

SEC's Concept of Web Site Disclosures —Not Ready for Prime Time

By David C. Collins

I applaud the Securities and Exchange Commission for their forward thinking on the issue of optimizing corporate disclosure through the power of the Web.

I believe, however, that for now the investing world—and the way it consumes data—is not yet ready for material information to be disclosed via corporate Web sites. I plan to share my views on the topic in this article and in the public comment period ending November 5. I encourage you to do the same.

The SEC makes many sound arguments in its release, Commission Guidance on the Use of Company Web Sites, about the use of corporate Web sites to improve investor communications. Clearly, the SEC took notice that investor communications on the Internet had made huge strides since the adoption of Regulation FD in 2000.

Today, most publicly traded companies host corporate Web sites with IR sections that provide a broad array of investment information. These sites are often updated on a weekly or daily basis. Some are even updated more than once a day.

The SEC release provides valuable perspective on issues that challenge IROs, such as liability for older content on

your site or liability for links to third-party content.

However, the section of the SEC release that is of greatest consequence—and the point on which I think the SEC is currently wrong (or premature)—is the idea of using a company's Web site as means to achieve corporate disclosure in lieu of traditional wire service or EDGAR disclosures.

Centralization vs. Decentralization

Markets were formed to bring together investors in centralized locales to conduct an orderly exchange of securities positions. Corporate disclosure still requires such a centralized mechanism to ensure the orderly distribution of and fair access to market moving data.

Despite the progress on the Web with the advent of RSS, Atom, and other data-feed technologies, my window on the investment community suggests

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Corporate disclosure requires a centralized mechanism for the orderly distribution of market-moving data.

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"There is no reason we shouldn't take advantage of these trends to democratize information and reach beyond the traditional media and analysts to connect directly with investors or others interested in our company.

"Dell Shares, our investor relations blog on Dell.com/investor is a perfect example of this. It's about investor relations at Dell expanding beyond the traditional approaches to IR with a view to being involved in direct relationships with our shareholders and potential shareholders."

Collins: Web Site Disclosures

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that ferreting out meaningful news from thousands of corporate Web sites each day is not practical for small or large investors.

Further, RSS-like technology is not yet sufficiently advanced to provide easy-to-use disclosure caliber functionality. My finger-in-the-wind assessment is that the use of data feeds has not reached sufficient deployment in corporate Web sites. Nor has it been adopted by a sufficient percentage of the investing audience to be relied upon for this critical new disclosure function.

The current conduits for potentially market-moving information are the major newswire services such as BusinessWire or PR Newswire, as well as the SEC's own EDGAR database. These centralized distribution services have built substantial infrastructure to allow them to "push" material news out to financial portals worldwide at near real-time speeds, while at the same time providing security technology and procedures to prevent malevolent forces from "gaming" the system with false news or premature access.

By accessing any major financial portal or quote service an investor can be alerted to material news that is relevant to each of their investments. The benefit of these wire services is that even the

Lynn Tyson will share her views on the recent SEC guidance on corporate Web site disclosure in a Web conference titled *The SEC's New Corporate Website Guidance: Everything You Need to Know—and Do Now*, Jan. 14, 2009, at InvestorRelationships.com. In addition to Tyson, the panel will include Dominic Jones, Broc Romanek, and speakers from Intel, Microsoft, and RiskMetrics. Visit www.investorrelationships.com/webcast/2009/01_14.htm for more information. □

smallest or most remote investor has rapid access to news on the investments they track, keeping them on an equal footing with the largest institutional investors.

So why are we looking to fix something that is not really broken? The answer is not that clear, so let's look at some of the issues.

No Cost Reductions on the Horizon

Public companies spend ample sums each year to disseminate news via wire services and with various vendors who complete their SEC filings. Easing this financial burden is a worthy cause, but the suggested solution seems to have hidden costs as great as, or perhaps greater than, the status quo.

Web-based disclosures will require investing in more robust Web-site infrastructure, greater security measures, and push technologies like RSS to move news to those who have signed up for feeds.

The new approach would also require personnel and/or a vendor to manage each site and its disclosures. From the SEC's comments, it sounds like it will also involve some level of investment (perhaps in news wires) to regularly alert the markets that they should rely upon the

corporate Web site as the point of disclosure for a particular company.

These are not small investments, and currently they would deliver a solution that seems grossly inferior to the trusted, centralized news dissemination platforms we all enjoy today. (Note: I do not own any Berkshire Hathaway stock!)

Certainly, the SEC and each exchange would also need to spend more time overseeing and enforcing Web disclosure practices. That will drive costs for public companies as well.

Digression on Disclosure Costs

Since we are on the subject of cost, one suggestion the SEC did not raise was to look at ways to eliminate the duplicative reporting involved when companies must file news releases on the EDGAR system (and incur that cost) after they have paid to utilize SEC-approved disclosure sources to distribute the release. This duplication provides no benefit to investors. It costs more and wastes a lot of time.

Also, as the SEC nears the launch of IDEA—Interactive Data Electronic Applications—the interactive online application that will replace EDGAR, I hope the commission will develop Web portals to enable public company filers to upload their disclosure filings directly for little or no fee.

This change could substantially reduce the compliance burden of public companies. But instead, the SEC is asking companies to adopt data-tagging technologies such as XBRL, which, while providing a range of benefits, will also drive increased compliance costs for companies required to report using such formats.

The suggested solution may have hidden costs as great or greater than the status quo.

Will Your Site Pass SEC Muster?

Adding to the IRO's burdens, the SEC does not provide much clear guidance to companies in assessing whether your site is even suitable for use as the corporate disclosure point they are seeking.

While still early in their review, this seems a major issue that needs clarification. The SEC's statement doesn't help much: "We now believe that technology has evolved and the use of the Internet has grown such that, for some companies in certain circumstances, posting of the information on the company's Web site in and of itself may be a sufficient method of public disclosure under Rule 101(e) of Regulation FD." (That sure clears it up for me ... how about you?) The implication is that big company sites are more likely to qualify than those of smaller companies; but how is one to know ... and how do you assess this for each disclosure?

Valuable Data on Corporate Web Sites

Let me emphasize here that my comments on the SEC release, Commission Guidance on the

Investor Relations Calendar

Tackling Your 2009 Compensation Disclosures: The 3rd Annual Proxy Disclosure Conference & 5th Annual Executive Compensation Conference, New Orleans, via live nationwide video webcast. Oct. 21-22. Contact: CorporateCounsel.Net, 925- 685-5111; info@thecorporatecounsel.net

Corporate Security, Business Continuity, and Crisis Management Conference, New York Marriott Downtown Hotel, New York City. Nov. 11-12. Contact: The Conference Board, 212-3390345; www.conference-board.org/conferences

Effective IR in Contemporary Capital Markets, Swissotel, Chicago. Nov. 13, open to NIRI members only. Contact: National Investor Relations Institute, www.niri.org

The SEC's New Corporate Website Guidance: Everything You Need to Know—And Do Now, Web conference on InvestorRelationships.com, Jan. 19. Contact: info@investorrelationships.com.

4th Annual Clean-Tech Investor Summit, Renaissance Esmeralda Resort & Spa, Indian Wells, Palm Spring, Calif., Jan. 21-22. Contacts: Clean Edge, Ron Pernick, pernick@cleanedge.com or International Business Forum, Craig Simak, craig@ibfconferences.com

point-counterpoint

Use of Company Web Sites, focus on the most critical issue of disclosure: namely, *the release of market-moving, material information.*

Issues involving other data points that are not material but help to form the mosaic from which investors can make informed investment decisions are not really relevant. That data is already being provided on corporate Web sites in large quantities, and this practice should continue. The relevance of such information is not sufficient to alter an investment thesis, but it is important enough to warrant inclusion on a corporate site.

I view the current role of a corporate Web site as an immediate (real-time) archive of company disclosures and data, be they news announcements, SEC filings, PowerPoint presentations, webcasts (live or archived), corporate videos, or product information.

Once a broad disclosure has been achieved, and all investors have fair access to the data through a variety of centralized investment portals, then the data can be posted to the corporate site as is currently the norm.

Newswires Level the Playing Field

The news release or filing is the trigger or bugle call to alert investors that something new of substance is now available via either a financial portal or on a corporate site. That broad, simultaneous alert is critical and is a function that no corporate site, no matter how frequently updated or how many page views it receives or how many people subscribe to its RSS feeds, can ever replicate at this time.

Down the road, with broader adoption and greater specificity and speed in push services like RSS, Google alerts, or others, the potential for a corporate Web disclosure becomes more feasible and fair to all market participants.

Just as the SEC was ahead of its time in beginning the development of the EDGAR

system in the early 1980s—but only fully implementing it more than a decade later in January 1995—their call for Web site-based disclosure shows vision, I believe. But it is premature. Centralized disclosures via the major newswires and EDGAR are working just fine in providing immediate dissemination to all constituencies, and the alternative proposed seems to offer no real cost or functionality benefits at this time.

My Vote? ‘Don’t Do It!’

Any effort to halt the current practices before technology and user behavior have caught up would be a big blow against the concept of fairness embodied in Regulation FD, and—as this election season heats up—I clearly vote against it!

For further information, see the SEC’s Interpretive Release: Commission Guidance on the Use of Company Web Sites at www.sec.gov/news/speech/2008/spch073008km.htm. □

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Coming in future issues of IRN

- **What Issues Are Being Prophesied for the Future?** Faith-based investors and related groups were eerily prophetic when they started sounding the alarm in 1993 about subprime mortgage abuses. These cautions from faith-based groups started about 12 years before the start of widespread acceptance in 2005 that the United States was heading into a mortgage-foreclosure crisis. We will discuss the three emerging issues that religious investors are highlighting today that are likely to have a major impact on the bottom line of investors tomorrow.
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