

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 241 and 271

[Release Nos. 34-58288, IC-28351; File No. S7-23-08]

COMMISSION GUIDANCE ON THE USE OF COMPANY WEB SITES

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; solicitation of comment.

SUMMARY: We are publishing this interpretive release to provide guidance regarding the use of company web sites under the Exchange Act and the antifraud provisions of the federal securities laws. We are soliciting comment on issues relating to company use of technology generally in providing information to investors.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comment Date: Comments should be received on or before [insert date 90 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/interp.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-23-08 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-23-08. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's web site (<http://www.sec.gov/rules/interp.shtml>).

Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cohan, Kim McManus or Mark Vilardo, Special Counsels in the Office of Chief Counsel, Division of Corporation Finance, at (202) 551-3500, 100 F Street, NE, Washington, DC 20549.

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I. Introduction and Overview

A. Introduction

In its February 2008 Progress Report, the Federal Advisory Committee on Improvements to Financial Reporting recommended that we provide more guidance as to how companies can use their web sites to provide information to investors in compliance with the federal securities laws, particularly with respect to the Securities Exchange Act of 1934 (the “Exchange Act”).¹ Prompted, in part, by this report, we believe that to encourage the continued development of company web sites as a significant vehicle for the dissemination to investors of important company information, it is an appropriate time to provide additional Commission guidance specifically addressing company web sites.² While we addressed certain discrete Internet issues relating to the Securities Act of 1933 (the “Securities Act”) in 2005,³ we last provided guidance in 2000 on the electronic delivery of disclosure documents, company liability for web site content, as well as other matters.⁴ We noted then that, given the speed at which technological advances are developing, and the translation of those technologies into investor tools, we expected to revisit the guidance provided at that time in order to update and supplement it as appropriate.⁵

¹ See Progress Report of the SEC Advisory Committee on Improvements to Financial Reporting, Release No. 33-8896 (Feb. 14, 2008) (“CIFiR Progress Report”), available at <http://www.sec.gov/rules/other/2008/33-8896.pdf>.

² In this release the term “company web site” and the use of the term “web site” in the context of companies refer to public (Internet) company sites, as distinguished from private (intranet) sites. A company web site is maintained by or for the company and contains information about the company.

³ See Securities Offering Reform, Release No. 33-8591 (Aug. 3, 2005) [70 FR 44721] (“Securities Offering Reform Release”).

⁴ See Use of Electronic Media, Release No. 33-7856 (Apr. 28, 2000) [65 FR 25843] (“2000 Electronics Release”).

⁵ See id. at Section II.D.

Given the development and proliferation of company web sites since 2000, and our expectation that continued technological advances will further enhance the quality, not just the quantity, of information delivered and available to investors on such web sites, as well as the speed at which such information reaches the market, we are issuing this interpretive release⁶ to provide additional guidance on the use of company web sites with respect to the antifraud provisions and certain relevant Exchange Act provisions of the federal securities laws.⁷ Our guidance focuses principally on:⁸

- When information posted on a company web site is “public” for purposes of the applicability of Regulation FD;
- Company liability for information on company web sites – including previously posted information, hyperlinks to third-party information, summary information and the content of interactive web sites;
- The types of controls and procedures advisable with respect to such information; and
- The format of information presented on a company web site, with the focus on readability, not printability.

⁶ We do not view the guidance in this release as a delineation of the outer limits of how technology can or should be used on company web sites.

⁷ In addition to the Exchange Act, companies must also consider whether their web sites may involve issues under the Securities Act, which we discussed in our 2000 Electronics Release. For example, a company in registration must consider the application of Section 5 of the Securities Act to all of its communications with the public – including information on a company’s web site. See 2000 Electronics Release, supra note 4. This consideration is important with regard to any company engaged in offering and selling its securities, including companies engaged in continuous offerings of their securities, such as mutual funds. Because our rules adopted as part of Securities Offering Reform in 2005 answered many of the key issues relating to company web site use under the Securities Act, this release will focus on the antifraud provisions and certain Exchange Act provisions only. See Securities Offering Reform Release, supra note 3; Securities Act Rule 433 [17 CFR 230.433].

⁸ For purposes of this release generally, we are using the term “company” to refer to entities that are corporations, partnerships and other types of registrants subject to the periodic reporting and antifraud provisions of the Exchange Act, including registered investment companies.

We have long recognized the vital role of the Internet and electronic communications in modernizing the disclosure system under the federal securities laws and in promoting transparency, liquidity and efficiency in our trading markets.⁹ Central to the effective operation of our trading markets is the ongoing dissemination of information by companies about themselves and their securities. A reporting company's reports that it files under the Exchange Act and other publicly available information form the basis for the market's evaluation of the company and the pricing of its securities, and investors in the secondary market use that information in making their investment decisions.

Ongoing technological advances in electronic communications have increased both the markets' and investors' demand for more timely company disclosure and the ability of companies to capture, process and disseminate this information to market participants. Indeed, one of the key benefits of the Internet is that companies can make information available to investors quickly and in a cost-effective manner. Recently, we noted that approximately 80% of investors in mutual funds in the United States have access to the Internet in their homes.¹⁰ Investors are turning increasingly to electronic

⁹ See, e.g., The Impact of Recent Technological Advances on the Securities Markets (Sept. 1997) (available at <http://www.sec.gov/news/studies/techrp97.htm>). In this report, we stated that we were mindful of the benefits of increasing use of new technologies for investors and the markets, and have encouraged experimentation and innovation by adopting flexible interpretations of the federal securities laws. We noted that our approach has balanced the goals of promoting the benefits of electronic media, with the need to protect investors and the integrity of the markets from fraud and abuse. We also emphasized the importance of continued coordination with market participants and federal, state and international regulators as technological advances develop. See also Securities Offering Reform Release, *supra* note 3.

¹⁰ See Internet Availability of Proxy Materials, Release No. 34-55146, at Section I (Jan. 22, 2007) [72 FR 4147] ("Internet Proxy Release"). The Investment Company Institute reported that, in 2006, 92% of mutual fund shareholders had Internet access. See Sandra West & Victoria Leonard-Chambers, Ownership of Mutual Funds and Use of the Internet, 2006, Investment Company Institute Research Fundamentals (Oct. 2006), available at <http://ici.org/stats/res/fm-v15n6.pdf>. In 2005, that figure was at 88%. Additionally, the Investment Company Institute reported that 79% of all U.S. adults had Internet access in 2005. See Sandra West & Victoria

media and to company and third-party web sites as sources of information to aid in their investment decisions, particularly since many types of investment-related company information are available only in electronic form. We believe that the Internet has helped to transform the trading markets by enabling many retail investors to have ready access to company information.¹¹

Through the years, we have taken a number of steps to encourage the dissemination of information electronically via the Internet, as we believe that widespread access to company information is a key component of our integrated disclosure scheme, the efficient functioning of the markets, and investor protection. Today, all companies must make their Commission filings electronically through our Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system,¹² and we provide free access to EDGAR on a real-time basis through our Internet web site, www.sec.gov.¹³ In addition to our ongoing efforts to improve and modernize EDGAR, we have

Leonard-Chambers, Mutual Fund Shareholders’ Use of the Internet, 2005, Investment Company Institute Research Fundamentals (Feb. 2006), available at <http://www.ici.org/pdf/fm-v15n2.pdf>. According to the Pew Internet & American Life Project, as of an October-December 2007 survey, 75% of adults use the Internet. See http://www.pewinternet.org/trends/User_Demo_2.15.08.htm.

¹¹ See, e.g., Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports, Release No. 33-8128, at Section II.D.1 (Sept. 5, 2002) [67 FR 58480] (“Accelerated Periodic Report Filing Release”) (“Online access to Internet information also helps to democratize the capital markets by enabling many small investors to access corporate information.”).

¹² A limited number of forms continue to be permitted to be filed in paper. For example, we permit paper filing of Form 1-A [17 CFR 239.90] and Form 144 [17 CFR 239.144]. In addition, SEC registered investment advisers make some of their filings electronically through the Investment Adviser Registration Depository.

¹³ Since 1983, when the Commission first began to develop an electronic disclosure system, we have been continually improving and modernizing electronic access to companies’ Commission filings, as well as requiring more forms to be filed electronically rather than in paper. The pilot program for EDGAR was established in the early 1980s pursuant to a Congressional mandate and the system was fully implemented, effective January 30, 1995. For a summary of the development of EDGAR, see the staff’s report, “Electronic Filing and the EDGAR System: A Regulatory Overview,” (Oct. 3, 2006), available at <http://www.sec.gov/info/edgar/regoverview.htm>.

encouraged, and recently proposed requiring,¹⁴ companies to provide financial information on EDGAR in interactive data files, which would make financial information easier for investors to analyze, as well as help automate regulatory filings and business information processing. We also proposed rule amendments requiring mutual funds to provide certain key information from their prospectuses in interactive data format.¹⁵

Interactive data has the potential to increase the speed, accuracy and usability of financial and other disclosure, and eventually to reduce costs.¹⁶

As we have developed EDGAR to facilitate and promote electronic availability of information, we also have encouraged companies to make their Commission filings and other company information available on their web sites. We believe that company disclosure should be more readily available to investors in a variety of locations and formats to facilitate investor access to that information. Although our rules do not

¹⁴ On May 30, 2008, we published proposed rule amendments requiring companies to provide their financial statements, including financial statement footnotes and schedules, in interactive data format on EDGAR. The proposed rules would require a company to provide such interactive data in its annual and quarterly reports, transition reports, and Securities Act registration statements. Companies that maintain web sites also would be required to post this new interactive data on their web sites. See Interactive Data to Improve Financial Reporting, Release No. 33-8924 (May 30, 2008) [73 FR 32794] (“Interactive Data Proposing Release”).

¹⁵ See Interactive Data For Mutual Fund Risk/Return Summary, Release No. 33-8929 (June 10, 2008) [73 FR 35442] (“Mutual Fund Interactive Data Proposing Release,” together with the Interactive Data Proposing Release supra note 14, the “Interactive Data Proposing Releases”).

¹⁶ Companies create interactive data files by defining – or “tagging” – their financial statements using elements and labels from a standard list of interactive data tags. Data tagging provides a format for enhancing financial and other reporting data using electronic formats such as eXtensible Mark-Up Language (XML) and its derivatives, such as eXtensive Business Reporting Language (XBRL). General information concerning interactive data is available on our web site at <http://www.sec.gov/spotlight/xbrl.shtml>. See also XBRL Voluntary Financial Reporting Program on the EDGAR System, Release No. 33-8529 (Feb. 3, 2005) [70 FR 6556]; and Extension of Interactive Data Voluntary Reporting Program on the EDGAR System to Include Mutual Fund Risk/Return Summary Information, Release No. 33-8823 (July 11, 2007) [72 FR 39290].

appropriate and helpful to investors, such as when it relates to lengthy or complex information. For similar reasons, we believe the use of summaries or overviews on web sites can be helpful to investors. We note, however, that summaries or overviews standing alone and which a reasonable person would not perceive as summary, and which do not provide additional information to alert a reader as to where more detailed information is located, could result in investors not necessarily understanding that the statements should be read in the context of the information being summarized. Consequently, when using summaries or overviews on web sites, companies should consider ways to alert readers to the location of the detailed disclosure from which such summary information is derived or upon which such overview is based, as well as to other information about a company on a company's web site.

In presenting information in a summary format or as part of an overview, companies should consider the context in which such information is presented. Just as with hyperlinks to third-party information, companies should consider using appropriate explanatory language to identify summary or overview information. As an example, a summary page on a company web site that is identified and presented in a manner similar to an introductory page in a "glossy" annual report – with graphs and charts illustrating key performance metrics derived from financial statements contained in later pages of the same document – would likely be viewed as a summary. Conversely, where summary

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- We require prospectuses to include a plain English "summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful." See Item 503(a) of Regulation S-K [17 CFR 229.503(a)].
 - We recently proposed rules that would require key information to appear in a summary section at the front of mutual fund prospectuses. See Mutual Fund Summary Prospectus Proposing Release, supra note 27.

