision on September 1, 2005. We also require each stock to have a complete series of daily stock returns over the sample period, which includes 505 trading days, available in CRSP. We exclude stocks with missing data in Compustat for net sales, total assets, and market capitalization, for the fiscal year 2003. Our final sample contains 3,065 unique stocks and 1,547,825 (= 3,065 stocks x 505 trading days) daily stock returns observations. Panel B of the table reports that the mean (median) of daily absolute stock returns, *ABS_RET*, is 0.0155 (0.0105). The mean value of *FIRM_PUBLIC_DISC* is 0.1014, suggesting that 10.14% of the 1,547,825 firm-date observations in our final sample have at least one public firm disclosure within [-1, 0] days. The mean value of *ANALY_OUT* is 0.1832, suggesting that 18.32% of observations in our final sample have within [-1, +1] days at least one analyst earnings forecast or one stock recommendation that is not issued within two days following a firm's public disclosure.

Main Results

Table 2 reports results for the test of change in the informativeness of analyst outputs after the Siebel decision. Panel A reports the regression results of the base model (equation 1). The coefficients on *FIRM_PUBLIC_DISC* and *ANALY_OUT* are positive and significant, consistent with significant stock price reaction to firms' public disclosures and to analysts' outputs. Further, the coefficient on *ANALY_OUT* x *POST_SIEBEL* is positive and significant, 0.0009 (t-statistic = 5.36), suggesting that the informativeness of analyst outputs increased after the Siebel decision.

Electronic copy available at: https://ssrn.com/abstract=3440852

Moreover, the magnitude of the effect, 0.09 percent, is economically meaningful given that for our sample, firms' public disclosures (earnings announcements, management forecasts, and 8-Ks) generate absolute daily stock returns of 0.76 percent. This finding is consistent with managers significantly increasing selective disclosure to analysts after the Siebel decision.[14] This change in managers' disclosure behavior implies that the ruling revised market participants' beliefs about the difficulty the SEC would face in the future in policing private communication.

Panel B of Table 2 reports the results of robustness tests. Column (1) presents regression results of equation (1) after including *FIRM_PUBLIC_DISC* x *POST_SIEBEL*. This term controls for any change in the informativeness of public disclosures following the Siebel decision. We find that the coefficient on *FIRM_PUBLIC_DISC* x *POST_SIEBEL* is insignificant, and the coefficient on *ANALY_OUT* x *POST_SIEBEL* remains positive and significant, 0.0009 (t-statistic = 5.51), and is very similar to that in panel A.[15]

Column (2) reports the results of the model that defines the dependent variable, *ABS_RET*, as the absolute value of stock market returns on the date of analyst output issuance, instead of the [-1,+1] window used in panel A. The results are robust to the alternate definition of *ABS_RET*. Because analysts may take more than just two days to issue analyst outputs following a firm's public disclosure (e.g., earnings announcements), we check the sensitivity of our results to defining *ANALY_OUT* as taking the value of 1 only when there are no earnings announcements, management earnings guidance, and 8-K filings within five days (instead of two days used previously) prior to analyst outputs. Column (3) shows that our results are robust to this alternate definition of *ANALY_OUT*. Finally, column (4) shows that the base model results, reported in panel A, are robust to controlling for firm fixed effects.

[14] Brown et al. (2015) note based on their survey of analysts that "*private* communication with management is a more useful input to analysts' earnings forecasts and stock recommendations than their own primary research, recent earnings performance, and recent 10-K and 10-Q reports."

[15] Our results are robust to the inclusion of *FIRM_PUBLIC_DISC* x *POST_SIEBEL* in all the other models in the paper, and the coefficient on this term is always insignificant. Thus, for brevity, we do not include this term when we report other models in the paper.

Electronic copy available at: https://ssrn.com/abstract=3440852

Tests of Time Trend and Contemporaneous Events Unrelated to the Siebel Decision

Time Trend

To mitigate the concern that a time trend may drive our results, we perform a pseudo-event test and report the results in panel A of Table 3. We divide our two-year sample period into three non-overlapping eight-month sub-periods: the first sub-period is from September 1, 2004 to April 30, 2005, and is entirely before the Siebel decision; the second sub-period straddles the Siebel decision, and is from May 1, 2005 to December 31, 2005; and the third sub-period is from January 1, 2006 to August 31, 2006, and is entirely after the Siebel decision. Column (2) reports results for the second sub-period, with the actual date of the Siebel decision, i.e., September 1, 2005, as the event date. The coefficient on *ANALY_OUT* x *POST_SIEBEL* is 0.0008 (t-statistic = 3.57), suggesting a significant increase in the informativeness of analyst outputs from the four-month period before to the four-month period after the Siebel decision. This result is similar to that for the full sample period (Table 2, panel A). Columns (1) and (3) of Table 3 report results for the first and third sub-periods, with January 1, 2005, and May 1, 2006, as pseudo-event dates, respectively. We find an insignificant change in the informativeness of analyst outputs from the period before to the period after the pseudo-event dates. These results suggest that the increase in the informativeness of analyst outputs after the Siebel decision is unlikely to be driven by a time trend.[16]

ADR Firms as Controls

To address the concern that contemporaneous macroeconomic events or a systemic change in disclosure practices unrelated to the Siebel decision may drive our results, we use ADR firms as controls. ADR firms are not subject to Reg FD, so their disclosure practices should be unaffected

[16] In untabulated tests, we find that our results are robust to using even shorter sample periods – i.e., three months and two months before and after the court's ruling.

Electronic copy available at: https://ssrn.com/abstract=3440852

by the Siebel decision (Francis et al. 2006).[17] In column (1) of panel B of Table 3, we present results from estimating equation (1) for ADR firms. The coefficient on *ANALY_OUT* x *POST_SIEBEL* is insignificant. This finding mitigates the concern that the change in the informativeness of analyst outputs after the Siebel decision is driven by other contemporaneous macroeconomic events.[18]

In column (2) of panel B of Table 3, we use a difference-in-differences research design to corroborate our above conclusion. The sample includes both U.S. and ADR firms. The coefficient on *ANALY_OUT* x *POST_SIEBEL* x *TREAT* is positive and significant, 0.0010 (t-statistic = 2.02), where TREAT equals one for U.S. firms, and zero otherwise. This result suggests that the increase in the informativeness of analyst outputs after the Siebel decision is significantly greater for U.S. firms than for ADR firms. Thus, our results for U.S. firms are unlikely to be driven by other macroeconomic events concurrent to the Siebel decision.

Cross-sectional Tests

Analyst Outputs Explicit about Management Meetings

To further investigate whether the increase in the informativeness of analyst outputs after the Siebel decision is due to selective disclosure, we examine whether the increase is greater when analysts indicate in their reports that they recently met with management (Brochet et al. 2014). We hand collect this data by following the procedure in Brochet et al. (2014). Specifically, from the Thomson ONE database, we retrieve all analyst reports that were issued between September 1, 2004 and August 31, 2006 and that include one of the following words subsequent to an instance of "company" or "management": "meeting," "visit," or "tour." We manually check whether these reports mention any recent meeting with management prior to their issuance. We then use the

[17] Koch et al. (2013) discuss whether ADR firms are effective controls to examine the effects of Reg FD, particularly since ADR firms may voluntarily adopt Reg FD-like policies. However, this concern is less relevant in our setting because we focus on the weakening of the threat of enforcement due to the Siebel Systems case and the same threat of enforcement does not exist for ADR firms to begin with.

[18] The results are similar to that in Table 2 when we restrict our sample to only U.S. firms.

Electronic copy available at: https://ssrn.com/abstract=3440852

corporate names in the analyst reports and Compustat to merge the hand-collected data with our main sample. Using the merged sample, we estimate the following equation:

$$
\begin{aligned}
ABS_RET_{i,t} = \alpha &+ \beta_1\, FIRM_PUBLIC_DISC_{i,t} + \beta_2\, ANALY_OUT_{i,t} \\
&+ \beta_3\, POST_SIEBEL_t + \beta_4\, ANALY_OUT_{i,t} \times POST_SIEBEL_t \\
&+ \beta_5\, ANALY_OUT_{i,t} \times MGMT_MEETING_{i,t} \\
&+ \beta_6\, ANALY_OUT_{i,t} \times MGMT_MEETING_{i,t} \times POST_SIEBEL_t + \varepsilon_{i,t} \qquad (2)
\end{aligned}
$$

For firm-date observations with $ANALY_OUT_{i,t}$ equal to one, $MGMT_MEETING_{i,t}$ equals one for firm *i* on date *t* if at least one analyst report issued in the [-1,+1] window indicates a meeting with management. The mean value for *MGMT_MEETING* is 0.003, and it is around 2% (=0.003/0.1832) of the mean value for *ANALY_OUT*.[19] Table 4 column (1) shows that the coefficient on *ANALY_OUT* x *MGMT_MEETING* x *POST_SIEBEL* is significantly positive, 0.0012 (t-statistic = 1.99), suggesting that the increase in the informativeness of analyst outputs following the Siebel decision is more pronounced when analyst reports include a reference to a recent meeting with management.[20] While this result does not directly measure manager's private disclosure to analysts, the result is consistent with the notion that the increase in the informativeness of analyst outputs after the Siebel decision is at least in part due to managers' selective disclosure to analysts in private meetings.

We also note that the coefficient on *ANALY_OUT* x *MGMT_MEETING* is significantly negative, -0.0023 (t-statistic = -5.76), indicating that in the pre-Siebel period, analyst reports that mention management meetings are less informative. This finding suggests that in the pre-Siebel period, when it was presumably easier for the SEC to bring Reg FD violation charges for selective disclosures, managers might have discouraged analysts from mentioning private meetings in their

[19] This descriptive statistic is consistent with that for the *Meeting with Management* variable in Table 5 of Brochet et al. (2014). They also report that around 2% of analyst reports are explicit about meeting with management.
[20] Analysts may have an incentive to disclose meeting with management because, all else being equal, it may give their reports greater credibility.

Electronic copy available at: https://ssrn.com/abstract=3440852

reports, especially if management disclosed non-public information in the meeting. Moreover, in the pre-Siebel period, analysts are more likely to have mentioned in their reports their meetings with management when non-public information was not disclosed. Consequently, the informativeness of analyst reports that mention meetings with management in the pre-Siebel period would be relatively less. However, after the Siebel ruling, managers were presumably less concerned about analysts' mentioning in their reports the private meetings in which they made selective disclosure. Thus, the increase in the informativeness of analyst outputs after the Siebel ruling is greater when analysts mention their private meetings with management in their reports.

Analyst Outputs Issued Before 8-K Filings

Campbell et al. (2021) show that managers tend to disclose information selectively prior to public disclosure through Reg FD 8-K filings. Reg FD 8-K filings have to be made within 24 hours following managers' selective disclosure of *material* non-public information.[21] Thus, selective disclosures made to analysts prior to Reg FD 8-K filings are likely to be material (Campbell et al. 2021).[22] To test whether the increase in the informativeness of analyst outputs following the Siebel decision is due to increase in selective disclosure of material non-public information, we examine whether the increase is more pronounced for analyst outputs issued just prior to Reg FD 8-K filings. Specifically, we estimate the following equation:

$$ABS_RET_{i,t} = \alpha + \beta_1\, FIRM_PUBLIC_DISC_{i,t} + \beta_2\, ANALY_OUT_{i,t} + \beta_3\, POST_SIEBEL_t + \beta_4\, ANALY_OUT_{i,t} \times POST_SIEBEL_t$$

[21] Technically the 24-hour window is available only to managers who disclose material non-public information inadvertently.

[22] Campbell et al. (2021) incorporate press releases in addition to Reg FD 8-K filings because managers can disclose material information in other ways. However, Campbell et al. note that 33 percent of their sample firms do not issue any press releases during the nine trading-day window surrounding the 8-K filing date, and another 41 percent of their sample firms issue a press release on the same day as the 8-K filing. Thus, we believe that our assumption that Reg FD 8-K filings publicly disclose material information and selective disclosures made to analysts prior to Reg FD 8-K filings are likely to be material is reasonable.

Electronic copy available at: https://ssrn.com/abstract=3440852

$$+ \beta_5 \, ANALY_OUT_{i,t} \text{ x } BEFORE_FD8K_{i,t}$$

$$+ \beta_6 \, ANALY_OUT_{i,t} \text{ x } BEFORE_FD8K_{i,t} \text{ x } POST_SIEBEL_t + \varepsilon_{i,t} \qquad (3)$$

For firm-date observations with $ANALY_OUT_{i,t}$ equal to one, $BEFORE_FD8K_{i,t}$ equals one if the analyst output(s) is issued prior to Reg FD 8-K filings, and equals zero otherwise.[23] Thus, the coefficient on *ANALY_OUT* x *BEFORE_FD8K* x *POST_SIEBEL* in equation (3) captures the effect of the Siebel decision on private disclosure to analysts prior to Reg FD 8-K filings. The mean value for *BEFORE_FD8K* is 0.005, which is 3% (=0.0005/0.1832) of the mean value for *ANALY_OUT*. Table 4 column (2) shows that the coefficient on *ANALY_OUT* x *BEFORE_FD8K* x *POST_SIEBEL* is positive and significant, 0.0017 (t-statistic = 2.17), indicating that the increase in the informativeness of analyst outputs after the Siebel decision is more pronounced for analyst outputs that are issued when managers are more likely to selectively disclose material non-public information (Campbell et al. 2021).[24] Thus, we conclude that the increase in the informativeness of analyst outputs following the Siebel decision is at least in part due to an increase in selective disclosure of material non-public information.

Analyst Outputs for Serial Guiders

For firms that make public disclosures regularly (hereafter, serial guiders), their managers are likely to prefer making disclosures publicly rather than privately (Brochet et al. 2011). For such firms, the effect of the Siebel decision in terms of increasing selective disclosure of non-public information to analysts is likely to be lower. To test this prediction, we estimate the following equation:

[23] For this particular test, we define *ANALY_OUT* slightly differently. $ANALY_OUT_{i,t}$ equals one for firm i on day t if that day is within the [-1, +1] window of at least one analyst earnings forecast or stock recommendation that is not issued within two days following the firm's earnings announcements and management earnings guidance, but could be issued within two days following the firm's 8-K filings. However, our results are consistent with or without using this alternative definition.

[24] Table 4 also shows that the coefficient on *ANALY_OUT* x *BEFORE_8K* is not significant. This finding is not inconsistent with that in Campbell et al. (2021) because their sample starts from 2005, and is thus primarily in the post-Siebel period.

Electronic copy available at: https://ssrn.com/abstract=3440852

$$ABS_RET_{i,t} = \alpha + \beta_1\ FIRM_PUBLIC_DISC_{i,t} + \beta_2\ ANALY_OUT_{i,t}$$
$$+ \beta_3\ POST_SIEBEL_t + \beta_4\ ANALY_OUT_{i,t} \text{ x } POST_SIEBEL_t$$
$$+ \beta_5\ ANALY_OUT_{i,t} \text{ x } SERIAL_GUIDER_{i,t}$$
$$+ \beta_6\ ANALY_OUT_{i,t} \text{ x } SERIAL_GUIDER_{i,t} \text{ x } POST_SIEBEL_t + \varepsilon_{i,t} \qquad (4)$$

For firm-date observations with $ANALY_OUT_{i,t}$ equal to one, $SERIAL_GUIDER_{i,t}$ equals one for firm i on day t if the firm issued one or more EPS guidance in both current and previous calendar quarters, and zero otherwise. The mean value for *SERIAL_GUIDER* is 0.340 indicating that 34% of firm-date observations in our sample are for firm-quarters that issued earnings guidance over two consecutive quarters. Table 4 column (3) shows that the coefficient on *ANALY_OUT* x *SERIAL_GUIDER* x *POST_SIEBEL* is significantly negative, -0.0004 (t-statistic = -1.82), suggesting that the increase in the informativeness of analyst outputs following the Siebel decision is less pronounced for firms that provide earnings guidance regularly. This result further supports the notion that the increase in the informativeness of analyst outputs after the Siebel decision is consistent with the increase in managers' selective disclosure to analysts.

Types of Information Contained in Increased Selective Disclosure Post Siebel

In this section, we investigate whether the effect of the Siebel decision is different for selective disclosures to analysts of positive versus negative information. For this purpose, we estimate the following equation:

$$SIGNED_RET_{i,t} = \alpha + \beta_1\ FIRM_PUBLIC_DISC_{i,t} + \beta_2\ ANALY_OUT_{i,t}$$
$$+ \beta_3\ POST_SIEBEL_t + \beta_4\ ANALY_OUT_{i,t} \text{ x } POST_SIEBEL_t$$
$$+ \beta_5\ ANALY_OUT_{i,t} \text{ x } POSITIVE_{i,t}$$
$$+ \beta_6\ ANALY_OUT_{i,t} \text{ x } POSITIVE_{i,t} \text{ x } POST_SIEBEL_t$$

Electronic copy available at: https://ssrn.com/abstract=3440852

$$+ \beta_7 \, ANALY_OUT_{i,t} \text{ x } NEGATIVE_{i,t}$$

$$+ \beta_8 \, ANALY_OUT_{i,t} \text{ x } NEGATIVE_{i,t} \text{ x } POST_SIEBEL_t + \varepsilon_{i,t} \qquad (5)$$

where $SIGNED_RET_{i,t}$ is signed stock return for firm i on date t. $POSITIVE_{i,t}$ equals one if two or more analysts provide earnings forecasts during the [-1, +1] window and all of these forecasts are revisions from below to above the analyst consensus forecast (the most recent mean forecast in IBES), and equals zero otherwise. $NEGATIVE_{i,t}$ equals one if two or more analysts provide earnings forecasts during the [-1, +1] window and all of these forecasts are revisions from above to below the analyst consensus forecast, and equals zero otherwise.[25] Table 5 reports the results from estimating equation (5). The coefficients on *ANALY_OUT* x *POSITIVE* and *ANALY_OUT* x *NEGATIVE* are significantly positive and negative, respectively, as expected. The coefficient on *ANALY_OUT* x *POSITIVE* x *POST_SIEBEL* is 0.0018 (t-statistic = 2.03) and the coefficient on *ANALY_OUT* x *NEGATIVE* x *POST_SIEBEL* is 0.0008 (t-statistic = 0.85), suggesting that the increase in the informativeness of analyst outputs following the Siebel decision is primarily driven by the increase in selective disclosure of positive information. This result is consistent with the notion that disclosing positive information in public increases managers' litigation risk (see, e.g., Kothari et al. 2009; Rogers et al. 2011; Cazier et al. 2020), providing an incentive to communicate positive information in private to analysts, who can then disseminate the good news through their forecasts or recommendations. In the context of investors, Allee et al. (2022) conclude that the Siebel decision led to increased selective disclosure of negative information, by showing that after the Siebel decision, there is an increase in transient institutional investors' ability to sell stocks before breaks in a string of earnings increases. Allee et al. (2022) also provide evidence that there is an increase in institutional investors' ability to pick stocks in their trades prior to earnings announcements, suggesting that institutions' private information advantage increases after Siebel.

[25] When defining *POSITIVE* and *NEGATIVE*, we require two or more analysts to provide unanimous outputs so that we have a higher chance of analyst outputs being driven by private communication with managers rather than idiosyncratic information generated by an analyst. However, our results are similar with and without the requirement to have two or more analyst outputs for defining the *POSITVE* and *NEGATIVE* variables.

Electronic copy available at: https://ssrn.com/abstract=3440852

However, in this test they do not specifically examine whether the advantage is related to positive or negative information. Our study provides evidence indicating that Siebel increased selective disclosure of positive information, albeit to analysts.

Recipients of Post-Siebel Increased Selective Disclosure

Siebel's Effect Conditioned on Managers Selectively Disclosing to Several Analysts at a Time

In this section, we explore whether the increase in selective disclosures after Siebel is greater when managers selectively disclose to several analysts at a time. For this purpose, we examine whether the increase in the informativeness of analyst outputs after the Siebel decision is more or less pronounced when several analysts provide their outputs on the same day. We estimate the following equation:

$$\begin{aligned} ABS_RET_{i,t} = \alpha &+ \beta_1\, FIRM_PUBLIC_DISC_{i,t} + \beta_2\, ANALY_OUT_{i,t} \\ &+ \beta_3\, POST_SIEBEL_t + \beta_4\, ANALY_OUT_{i,t} \times POST_SIEBEL_t \\ &+ \beta_5\, ANALY_OUT_{i,t} \times MANY_ANALYST_{i,t} \\ &+ \beta_6\, ANALY_OUT_{i,t} \times MANY_ANALYST_{i,t} \times POST_SIEBEL_t + \varepsilon_{i,t} \qquad (6) \end{aligned}$$

For firm-date observations with $ANALY_OUT_{i,t}$ equals to one, $MANY_ANALYST_{i,t}$ equals one if three or more analysts revise their EPS forecasts and/or stock recommendation during [-1,+1] days around trading day t. For firm-date observations where *ANALY_OUT* = 1, the mean (median) number of analysts announcing analyst outputs during the [-1,+1] window is 1.64 (1.00) analysts, and the 90th percentile is 3 analysts. Table 6 reports the results from estimating equation (6). The coefficient on *ANALY_OUT* x *MANY_ANALYST* is significant and positive, suggesting that the informativeness of analyst outputs is greater when more analysts provide outputs at the same time. The coefficient on *ANALY_OUT* x *MANY_ANALYST* x *POST_SIEBEL* is also positive and significant, 0.0007 (t-statistic = 1.92), indicating that following the Siebel decision, increased

Electronic copy available at: https://ssrn.com/abstract=3440852

selective disclosure of non-public information is likely to be more pronounced when managers privately communicate with multiple analysts. This finding is consistent with survey evidence and anecdotal evidence from Reg FD enforcement that managers tend to privately communicate material non-public information to multiple analysts and investors on a given day.[26]

Managers Selectively Disclose to Analysts vis-à-vis Institutional Investors

We explore whether the increase in informed trading by transient institutional investors following the Siebel decision, documented in Allee et al. (2022), is driven by an increase in selective disclosure of non-public information to analysts, who then privately disclose the information to transient institutional investors. For this purpose, we test whether the increase in the informativeness of analyst outputs after Siebel is more pronounced for firms with higher transient institutional ownership. We use the Bushee (1998, 2001) approach to classify institutional investors as transient, and obtain the related data from Thomson/Refinitiv 13-F filing database.[27] We are not able to draw a meaningful inference from this test. The result from this test (not tabulated) is not statistically significant. Furthermore, the test design has a limitation – transient owners might still be the ultimate beneficiaries of private communications between management and analysts even when they do not account for a high proportion of total ownership of the firm.

Time-Series Variation in Regulation/Enforcement and Selective Disclosure

Pre-Reg FD versus Post-Siebel Periods

[26] In the SEC press release about SEC vs. Schering-Plough , the SEC noted that "during the week of September 30, 2002, Kogan and Schering's senior vice president of investor relations met privately in Boston with analysts and portfolio managers of four institutional investors" and also that "on October 3, 2002, in the midst of this sell-off, Kogan held a previously scheduled private meeting with approximately 25 analysts and portfolio managers." Also, in the case against Office Depot and Motorola, the SEC notes that "Office Depot then made a series of one-on-one calls to analysts" and "The Division of Enforcement has conducted an investigation into whether Motorola, Inc. ("Motorola") violated the federal securities laws when one of its senior officials selectively disclosed information about the company's quarterly sales and orders during private telephone calls with sell-side analysts in March 2001." Additionally, survey evidence from Durney (2021) indicate that meetings with more than one participant are not uncommon.

[27] We thank Professor Brian Bushee for making the institutional investor classification data available (https://accounting-faculty.wharton.upenn.edu/bushee/).

Electronic copy available at: https://ssrn.com/abstract=3440852

To understand the extent to which the Siebel decision reverted selective disclosure to the pre-Reg FD levels, we compare analyst output informativeness during the post-Siebel period with analyst output informativeness in the pre-Reg FD period. Specifically, we estimate the following equation:

$$\begin{aligned} ABS_RET_{i,t} = \alpha &+ \beta_1\, FIRM_PUBLIC_DISC_{i,t} + \beta_2\, ANALY_OUT_{i,t} \\ &+ \beta_3\, POST_RFD_PRE_SIEBEL_t + \beta_4\, POST_SIEBEL_t \\ &+ \beta_5\, ANALY_OUT_{i,t} \text{ x } POST_RFD_PRE_SIEBEL_t \\ &+ \beta_6\, ANALY_OUT_{i,t} \text{ x } POST_SIEBEL_t + \varepsilon_{i,t} \end{aligned} \tag{7}$$

where *POST_RFD_PRE_SIEBEL* equals one if the trading day is between the Reg FD implementation date and the court's decision date, i.e., between 10/23/2000 and 8/31/2005, and zero otherwise. Our sample period for this test starts from 10/23/1999, and hence the pre-Reg FD period is between 10/23/1999 to 10/22/2000. In panel A of Table 7, the coefficient on *ANALY_OUT* x *POST_RFD_PRE_SIEBEL* is negative and significant, -0.0005 (t-statistic = -1.80), consistent with the negative effect of Reg FD on analyst output informativeness documented in prior studies (e.g., Gintschel and Markov 2004). However, the coefficient on *ANALY_OUT* x *POST_SIEBEL* is insignificant, -0.0002 (t-statistic = -0.57), indicating that the analyst output informativeness in the post-Siebel period is not significantly different from the level in the pre-Reg FD period. These results shed light on the extent to which selective disclosures to analysts reverted back to the pre-Reg FD levels after the Siebel decision.

Persistence of the Effect of the Siebel Decision

Our analysis so far examines the effect of the Siebel decision over a short post period of one year. Did this effect persist? We address this question next. Confounding effects of unspecified macro events make it difficult to assess the long-term effect of the Siebel decision properly.

Electronic copy available at: https://ssrn.com/abstract=3440852

Nevertheless, we estimate equation (1) after extending the post-Siebel period from one year (September 2005 to September 2006) to 14 years (from September 2005 to the end of 2019), and report the results in column (1) of panel B of Table 7.[28] The coefficient on *ANALY_OUT* x *POST_SIEBEL* is 0.0004 (t-statistic = 2.24), indicating that the average effect of the Siebel decision on the informativeness of analyst outputs for the fourteen-year period, though significant, is significantly smaller in magnitude (F-statistic = 15.59 with p-value < 0.000, untabulated) than that for the first year after the Siebel decision (0.0009, t-statistic = 5.36, see Table 2 panel A). One plausible reason for the smaller average effect for the longer period is that the effect of Siebel faded away when the SEC resumed Reg FD enforcement actions a few years after the Siebel decision (Fisch 2013; Bengtzen 2017). We investigate this possibility below.

The SEC filed the first post-Siebel enforcement action in September 2009 against the CFO of American Commercial Airlines. Soon thereafter, in March 2010, SEC brought an enforcement action against Presstek Inc. and its CEO. It filed a third enforcement action against Office Depot in October 2010. In sum, during the four-year period after Siebel, SEC's enforcement activity slowed down, presumably due to the Siebel decision. After 2009, however, the SEC resumed its enforcement efforts. To examine whether the resumption of SEC enforcement actions may have contributed to the observed smaller average effect for the longer Siebel post period, we examine the informativeness of analyst outputs separately for the period before and after September 23, 2009, when the SEC resumed its enforcement actions.

Column (2) of panel B of Table 7 reports the results of the analysis. In this model, which is similar to equation (1), we break up the extended post-Siebel period into two. We use an indicator variable, *POST_SIEBEL_PRE_RENEW_ENFORCE*, which equals one if the trading day is between the Siebel decision and the SEC's first post-Siebel Reg FD enforcement action, i.e., between 9/1/2005 and 9/23/2009, and zero otherwise We also use the variable, *POST_RENEW_ENFORCE*, which equals one for trading days after the SEC's first post-Siebel

[28] We end the longer sample period in 2019 to avoid any confounding effect of the COVID-19 pandemic. However, our results are similar when we extend the sample period to the end of 2021.

Electronic copy available at: https://ssrn.com/abstract=3440852

Reg FD enforcement action, i.e. between 9/24/2009 and 12/31/2019, and zero otherwise. The coefficient on *ANALY_OUT* x *POST_SIEBEL_PRE_RENEW_ENFORCE* is positive and significant (0.0019, t-statistic=6.11), and the coefficient on *ANALY_OUT* x *POST_RENEW_ENFORCE* is not significantly different from zero (0.0000, t-statistic=0.15). These findings suggest that the effect of Siebel, in terms of increased selective disclosure to analysts, as measured by the informativeness of analyst outputs, faded away after the SEC resumed its enforcement actions in 2009. In other words, the reduction in selective disclosure that Reg FD achieved prior to the Siebel decision characterizes the information environment of more recent years.

For a more granular understanding of how the informativeness of analyst outputs changed during the extended post-Siebel period, we estimate equation (1) after introducing a year-by-year interaction with *ANALY_OUT* for the extended post-Siebel period, 9/1/2005 to 12/31/2019, and plot the coefficients (with 90 percent confidence interval) in Figure 3. The figure indicates that compared to analyst output informativeness in the pre-Siebel period, the informativeness is significantly higher during each of the first four years following the Siebel decision, i.e. 9/1/2005 to 8/31/2009, and is significantly lower during the fifth year, 9/1/2009 to 8/31/2010, which is the year following the SEC's Reg FD enforcement resumption. The sixth year onwards, the analyst output informativeness is not significantly different from that in the pre-Siebel period. The results in Table 7 adds to the literature's understanding of the effect of the Siebel case. Though we examine sell-side analysts instead of institutional investors, we extend beyond the analysis in Allee et al (2022) by documenting the influence of subsequent changes in the SEC enforcement policy on the persistence of the effect of Siebel on selective disclosure.

4. Exploratory Analyses: Survey and Interviews with Law Firm Partners

The prior sections provide evidence that our results are likely driven by increases in selective disclosure in private meetings due to the Siebel decision. To explore possible mechanisms for the

Electronic copy available at: https://ssrn.com/abstract=3440852

selective disclosure, we collected survey responses from 76, and conducted interviews with 3 law firm partners with Reg FD expertise. We asked the lawyers their views about the factors likely to be driving our results. The Online Appendix discusses our methodology and Table 9 panels A and B describe our survey participants.[29]

Interview responses indicate that the Siebel ruling removed Reg FD's chilling effect on private disclosure brought by Reg FD. Specifically, Siebel reduced managers' perception that they faced a high level of liability risk by communicating privately with analysts. This sentiment is embodied in the following comment: "*Before Siebel, there was such a fear of enforcement that there was a chilling effect and Siebel removed that chilling effect … the takeaway from Siebel is that people felt a little more comfortable.*" Another partner spoke about their personal experience advising clients as a result of the Siebel case: "*In light of the Siebel case, I tell them to, you know, kind of relax. Because I don't want them to feel like communications are chilled. That was the whole point of the case that communication should not be chilled. You should be allowed to talk without fear that, you know, people are going to take all kinds of things out of the tone of your voice.*" And a third partner said: "*[managers] are not going to get hung by the body language*."

Yet, interviewees also noted that corporate officials were still careful to explicitly communicate the same information in private as in public. One lawyer said, "*I don't think IR people take any solace that, say oh look there is this court case that says I can go out on a limb*." Another noted, "*In terms of the substance, I think, you should've been careful before, you should be careful afterwards that your substantive message is the same both publicly and privately. You don't want to be giving different numbers or that sort of thing*." In sum, the interviewees suggest that concern about the risk of selective disclosure was not eliminated entirely

Table 9 panel C reports the potential explanations we offered survey participants and the corresponding survey results, which are consistent with the interview results in that lawyers perceive the effect of Siebel to be concentrated in increases in implicit communication, though

[29] Please see supporting information, "Appendix: Survey Methodology," as an addition to the online article.

Electronic copy available at: https://ssrn.com/abstract=3440852

explicit communication may have also played a role. These results are consistent with the notion that, after the Siebel decision, managers may have become more relaxed and less concerned about communicating non-public information in private meetings.[30]

5. Conclusion

This study examines the effectiveness of Reg FD in preventing private information leakage from managers to analysts. In a unique federal court case, *SEC v. Siebel Systems, Inc.* (2005), the court took a narrow approach to Reg FD, limiting the SEC's power to pursue subsequent enforcement actions. We posit that the Siebel decision operated as a signal to market participants about the potential liability risk from selective disclosure. Using a variety of tests, we provide evidence that the informativeness of analyst reports increased after the Siebel decision and that this increase was associated with participation in private meetings. Specifically, we conduct cross-sectional tests conditioned on whether (i) analyst outputs indicate meeting with the management, (ii) analyst outputs are released prior to Reg FD 8-K filings, and (iii) analyst outputs are for firms that are serial guiders. We also show that our findings are unlikely to be driven by a time trend or a contemporaneous macroeconomic event. These results suggest that the increase in the informativeness of analyst outputs following the Siebel decision is consistent with an increase in selective disclosure from managers to analysts. Further analyses suggest that such disclosures are more likely to contain positive information and are more likely to be simultaneously made to multiple analysts. Importantly, we find evidence suggesting that the increased selective disclosure after the Siebel decision faded as the SEC resumed enforcement actions related to Reg FD in 2009. Finally, our survey and interview results provide exploratory evidence suggesting that the Siebel

[30] The averages of explanation likelihood shown in Table 9 panel C indicate that the lawyers were, true to form, generally skeptical (Richard 2002) of rating any explanation very high, including "another explanation". Thus, relative statistical differences, rather than absolute averages, are especially informative. An alternative question, which we did not ask, could have assessed whether the lawyers believe selective disclosure did, in fact, increase after the Siebel case. However, we wanted to focus on lawyers' knowledge about how the disclosure might have changed as opposed to if it changed since these lawyers are not capital market experts.

Electronic copy available at: https://ssrn.com/abstract=3440852

decision reduced managers concern about liability from selective disclosure. By documenting the effect of the Siebel decision on the behavior of market participants, our study sheds light on how managers respond in the private meeting context to perceived enforcement threats related to corporate disclosure regulation.

Our research necessarily comes with caveats and limitations. Our evidence of increased informativeness of analyst outputs post-Siebel is consistent with increased private communication between managers and analysts. However, the very nature of private communications prevents us from providing more direct evidence. In addition, we cannot conclude from our results that the Siebel case resulted in a less level playing field for the U.S. capital markets. In fact, analysts serve an information intermediary role, and their outputs may contribute to lowering information asymmetry among market participants. Thus, it would be interesting for future research to examine changes in market measures of information asymmetry post-Siebel. Finally, future research may examine more closely why the effect of Siebel appears to fade away in more recent years. While we conjecture that resumed SEC enforcement is a likely explanation for the dissipation, a more thorough examination is warranted.

Electronic copy available at: https://ssrn.com/abstract=3440852

References

Allee, K. D., B. J. Bushee, T. J. Kleppe, and A. T. Pierce. 2022. Did the Siebel Systems case limit the SEC's ability to enforce Regulation Fair Disclosure? *Journal of Accounting Research*, forthcoming.

Arya, A., J. Glover, B. Mittendorf, and G. Narayanamoorthy. 2005. Unintended consequences of regulation disclosures: The case of Regulation Fair Disclosure. *Journal of Accounting and Public Policy* 24 (3): 243-252.

Asay, H. S., S. Clor-Proell, and M. T. Durney. 2022. Behind closed doors: An investigation of investor relations officer disclosures in private meetings with investors. Working paper.

Basic, Inc. v. Levinson. 1988. 485 U.S. 224

Bengtzen, M. 2017. Private investor meetings in public firms: The case for increasing transparency. *Fordham Journal of Corporate and Financial Law* 22: 33-132.

Bowen, R., S. Dutta, S. Tang, and P. Zhu. 2020. Does stricter disclosure regulation of private meetings improve the information environment? Working paper.

Brochet, F., L. Faurel, and S. McVay. 2011. Manager-specific effects on earnings guidance: An analysis of top executive turnovers. *Journal of Accounting Research* 49 (5): 1123-1162.

Brochet, F., G. S. Miller, and S. Srinivasan. 2014. Do analysts follow managers who switch companies? An analysis of relationships in the capital markets. *The Accounting Review* 89 (2): 451-482.

Brown, L. D., A. C. Call, M. B. Clement, and N. Y. Sharp. 2015. Inside the "black box" of sell-side financial analysts. *Journal of Accounting and Economics* 53 (1): 1-47.

Brown, L. D., A. C. Call, M. B. Clement, and N. Y. Sharp. 2016. The activities of buy-side analysts and the determinants of their stock recommendations. *Journal of Accounting and Economics* 62 (1): 139-156.

Brown, L. D., A. C. Call, M. B. Clement, and N. Y. Sharp. 2019. Managing the narrative: Investor relations officers and corporate disclosure. *Journal of Accounting and Economics* 67 (1): 58-79.

Bushee, B. J. 1998. The influence of institutional investors on myopic R&D investment behavior. *The Accounting Review* 73 (3): 305-333.

Bushee, B. J. 2001. Do institutional investors prefer near-term earnings over long-run value? *Contemporary Accounting Research* 18 (2): 207-246.

Bushee, B. J., J. Gerakos, and L. F. Lee. 2018. Corporate jets and private meetings with investors. *Journal of Accounting and Economics* 65: 358-379.

Electronic copy available at: https://ssrn.com/abstract=3440852

Cai, H., and Z. Qi. 2021. Private conversation matters: Evidence from sell-side analyst reports after private meetings. *The North American Journal of Economics and Finance* 58: 101481.

Campbell, J. L., B. J. Twedt, and B. C. Whipple. 2021. Trading prior to the disclosure of material information: Evidence from Regulation Fair Disclosure Form 8-Ks. *Contemporary Accounting Research* 38 (1): 412-442.

Cazier, R. A., K. J. Merkley, and J. S. Treu. 2020. When are firms sued for qualitative disclosures? Implications of the safe harbor for forward-looking statements. *The Accounting Review* 95 (1): 31-55

Durney, M. T. 2021. Managers' private disclosures: Descriptive evidence and the effect of audience size. Working paper.

Ericson, B. A. 2005. Regulation FD after Siebel Systems: No longer "the hobgoblin of little minds"? *The M&A Lawyer* 9 (6).

Fisch, J. E. 2013. Regulation FD: An alternative approach to addressing information asymmetry. In *Research Handbook on Insider Trading,* edited by S. Bainbridge, 112-129. Northampton, MA: Edward Elgar Publishing.

Fisch, J. E. 2007. Fiduciary duties and the analyst scandals. *Alabama Law Review* 58: 1083-1102.

Francis, J., D. Nanda, and X. Wang. 2006. Re-examining the effect of Regulation Fair Disclosure using foreign listed firms to control for concurrent shocks. *Journal of Accounting and Economics* 41 (3): 271-292.

Francis, J., and L. Soffer. 1997. The relative informativeness of analysts' stock recommendations and earnings forecast revisions. *Journal of Accounting Research* 35: 193-211.

Gintschel, A., and S. Markov. 2004. The effectiveness of Regulation FD. *Journal of Accounting and Economics* 37: 293-314.

Green, T. C., R. Jame, S. Markov, and M. Subasi. 2014. Access to management and the informativeness of analyst research. *Journal of Financial Economics* 114: 239-255.

Hanley, T. L. 2003. Regulation FD compliance after Schering-Plough – Mind your mannerisms. *Securities Regulatory Update* 21: 12-14.

Irani, A. J., and I. Karamanou. 2003. Regulation Fair Disclosure, analyst following, and analyst forecast dispersion. *Accounting Horizons* 17 (1): 15-29.

Johnson, C. 2005. Siebel wins dismissal of SEC suit. *The Washington Post*, September 2.

Ke, B., K. R. Petroni, and Y. Yu. 2008. The effect of Regulation FD on transient institutional investors' trading behavior. *Journal of Accounting Research* 46 (4): 853-883.

Electronic copy available at: https://ssrn.com/abstract=3440852

Kedia, S., K. Koh, and S. Rajgopal. 2015. Evidence on contagion in earnings management. *The Accounting Review* 90 (6): 2337-2373.

Kobi, D. C. 2002, Wall Street v. Main Street: The SEC's new Regulation FD and its impact on market participants. *Indiana Law Journal* 77: 551-614.

Koch, A. S., C. E. Lefanowicz, and J. R. Robinson. 2013. Regulation FD: A review and synthesis of the academic literature. *Accounting Horizons* 27 (3): 619-646.

Kross, W. J., and I. Suk. 2012. Does Regulation FD work? Evidence from analysts' reliance on public disclosure. *Journal of Accounting and Economics* 53: 225–248.

Labaton, S., 2005. Judge dismisses disclosure suit brought by S.E.C. against Siebel. *The New York Times*, September 2.

Li, X., S. Radhakrishnan, H. Shin, and J. Zhang. 2011. Regulation FD, accounting restatements and transient institutional investors' trading behavior. *Journal of Accounting and Public Policy* 30 (4): 298-326.

Lin, H., and M. F. McNichols. 1998. Underwriting relationships, analysts' earnings forecasts and investment recommendations. *Journal of Accounting and Economics* 25: 101-127.

Maco, P. S. 2000. Speech by SEC staff: Securities laws and the municipal issuer: Points for the electronic era. https://www.sec.gov/news/speech/spch397.htm

Mohanram, P. S., and S. V. Sunder. 2006. How has Regulation FD affected the operations of financial analysts? *Contemporary Accounting Research* 23: 491-525.

Morgan, N. 2007. The rise, fall (and return?) of Reg FD. *Forbes*, August 14.

Norris, F. 2005. Does the 'voice of business' think the bill of rights cover insider tips? *New York Times*, February 4.

Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund. 2015. 575 U.S. 175

Park, C. W., and E. K. Stice. 2000. Analyst forecasting ability and the stock price reaction to forecast revisions. *Review of Accounting Studies* 5: 259-272.

Park, J., and E. F. Soltes. 2019. What do investors ask managers privately? Working paper.

Page, A., and K. Yang. 2005. Controlling corporate speech: Is Regulation Fair Disclosure unconstitutional? *U.C. Davis Law Review* 39: 1-84.

Parker, A. 2005. Judge throws out SEC findings. *Financial Times*, September 2.

Richard, L. 2002. Herding cats: The lawyer personality revealed. *Report to Legal Management* 29 (11): 1-12.

Rogers, J. L., A. Van Buskirk, and S. L. C. Zechman. 2011. Disclosure tone and shareholder litigation. *The Accounting Review* 86: 2,155-2,183.

SEC v. Siebel Systems, Inc. 2005. 384 F.Supp.2d 694.

Electronic copy available at: https://ssrn.com/abstract=3440852

SEC. 1999. Proposed rule: Selective disclosure and insider trading. Release Nos. 33-7787, 34-42259, IC-24209. *SEC, Washington, DC.* https://www.sec.gov/rules/proposed/34-42259.htm

SEC. 2000. Selective disclosure and insider trading. Release Nos. 33-7881, 34-43154, IC-24599. https://www.sec.gov/rules/final/33-7881.htm#P118_45883

SEC. 2001. Written statement concerning Regulation Fair Disclosure. https://www.sec.gov/news/testimony/051701wssec.htm

SEC. 2010. Regulation FD. https://www.sec.gov/divisions/corpfin/guidance/regfd-interp.htm

Silvers, R. 2016. The valuation impact of SEC enforcement actions on nontarget foreign firms. *Journal of Accounting Research* 54 (1): 187-234.

Sinha, P., and C. Gadarowski. 2010. The efficacy of Regulation Fair Disclosure. *Financial Review* 45 (2): 331-354.

Solomon, D. 2005. Court favors Siebel in SEC's Regulation FD suit. *The Wall Street Journal*, September 2.

Solomon D. H. and E. F. Soltes. 2015. What are we meeting for? The consequences of private meetings with investors. *Journal of Law and Economics* 58: 325-355.

Soltes, E. F. 2014. Private interaction between firm management and sell-side analysts. *Journal of Accounting Research* 52: 245-272.

Soltes, E. F. 2018. What can managers privately disclose to investors? *Yale Journal on Regulation Bulletin* 36: 148-169.

TSC Industries, Inc. v. Northway, Inc. 1976. 423 U.S. 820

Walker, R. 2000. Speech by SEC staff: Regulation FD – An enforcement perspective. https://www.sec.gov/news/speech/spch415.htm

Wang, I. Y. 2007. Private earnings guidance and its implications for disclosure regulation. *The Accounting Review* 82: 1299-1332.

Electronic copy available at: https://ssrn.com/abstract=3440852

APPENDIX

Variable definitions

Variable	Definition
ABS_RET	Absolute value of daily stock returns
ANALY_OUT	Indicator variable that equals one if the trading day is within [-1,+1] days of at least one analyst earnings forecast or one stock recommendation that is not issued within two days following the firm's earnings announcements, management earnings guidance, and 8-K filings, and zero otherwise.
BEFORE_FD8K	Indicator variable that equals one if the *ANALY_OUT* equals one with one or more analyst outputs issued [-3,-1] days to Reg FD 8-K filings (Section 7, item 7.01), and equals zero otherwise.
FIRM_PUBLIC_DISC	Indicator variable that equals one if a trading day is within [0, +1] days of one or more public disclosures, i.e., earnings announcements, management earnings guidance, and 8-K filings, and zero otherwise.
MANY_ANALYST	Indicator variable that equals one for firm-date observations with *ANALY_OUT* equals one and with three or more analysts revising their EPS forecasts and/or stock recommendations during the [-1,+1] window, and zero otherwise.
MGMT_MEETING	Indicator variable that equals one for firm-date observations with *ANALY_OUT* equals one and with one or more analyst reports explicitly indicating that the report is prepared based on analysts' meetings with management, and zero otherwise.
NEGATIVE	Indicator variable that equals one if two or more analysts provide earnings forecasts during the [-1, +1] window and all of these forecasts are revisions from above to below the analyst consensus forecast (the most recent mean forecast in IBES), and equals zero otherwise.
POSITIVE	Indicator variable that equals one if two or more analysts provide earnings forecasts during the [-1, +1] window, and all of these forecasts are revisions

Electronic copy available at: https://ssrn.com/abstract=3440852

	from below to above the analyst consensus forecast, and equals zero otherwise.
POST_RENEW_ENFORCE	Indicator variable that equals one for trading days after the SEC's first post-Siebel Reg FD enforcement action, i.e. between 9/24/2009 and 12/31/2019.
POST_RFD_PRE_SIEBEL	Indicator variable that equals one if the trading day is between the Reg FD implementation and the court's decision dates, i.e., 10/23/2000-8/31/2005, and zero otherwise.
POST_PSEUDO1	Indicator variable that equals one if the trading day is after the first pseudo event date, i.e., January 1, 2005, and zero otherwise.
POST_PSEUDO2	Indicator variable that equals one if the trading day is after the second pseudo event date, i.e., May 1, 2006, and zero otherwise.
POST_SIEBEL	Indicator variable that equals one if the trading day is after the U.S. federal district court's ruling on *SEC v. Siebel Systems, Inc* (2005) on September 1, 2005, and zero otherwise.
*POST_SIEBEL*_PRE_RENEW_ENFORCE	Indicator variable that equals one if the trading day is between the court's decision and the SEC's first post-Siebel Reg FD enforcement action, i.e., 9/1/2005-9/23/2009.
SERIAL_GUIDER	Indicator variable that equals one if the firm issued one or more EPS guidance in both current and previous calendar quarters, and zero otherwise.
SIGNED_RET	Signed daily stock returns
TREAT	Indicator variable that equals one for U.S. firms, and zero otherwise. The control sample includes ADR firms that are exempt from Reg FD.

Electronic copy available at: https://ssrn.com/abstract=3440852

Figure 1 Siebel's stock price around private meetings on April 30

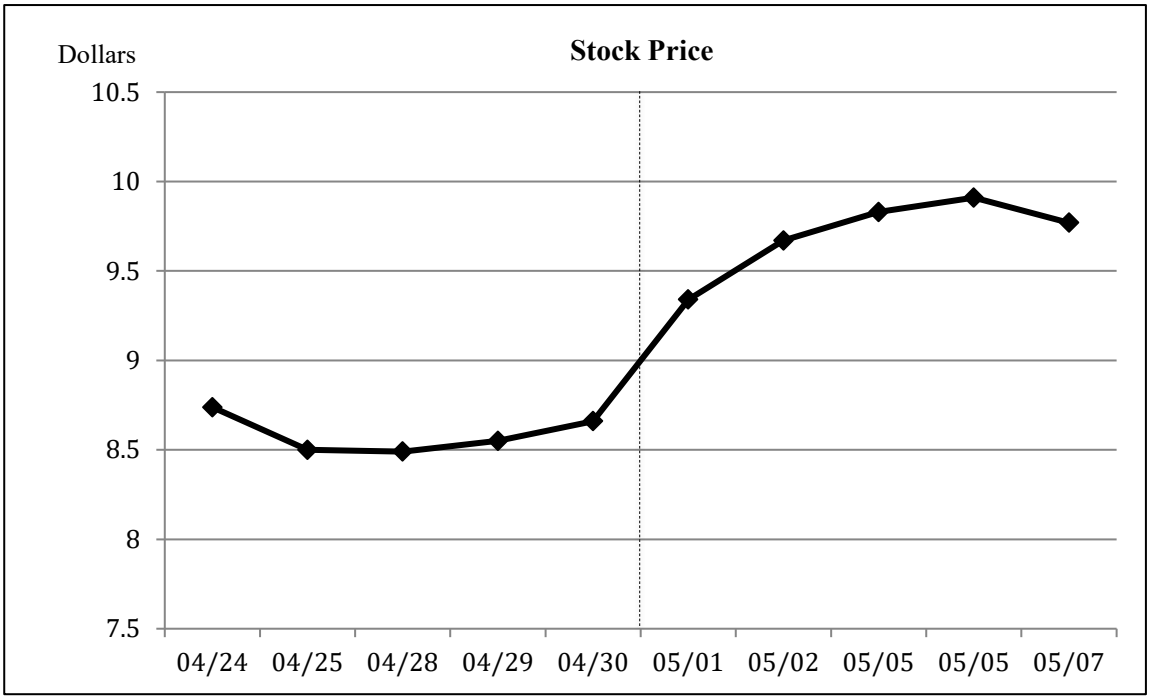
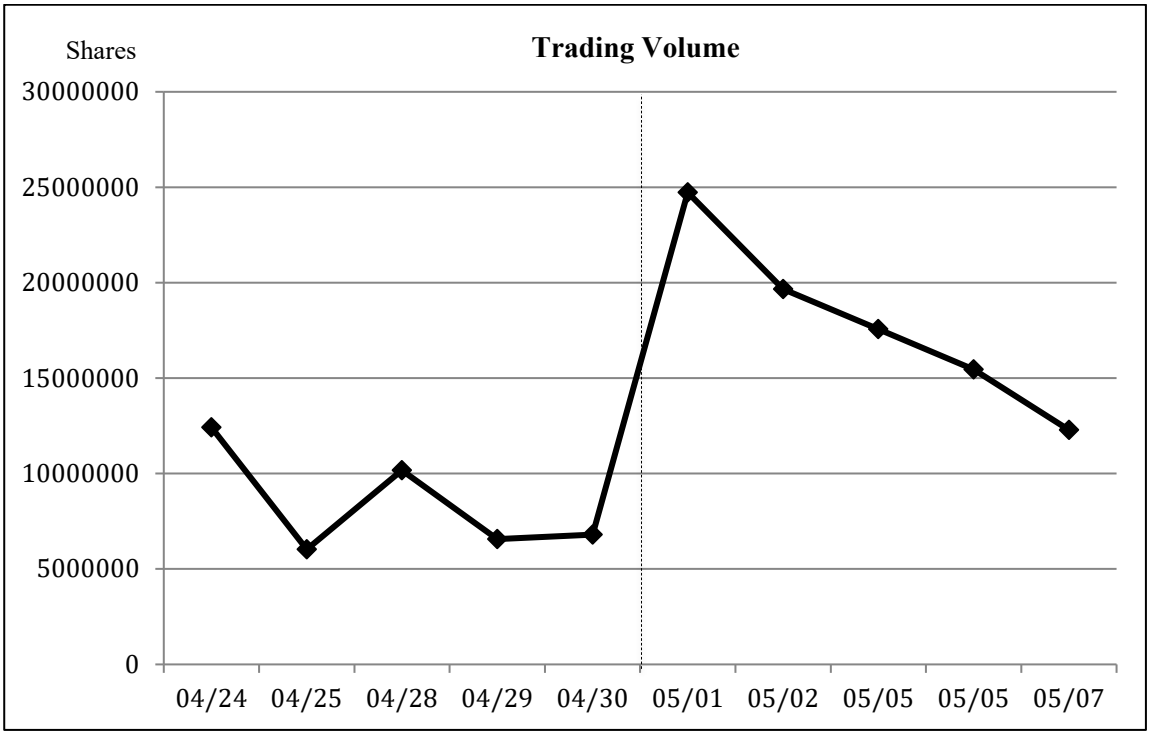
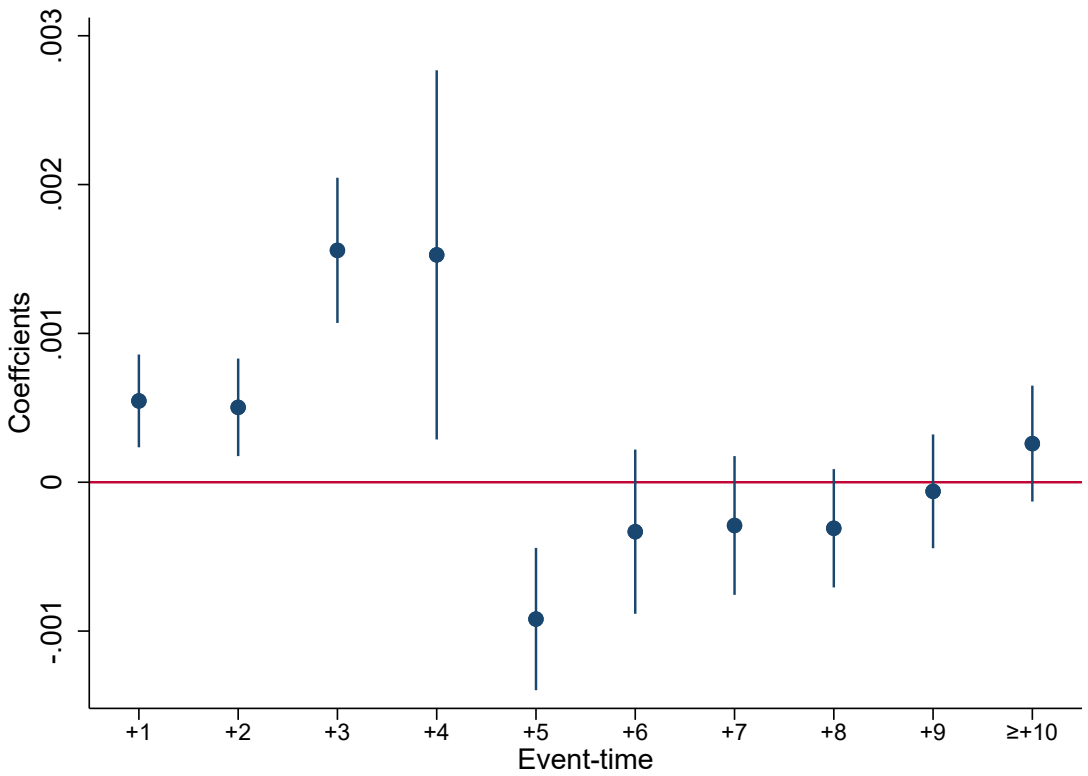


Figure 2 Siebel's trading volume around private meetings on April 30



Electronic copy available at: https://ssrn.com/abstract=3440852

Figure 3 Persistence of the effect of the Siebel decision on analyst output informativeness



Notes: This figure plots the coefficients (with 90 percent confidence interval) obtained from estimating equation (1) after introducing a year-by-year interaction with *ANALY_OUT* for the extended post-Siebel period, 9/1/2005 to 12/31/2019. Event-time 0 (base period) refers to the one-year period preceding the Siebel decision 9/1/2004 to 8/31/2005, event-time +1 refers to the one-year period 9/1/2005 to 8/31/2006, and so on. Event-time ≥ +10 refers to the period 9/1/2015 to 12/31/2019. The coefficients reflect the difference in the analyst output informativeness for a given year relative to the informativeness for the one-year period preceding the Siebel decision.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 1

Sample selection and summary statistics

Panel A: Sample selection

Filter	Number of Obs.	Data Source
U.S. stocks with at least one stock recommendation or analyst earnings forecast from 9/1/2004 to 8/31/2005 and from 9/1/2005 to 8/31/2006, the one-year period before and the one-year period after the Siebel decision on 9/1/2005, respectively.	3,841	IBES
Stocks with complete stock return series during the sample period from 9/1/2004 to 8/31/2006 (505 trading days).	3,297	CRSP
Stocks with non-missing and non-negative sales, assets, and market capitalization at the beginning of the fiscal year 2004.	3,065	Compustat
The final sample includes 1,547,825 daily stock returns observations		

Panel B: Summary statistics for the full sample

	N	Mean	25th percentile	Median	75th percentile	St. Dev.
ABS_RET	1,547,825	0.0155	0.0045	0.0105	0.0203	0.0189
FIRM_PUBLIC_DISC	1,547,825	0.1014	0.0000	0.0000	0.0000	0.3019
ANALY_OUT	1,547,825	0.1832	0.0000	0.0000	0.0000	0.3868
POST_SIEBEL	1,547,825	0.4990	0.0000	0.0000	1.0000	0.5000

Panel C: Summary statistics for U.S. firm and ADR firm subsamples

	U.S. Firms			ADR Firms		
	N	Mean	St. Dev.	N	Mean	St. Dev.
ABS_RET	1,452,380	0.0157	0.0191	95,445	0.0134	0.0140
FIRM_PUBLIC_DISC	1,452,380	0.1061	0.3080	95,445	0.0304	0.1716
ANALY_OUT	1,452,380	0.1839	0.3874	95,445	0.1734	0.3786
POST_SIEBEL	1,452,380	0.4990	0.5000	95,445	0.4990	0.5000

Notes: Panel A reports the sample selection procedure. The sample period is from September 1, 2004, to August 31, 2006, the two-year period around the U.S. federal district court's Siebel decision on September 1, 2005. Panel B reports summary statistics for the sample. Panel C reports summary statistics separately for U.S. and ADR firms. We follow prior studies to identify ADRs (https://wrds-www.wharton.upenn.edu/pages/support/research-wrds/research-guides/guide-adrs-and-research). Variable definitions are in the Appendix.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 2

Effect of the Siebel decision on the informativeness of analyst outputs

Panel A: Base model

Dependent Variable:	*ABS_RET*
Constant	0.0145***
	(74.95)
FIRM_PUBLIC_DISC	0.0076***
	(33.50)
ANALY_OUT	0.0004***
	(2.95)
POST_SIEBEL	0.0002
	(0.87)
ANALY_OUT x *POST_SIEBEL*	0.0009***
	(5.36)
Observations	1,547,825
Adjusted R-squared	0.0152

Electronic copy available at: https://ssrn.com/abstract=3440852

Panel B: Alternate model specifications

Dependent Variable:	(1) *ABS_RET*	(2) *ABS_RET*	(3) *ABS_RET*	(4) *ABS_RET*
Constant	0.0145***	0.0144***	0.0144***	0.0173***
	(75.49)	(76.16)	(74.61)	(383.70)
FIRM_PUBLIC_DISC	0.0075***	0.0077***	0.0046***	0.0082***
	(26.97)	(33.92)	(28.94)	(36.39)
ANALY_OUT	0.0004***	0.0015***	0.0002	0.0024***
	(2.89)	(8.92)	(1.11)	(24.46)
POST_SIEBEL	0.0002	0.0003	0.0003	0.0003
	(0.72)	(1.17)	(0.99)	(1.05)
ANALY_OUT x *POST_SIEBEL*	0.0009***	0.0009***	0.0008***	0.0006***
	(5.51)	(4.44)	(4.72)	(3.78)
FIRM_PUBLIC_DISC x *POST_SIEBEL*	0.0004			
	(0.92)			
Observations	1,547,825	1,547,825	1,547,825	1,547,825
Adjusted R-squared	0.0152	0.0156	0.0094	0.1190

Notes: This table reports changes in the informativeness of analyst outputs following the Siebel decision on September 1, 2005. Panel A reports results for our base model (equation 1). Variable definitions are in Appendix. Panel B reports results for alternative model specifications. In column (1), we include *FIRM_PUBLIC_DISC* x *POST_SIEBEL*. In column (2), we define *ANALY_OUT* slightly differently than in Appendix. *ANALY_OUT* equals one if at least one analyst earnings forecast or one stock recommendation is issued on the trading day, and that the analyst output is not issued within two days following the firm's earnings announcements, management earnings guidance, and 8-K filings, and zero otherwise. In column (3), we define *ANALY_OUT*, as taking the value of one if the trading day is within [-1,+1] days of at least one analyst earnings forecast or one stock recommendation and when there are no earnings announcements, management earnings guidance, and 8-K filings within [-2,+2] days around analyst outputs. In column (4), we control for firm fixed effects. The sample period is from 9/1/2004 to 8/31/2006. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 3

Tests of time trend and contemporaneous events unrelated to the Siebel decision

Panel A: Test of time trends using pseudo-event dates

Dependent Variable:	(1) *ABS_RET*	(2) *ABS_RET*	(3) *ABS_RET*
Constant	0.0147***	0.0138***	0.0136***
	(51.68)	(50.74)	(55.90)
FIRM_PUBLIC_DISC	0.0072***	0.0077***	0.0081***
	(22.06)	(21.25)	(21.68)
ANALY_OUT	0.0004**	0.0005***	0.0015***
	(2.14)	(2.62)	(7.67)
POST_PSEUDO_1	0.0004		
	(1.07)		
POST_SIEBEL		0.0004	
		(1.03)	
POST_PSEUDO_2			0.0024***
			(4.77)
ANALY_OUT x POST_PSEUDO_1	-0.0002		
	(-0.96)		
ANALY_OUT x POST_SIEBEL		0.0008***	
		(3.57)	
ANALY_OUT x POST_PSEUDO_2			-0.0002
			(-0.69)
Observations	511,855	521,050	514,920
Adjusted R-squared	0.0131	0.0160	0.0201

Electronic copy available at: https://ssrn.com/abstract=3440852

Panel B: Test of contemporaneous events unrelated to the Siebel decision using ADR firms

Dependent Variable:	ADR only subsample (1) *ABS_RET*	Diff-in-Diff ADR as control (2) *ABS_RET*
Constant	0.0120***	0.0120***
	(36.35)	(36.42)
FIRM_PUBLIC_DISC	0.0076***	0.0076***
	(7.73)	(7.75)
ANALY_OUT	0.0019***	0.0019***
	(3.83)	(3.84)
POST_SIEBEL	0.0018***	0.0018***
	(4.86)	(4.86)
ANALY_OUT x POST_SIEBEL	-0.0001	-0.0001
	(-0.21)	(-0.21)
TREAT		0.0027***
		(7.71)
FIRM_PUBLIC_DISC x TREAT		-0.0000
		(-0.04)
ANALY_OUT x TREAT		-0.0016***
		(-3.12)
POST_SIEBEL x TREAT		-0.0016***
		(-5.41)
ANALY_OUT x POST_SIEBEL x TREAT		0.0010**
		(2.02)
Observations	95,445	1,547,825
Adjusted R-squared	0.0148	0.0157

Notes: This table helps rule out time trend and other contemporaneous events as alternate explanations. In Panel A, we break our two-year sample period into three non-overlapping eight-month sub-periods: 9/1/2004-4/30/2005 in column (1) with pseudo-event date of January 1, 2005; 5/1/2005-12/31/2005 in column (2) with actual event date of September 1 2005; and 1/1/2006-8/31/2006 in column (3) with pseudo-event date of May 1, 2006. Panel B reports changes in the informativeness of analyst outputs following the Siebel decision for ADR firms, which are exempted from Reg FD. In column (1), we restrict the sample to ADR firms. In column (2), we adopt a difference-in-differences regression design with ADR firms as controls. The sample period is from 9/1/2004 to 8/31/2006. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively. See Appendix for variable definitions.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 4

Cross-sectional tests

PARTITION:	*MGMT_MEETING* (1)	*BEFORE_FD8K* (2)	*SERIAL GUIDER* (3)
Dependent Variable:	*ABS_RET*	*ABS_RET*	*ABS_RET*
Constant	0.0145***	0.0145***	0.0150***
	(74.94)	(74.86)	(71.56)
FIRM_PUBLIC_DISC	0.0076***	0.0076***	0.0077***
	(33.52)	(33.28)	(33.88)
ANALY_OUT	0.0004***	0.0004***	0.0004**
	(3.04)	(2.78)	(2.21)
POST_SIEBEL	0.0002	0.0002	0.0003
	(0.86)	(0.84)	(1.10)
ANALY_OUT x *POST_SIEBEL*	0.0008***	0.0008***	0.0010***
	(5.32)	(5.20)	(5.03)
ANALY_OUT x PARTITION	-0.0023***	-0.0001	0.0003
	(-5.76)	(-0.20)	(1.55)
ANALY_OUT x PARTITION x POST_SIEBEL	0.0012**	0.0017**	-0.0004*
	(1.99)	(2.17)	(-1.82)
POST_SIEBEL x PARTITION			-0.0001
			(-0.58)
PARTITION			-0.0017***
			(-7.66)
Observations	1,547,825	1,547,825	1,547,825
Adjusted R-squared	0.0152	0.0152	0.0170

Notes: This table reports the results of cross-sectional tests. Column (1) reports the effect of the Siebel decision on the informativeness of analyst outputs in reports that explicitly indicate that analysts met with the management. Column (2) reports the effect of the Siebel decision on the informativeness of analyst outputs released prior to Reg FD 8-K filings. For the 8-K filing test, we define $ANALY_OUT_{i,t}$ slightly differently than in Appendix. $ANALY_OUT_{i,t}$ equals one for firm i on day t if that day is within the [-1, +1] window of at least one analyst earnings forecast or stock recommendation that is not issued within two days following the firm's earnings announcements and management earnings guidance. Column (3) reports the effect of the Siebel decision on the informativeness of analyst outputs for firms that are serial guiders. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively. See Appendix for other variable definitions.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 5

Positive vs. negative information in increased selective disclosure after the Siebel decision

Dependent Variable:	*SIGNED_RET*
Constant	0.0010**
	(2.06)
FIRM_PUBLIC_DISC	-0.0000
	(-0.16)
ANALY_OUT	0.0003**
	(2.16)
POST_SIEBEL	-0.0006
	(-0.83)
ANALY_OUT x *POST_SIEBEL*	0.0001
	(0.53)
ANALY_OUT x POSITIVE	0.0043***
	(7.36)
ANALY_OUT x POSITIVE x POST_SIEBEL	0.0018**
	(2.03)
ANALY_OUT x NEGATIVE	-0.0063***
	(-8.60)
ANALY_OUT x NEGATIVE x POST_SIEBEL	0.0008
	(0.85)
Observations	1,547,825
Adjusted R-squared	0.0007

Notes: This table reports the effect of the Siebel decision on the informativeness of analyst outputs containing positive versus negative information. The sample period is from 9/1/2004 to 8/31/2006. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively. See Appendix for variable definitions

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 6

Siebel's effect conditioned on selective disclosure to several analysts at a time

Dependent Variables:	*ABS_RET*
Constant	0.0145***
	(74.95)
FIRM_PUBLIC_DISC	0.0077***
	(33.56)
ANALY_OUT	0.0001
	(0.85)
POST_SIEBEL	0.0002
	(0.87)
ANALY_OUT x *POST_SIEBEL*	0.0008***
	(5.10)
ANALY_OUT x *MANY_ANALYST*	0.0024***
	(8.98)
ANALY_OUT x *MANY_ANALYST* x *POST_SIEBEL*	0.0007*
	(1.92)
Observations	1,547,825
Adjusted R-squared	0.0156

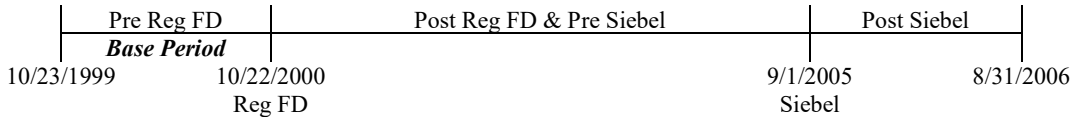
Notes: This table examines the effect of the Siebel decision conditioned on managers selectively disclosing to several analysts at a time. Specifically, the table reports the effect of the Siebel decision on the informativeness of analyst outputs conditioned on three or more analysts issuing outputs during the [-1,+1] window. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively. See Appendix for variable definitions.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 7

Effect on selective disclosure of time-series variation in regulation and enforcement

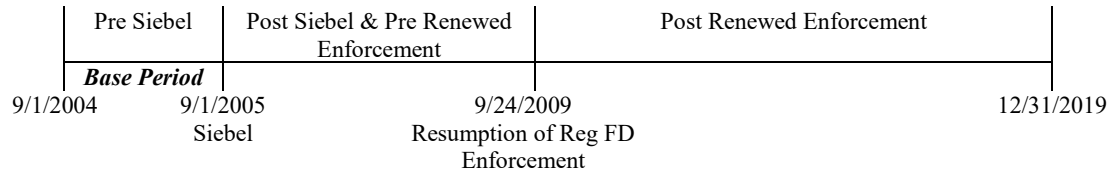
Panel A: Reversal of the Reg FD effect after Siebel



Dependent Variable:	*ABS_RET*
Constant	0.0271***
	(59.40)
FIRM_PUBLIC_DISC	0.0085***
	(36.69)
ANALY_OUT	0.0014***
	(4.49)
POST_RFD_PRE_SIEBEL	-0.0076***
	(-17.31)
POST_SIEBEL	-0.0132***
	(-27.29)
ANALY_OUT x *POST_RFD_PRE_SIEBEL*	-0.0005*
	(-1.80)
ANALY_OUT x *POST_SIEBEL*	-0.0002
	(-0.57)
Observations	3,335,940
Adjusted R-squared	0.0254

Electronic copy available at: https://ssrn.com/abstract=3440852

Panel B: The persistence of the Siebel effect over the extended post-Siebel period



Dependent Variables:	(1) *ABS_RET*	(2) *ABS_RET*
Constant	0.0136***	0.0136***
	(59.60)	(59.60)
FIRM_PUBLIC_DISC	0.0156***	0.0156***
	(48.11)	(48.97)
ANALY_OUT	0.0003	0.0003
	(1.48)	(1.48)
POST_SIEBEL	0.0027***	
	(10.51)	
ANALY_OUT x *POST_SIEBEL*	0.0004**	
	(2.24)	
POST_SIEBEL_PRE_RENEW_ENFORCE		0.0071***
		(15.39)
POST_RENEW_ENFORCEMENT		0.0009***
		(3.65)
ANALY_OUT x POST_SIEBEL_PRE_RENEW_ENFORCE		0.0019***
		(6.11)
ANALY_OUT x POST_RENEW_ENFORCE		0.0000
		(0.15)
Observations	5,801,580	5,801,580
Adjusted R-squared	0.0191	0.0364

Notes: This table reports how time-series variation in regulation and enforcement affect selective disclosure. In panel A, the sample period is from 10/23/1999 (one year before Reg FD implementation) to 8/31/2006 (one year after the Siebel decision). Unlike other tables, the coefficient on *ANALY_OUT* reflects the informativeness of analyst outputs in the period before Reg FD and the coefficient on *ANALY_OUT* x *POST_SIEBEL* reflects the informativeness over the one-year period after Siebel relative to that of the pre-Reg FD period. In column (1) of panel B, we estimate equation 1 (Table 2, panel A) after extending the post Siebel period from one year to fourteen years, 9/1/2005 to 12/31/2019. In column (2) of panel B, we divide the extended post Siebel period into two-before and after the SEC's resumption of Reg FD enforcement in 2009. Test statistics (two-sided) based on robust standard errors two-way clustered at the firm and trading day levels are reported in parenthesis. ***, **, and * represent significance levels of 10%, 5%, and 1%, respectively. See Appendix for variable definitions.

Electronic copy available at: https://ssrn.com/abstract=3440852

TABLE 8

Survey results of the explanation of the effect of Siebel on the informativeness of analyst outputs

Panel A: Job titles of survey participants

Job Title	Percent of Participants
Partner/Law Firm Partner/Managing Partner	75.0
Counsel/Of Counsel/Senior Counsel	11.7
Other/Blank	13.3

Panel B: Survey participants' years of law practice

Years of Law Practice	Percent of Participants
More than 20 years	81.7
Between 15 and 20 years	8.3
Between 10 and 15 years	6.7
Between 5 and 10 years	1.7
Less than 5 years	1.7

Panel C: Main survey question results

Explanation	Average (SD) likelihood rating	Significantly greater than explanation #
(1) *Unintentional* increase in *implicit* communication	1.4	2,3,4,5
(2) *Intentional* increase in *implicit* communication	0.9	3,4
(3) *Unintentional* increase in *explicit* communication	0.8	4
(4) *Intentional* increase in *explicit* communication	0.5	-
(5) Another explanation	0.7	-

Notes: Column (1) of Panel C reports the average likelihood ratings on 5-pt scales ranging from 0 = "*Not at all likely*" to 4 = "*Extremely likely*" for five explanations of the effect we observe in our archival analyses, namely, analyst outputs issued after the Siebel decision are significantly more informative to the market compared to analyst outputs issued just before the decision. Column (2) reports the results of pairwise t-tests testing the null hypothesis that the average likelihood ratings are equivalent for each set of two explanations. We report the explanations for which the likelihood of a given explanation is significantly greater at the 10% level using the Bonferroni-Holm method to adjust for multiple comparisons. For example, the likelihood of explanation 1 is significantly greater than that of explanations 2, 3, 4, and 5.

Electronic copy available at: https://ssrn.com/abstract=3440852

Appendix: Survey Methodology

To identify lawyers with expertise in Reg FD, we compile a hand-collected database of authors of publicly available law firm memos written about Reg FD. We interview three of these lawyers, each with more than two decades of experience, and send a survey to the final pool of potential survey respondents totaling 307 lawyers from 74 different law firms. We email a Qualtrics survey link to potential participants, followed by a reminder email one week later. The survey is open from 6/22/2020 to 7/20/2020 and receives 76 completed responses for a 24.8 percent response rate. Of the 76 completed responses, 16 participants do not progress beyond the screening questions, leaving 60 responses for analysis.[1]

The survey consists of two screening questions followed by relevant definitions (Figure 1a) and the main survey question (Figure 1b), which has five parts. Lastly, we ask two questions about participants' experience practicing law. The two screening questions prevent the lawyers from proceeding if they report having no (1) Reg FD-related experience or (2) familiarity with the *SEC v. Siebel Systems, Inc.* case. The main survey question then asks participants to rate the likelihood of five potential explanations (which are shown in random order) for the effect we observe archivally around the Siebel ruling (see Figure 1b). [2] The explanations for the increase in disclosure after the Siebel ruling in private meetings differ on two dimensions -- whether managers increase selective disclosure after Siebel (1) using explicit or implicit communication and (2) intentionally or unintentionally.[3]

[1] We received and incorporated feedback from three law firm partners before administering the survey.

[2] In the survey question (Figure 1b), we indicate that analyst outputs issued after the Siebel decision induce a significantly greater price reaction "in the one-year and one-month periods" around the decision. However, upon using two-way clustering of standard errors by firms and trading days, per helpful review comments, the one-month result becomes statistically insignificant. As such, the survey results should be viewed with a little caution. Yet, because we show that the corresponding results are significant when using slightly longer periods of two and three months (see footnote 16 in the paper), we do not believe that the tenor of the survey results would change if the survey question stated "one-year and *two-month* periods" instead of "one year and *one-month* periods."

[3] We include a focus on intentional versus unintentional disclosures because Reg FD refers to this distinction and explicitly applies to both intentional and unintentional disclosures, although an issuer is required to address intentional disclosures more rapidly. See 17 CFR § 243.100(a)(1) & (2).

Electronic copy available at: https://ssrn.com/abstract=3440852

Figure 1a

Definitions of explicit and implicit communication

Private meetings occur between company officials and investors/analysts and include in-person meetings, phone calls and any other communications that are not simultaneously disseminated to the general public via a website, press release, or SEC filing.

Information disclosed by company officials in **private meetings** can differ from a company's **public statements** in several ways. The information disclosed in **private meetings** might:

1. Contain different facts than those contained in the company's **public statements**.
2. Not contain facts different than those contained in the company's **public statements**, but the same facts are delivered
    - using different words or characterizations,
    - using a different tone – more upbeat, etc., or
    - using different body language, facial expressions, etc.

We refer to the first type (1) as **explicit communication** of non-public information and the second type (2) as **implicit communication** of non-public information.

Electronic copy available at: https://ssrn.com/abstract=3440852

Figure 1b

Main survey question

Survey Question

Recent research finds a significant change in the capital market information environment after the 2005 Siebel Systems case decision. Specifically, sell-side analyst earnings forecasts and buy/sell recommendations issued just after the decision are significantly more informative to the market (i.e., induce a greater stock price reaction) compared to sell-side analyst outputs issued just before the decision. The study shows the effect exists in the one-year *and* one-month periods immediately before and after the decision, indicating the effect is likely not due to something other than the decision.

Below, shown in random order, are several potential explanations for these findings. Keeping in mind that these explanations are not mutually exclusive, please rate the likelihood that each contributed to these findings. (Please feel free to refer to definitions of *implicit* and *explicit* communication and *private meetings* using the back button on the survey below.)

	Not at all likely	Somewhat likely	Moderately likely	Very likely	Extremely likely
After the Siebel Systems decision, corporate officials *intentionally* increased **explicit communication** of non-public information during private meetings with analysts.	○	○	○	○	○
After the Siebel Systems decision, corporate officials *intentionally* increased **implicit communication** of non-public information during private meetings with analysts.	○	○	○	○	○
After the Siebel Systems decision, corporate officials *unintentionally* increased **implicit communication** of non-public information during private meetings with analysts.	○	○	○	○	○
After the Siebel Systems decision, corporate officials *unintentionally* increased **explicit communication** of non-public information during private meetings with analysts.	○	○	○	○	○
Another explanation (select "Not at all likely" if you do not have another explanation):	○	○	○	○	○

Electronic copy available at: https://ssrn.com/abstract=3440852

european corporate governance institute

about ECGI

The European Corporate Governance Institute has been established to improve *corporate governance through fostering independent scientific research and related activities.*

The ECGI will produce and disseminate high quality research while remaining close to the concerns and interests of corporate, financial and public policy makers. It will draw on the expertise of scholars from numerous countries and bring together a critical mass of expertise and interest to bear on this important subject.

The views expressed in this working paper are those of the authors, not those of the ECGI or its members.

www.ecgi.global

european corporate governance institute

ECGI Working Paper Series in Finance

Editorial Board

Editor Nadya Malenko, Professor of Finance, Boston College

Consulting Editors Renée Adams, Professor of Finance, University of Oxford
Franklin Allen, Nippon Life Professor of Finance, Professor of Economics, The Wharton School of the University of Pennsylvania
Julian Franks, Professor of Finance, London Business School
Mireia Giné, Associate Professor, IESE Business School
Marco Pagano, Professor of Economics, Facoltà di Economia Università di Napoli Federico II

Editorial Assistant Asif Malik, Working Paper Series Manager

www.ecgi.global/content/working-papers

european corporate governance institute

Electronic Access to the Working Paper Series

The full set of ECGI working papers can be accessed through the Institute's Web-site (www.ecgi.global/content/working-papers) or SSRN:

Finance Paper Series	http://www.ssrn.com/link/ECGI-Fin.html
Law Paper Series	http://www.ssrn.com/link/ECGI-Law.html

www.ecgi.global/content/working-papers