
SEC Approves New Interpretive Guidance Regarding the Use of Corporate Websites

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On July 30, 2008, the SEC voted 4-0 to approve updated guidance regarding the application of federal securities laws to corporate websites. The SEC has not issued comprehensive guidance on the use of corporate websites since 2000.

At the meeting to adopt the new guidance, SEC Chairman Christopher Cox explained that ongoing technological advances in electronic communications, including blogs and syndication technologies, have increased the markets' and investors' demand for highly current and interactive information. In addition, new technologies allow companies to present information in new and more useful formats for investors. At the same time, these technological advances have given rise to securities law issues for public companies to consider. Chairman Cox explained that the SEC is acting in response to a concern that a lack of clear guidance in this area is hindering the development of newer, better and more informative websites for investors, and in the hope that interpretive guidance regarding the use of corporate websites will encourage companies to increase the use of their websites to disseminate corporate information.

The guidance, which will be divided into four parts, will clarify:

1. The circumstances in which information posted on a corporate website will be considered valid public disclosure under Regulation FD and matters for companies to consider in complying with Regulation FD's public disclosure requirements;
2. The parameters of liability for certain types of information posted on a corporate website, including historical or archived data, summary information, and hyperlinks to third-party information or websites;
3. That information posted on a company's website would generally not be subject to rules under the Sarbanes-Oxley Act relating to a company's disclosure controls and procedures; and
4. That information posted on a corporate website need not be in printer-friendly format unless other rules explicitly require it.

The exact parameters of the guidance will be available when the SEC issues the interpretative release and will be effective immediately upon publication in the Federal Register. Based on the SEC's discussion of the new guidance at the meeting--and in a potentially significant change from the current situation--it appears that in some circumstances posting material on a corporate website will itself constitute adequate public disclosure for purposes of Regulation FD. However, determining whether this is so in any particular case will depend on a facts-and-circumstances analysis, as the guidance will provide a non-exhaustive list of factors for companies to consider, rather than a bright-line rule. The SEC explained that the use of bright-line rules in this area is difficult because the rapid advancement of technology might quickly render any bright-line rules obsolete.

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