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DISCLOSURE**What Can I Find Out About a Company From Its Website?**

BY TOM RUNZO, JACK HOGOBOOM AND ALEX DINUR

Company websites are becoming an increasingly important source of information for investors as Congress and the Securities and Exchange Commission have passed regulations and national exchanges, including NYSE and NASDAQ, have issued rules that govern what, when and how content should be posted on them. The SEC has also published guidance on specific areas in which they do not have regulations, but want to prevent investor confusion.

Some companies present the bare minimum information required, while others prefer to use their websites as a tool to attract and inform investors. This article discusses several of the key requirements for public company websites and touches on some of the more complex scenarios that companies may face when they use their websites.

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Public Filings

Annual reports to shareholders of NYSE-listed companies must be made available on a company's website simultaneously with their filing with the SEC. Unless subject to the proxy rules, such companies are also required to provide shareholders, upon request, with a hard copy of the complete annual report, including audited financial statements, free of charge. Companies listed on NASDAQ must make their annual and quarterly reports available to their shareholders, and an easy way of doing that is by posting on their website. NASDAQ companies are also required, unless they follow the "Notice and Access" method of proxy solicitation under the proxy rules, to provide shareholders, upon request, with a hard copy of the complete annual report, including audited financial statements, free of charge.

Companies sometimes file current reports on Form 8-K with the SEC, providing investors with updated company information. While they are not required to post these filings on their websites, most choose to post them, along with the company's 10-Ks and 10-Qs, because a company's annual report on form 10-K asks the company to state whether all such forms are posted, and if not, why not. Our advice to our clients is to always post them.

Companies are also required to either post certain other forms or provide a link on their websites to the site where the SEC has posted them. These include Section 16 filings on Forms 3, 4 and 5. The Section 16 fil-

ings must remain on the website for at least 12 months, although many companies choose to leave them posted for a longer period to serve as an archive for investors.

Certain financial statements, including those filed with Forms 10-K, 10-Q and some 8-Ks, must be posted in eXtensible Business Reporting Language. The SEC requires this so that investors can efficiently analyze financial data between companies using the more streamlined XBRL format.

While the rules don't specifically require companies to follow any format when it comes to posting public filings, we advise our clients to provide website visitors with options to filter and search for specific filings in multiple file formats.

In addition to posting the required financial reports, some companies may post financial data that does not comply with Generally Accepted Accounting Practices, or GAAP. They are allowed to do that, but should not make the non-GAAP financials more prominent than the required GAAP financials and should always include a reconciliation of the non-GAAP measures to the most directly comparable GAAP measures.

Proxy Materials and Investor Presentations

In connection with the annual meeting process, many companies physically mail shareholders notices of meetings, proxy statements and annual reports. Some opt to make that information available online and simply mail a notice of online availability. If they do that, they're required to make the materials available on a website in a manner that does not infringe on the anonymity of a person accessing the website, including by not tracking cookies.

This requirement is designed to even the playing field, so the company doesn't know who has downloaded any proxy materials.

Many companies will opt to use a third-party website, separate from their regular site, for proxy materials. After posting proxy materials on a site that does not track cookies, the company may also post the proxy materials on its own company website. Additionally, the posted materials must be in a format that readers can search, print and read. HTML and PDF files meet these requirements.

Companies also very often post investor presentations on their websites, but regulations governing company behavior during new offerings complicate those posts.

To avoid a presentation being deemed an "offer" of securities under the securities laws, a company should not post a new presentation if it is in an offering process or expects to commence an offering in the near future. If a presentation used in an offering includes material non-public information, it must be posted at the same time it is presented, unless the person or group receiving the presentation agrees to keep the information confidential and agrees not to trade in the company's stock.

Corporate Leadership

Public companies are encouraged to list the members of their boards of directors, and they should indicate whether each director is an independent or non-

independent director. They should also provide brief biographies of board members and many companies post pictures.

Ways to communicate with the board of directors are, however, required to be posted on the website or included in the company's annual proxy statement. Companies listed on the New York Stock Exchange must also post, or include in the proxy, methods to communicate with the presiding director and with the independent or non-management directors as a group.

Companies are also required to make the charters for their audit, compensation and nominating committees public. They may do this by posting them online, or by attaching them to their proxy statements at least once every three years, and whenever they are amended. A code of ethics must also be made public, either by posting it online, attaching it to the 10-K each year or offering, in the 10-K, to mail it to anyone who requests it. However, the NYSE requires these charters and the code of ethics to be posted.

NYSE, but not NYSE MKT, -listed companies must post to their websites Corporate Governance Guidelines, and they must mention that they have such guidelines in their proxy statement or, if they do not file a proxy statement, in their 10-K.

Whistle-Blower Policy

The Sarbanes-Oxley Act of 2002 included whistleblower protections designed to identify irregularities while providing protection from retribution and safeguarding investors. Public companies must have and should post whistleblower policies. The policy, as published, must include how to communicate irregularities to the audit committee.

Third-Party Information

Many companies choose not to post any links to outside information on their websites to avoid any appearance that they are endorsing third-party reports about them. This is why many companies don't host outside analyst or research reports or even link to them. However, if a company wishes to link to third-party articles or analyst reports, the company is encouraged to consider the guidance put out by the SEC on this subject, which discusses, among other things, the context and location of hyperlinks, selective inclusion and exclusion of information and the use of disclaimers.

Conclusion

In addition to remaining in compliance with securities laws and exchange rules, reasons for maintaining compliant and robust websites, including by choosing the option of posting materials to the website even when alternatives are available, include the ability to use certain short form registration statements and incorporate previously filed forms under the securities laws and the simplification of the task of making corporate governance and other required information publicly available. For these reasons, companies should continuously monitor their websites and engage with legal and investor relations professionals regarding requirements and best practices.