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## Corporate Alert

### SEC Publishes Guidance on Expanding the Role of Company Web Sites for Distributing Investor Information

The Securities and Exchange Commission has recently published new guidance on the use of company Web sites. This guidance focuses primarily on the following:

- When information posted on a company Web site is considered "public" for purposes of Regulation FD which applies to selective disclosure of material information by companies;
- 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 that information; and
- The format of information on a company Web site, with the focus on readability, not printability.

Public and privately held companies should be aware of new SEC guidance on federal securities law implications of company Web sites. The new guidance contains helpful information in how companies may use the Internet to provide disclosures to investors, but does not give companies a blank check to use the Internet to disclose information to investors.

The SEC guidance encourages companies to develop their Web sites in compliance with federal securities laws as an effective tool in some circumstances for investors to gather information.

In issuing this new guidance, the SEC is acknowledging the now pervasive use of the Internet by investors. However, the SEC's guidance is carefully guarded. Indeed, the guidance stops well short of giving companies a blank check to use the Internet to disclose information to investors. For example, when addressing the question of whether information posted on a company's Web site would be "public" so that a subsequent selective disclosure would not implicate Regulation FD, the SEC states "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." (emphasis added) Despite the SEC's careful language, we do believe that the guidance contains a useful discussion of factors that a company may use in determining whether its Web site postings are "public" for purposes of Regulation FD.

The guidance emphasizes that the anti-fraud provisions of the federal securities laws apply to company statements made on the Internet in the same way that they would apply to any other statement that a company makes or that is attributable to the company. The guidance helpfully states that a company does not reissue or republish materials for purposes of the anti-fraud provisions of the federal securities laws simply because a company maintains previously posted materials on its Web site. The guidance notes, however, that the anti-fraud provisions apply when the statements are first made and that a company could affirmatively restate or reissue a statement. The guidance includes the SEC's views on what steps companies should take to assure investors that posted materials "speak" as of a certain date or earlier period.

Although the SEC has previously addressed hyperlinks to third party information, this new guidance explores the question of whether the context of a hyperlink and the hyperlinked information together creates a reasonable inference that the company has approved or endorsed the information.

Many companies include summary information on their Web sites. The guidance includes suggested techniques that companies may use to minimize the chance that investors would be confused about the level of incompleteness of summary information.

The SEC also takes note of the fact that many companies have interactive features, including blogs and shareholder fora. The guidance emphasizes that the anti-fraud provisions of the federal securities laws applies to blogs and these fora. It also states the SEC's view that companies cannot require investors to waive protections under the federal securities laws as a condition to entering or participating in a blog or forum.

The SEC notes that if a company elects to satisfy its disclosure obligations (when permitted to do so under the SEC's rules) by posting information on its Web site, the company's disclosure controls and procedures apply to that information. Finally, the SEC explains that information appearing on a company's Web site need not be made available in a format comparable to paper-based information unless the SEC's rules explicitly require it.

The SEC's guidance represents an important statement of the SEC's views on a number of issues involving the use of company Web sites.

Companies should review their own Web sites in light of this guidance. View the SEC's guidance by clicking on the link below:

 [SEC's Guidance on the Use of Company Web sites](#)

Possibly the biggest question for most companies will be establishing with reasonable certainty that their investor relations Web sites are a "recognized channel" for investors to receive information about the company.

Companies will also need to analyze the rules of the exchanges upon which their stock is listed (NYSE, NASDAQ, ASE) and determine how to continue to comply with those rules and this new guidance from the SEC concerning dissemination of information to the public.

If you have any questions regarding this alert or need assistance understanding how this new guidance may affect your company, please contact us.

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