

VEDDER PRICE

Corporate Securities

A bulletin designed to keep corporate executive and investment banking professionals informed on major developments in the securities industry

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June, 1999

EDGAR GETS A FACELIFT

The Securities and Exchange Commission recently announced amendments to Regulation S-T in connection with the initial modernization of its Electronic Data Gathering and Retrieval (EDGAR) service. The changes mark the first steps of a program to simplify the 15-year-old system and make it more accessible to the public.

Current Filing System

The EDGAR system automates the receipt, processing and dissemination of documents filed with the SEC. Until now, filers using EDGAR were required to convert their documents to a text-based format called ASCII. Material submitted in ASCII, or the American Standard Code for Information Interchange, is stripped of most of the formatting familiar to users of traditional word processing systems, such as varied fonts and graphics. As users of EDGAR are well aware, the finished ASCII product often bears little resemblance to the original document. ASCII text can be difficult to read and generally is not searchable.

New Filing System

In an effort to make EDGAR more user-friendly for both filers and readers, the SEC has amended Rule 105 under

SEC Regulation S-T to permit filers to submit certain documents in the format used on the World Wide Web, *i.e.*, the HyperText Markup Language (HTML). Documents created in HTML can include varied fonts, additional formatting and colors, graphic materials and other visual displays. Use of HTML also allows hypertext linking, which allows the reader to "jump" to another page by clicking on a highlighted term. HTML documents filed via EDGAR appear in substantially the same graphic format as the originals, and are generally more appealing to the eye. These documents are also more accommodating to formatting improvements, such as indentation, spacing, use of bullet points and highlighting, which the SEC has called for as part of its plain English initiative.

Implementation Period of New System

On June 28, 1999, the SEC began accepting official filings of HTML documents via EDGAR. Unofficial test filings of HTML documents have been accepted since late May 1999. Use of HTML for EDGAR submissions is strictly voluntary, and ASCII documents will still be accepted. Certain filings, including Financial Data Schedules, may not be submitted in HTML format.

The SEC has designated the period from June 28, 1999 until early 2000 as an HTML implementation period, and will provide limited support for HTML as it monitors anticipated technical issues that will accompany the use of HTML. During the implementation period, no EDGAR document submitted may contain any graphic or image material. The system will suspend any submission that contains prohibited material. Also, for the duration of the implementation period, documents may not contain hypertext links to external Web sites or documents. The SEC has stated that it will consider expanding the use of graphic material and hyperlinks after the implementation period.

Graphic and Visual Material

As part of its modernization efforts, the SEC has also adopted new Rule 104 to Regulation S-T to permit filers to submit, along with their official filings, a single, unofficial PDF (Portable Document Format) copy of each electronic document. PDF documents retain all of the fonts, formatting, colors, images and graphics contained in an original document. While PDF submissions are unofficial

and may not be submitted without an HTML or ASCII filing, they will be used for public dissemination of hard copies. This will allow filers to ensure that the public has access to the "cleanest," most appealing versions of their filings, complete with all graphic and visual material.

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SEC ISSUES PLAIN ENGLISH UPDATE

The SEC recently released an updated staff legal bulletin regarding plain English disclosures. The plain English rule, which became effective on October 1, 1998, is designed to make prospectuses easier to read by requiring issuers to write in a clear and understandable manner. The SEC bulletin addresses common questions about the plain English rule and presents sample comments in an effort to help issuers apply the plain English rule. The plain English rule is set forth in Rule 421 under the Securities Act, and presently applies only to prospectuses filed under the Securities Act. All information included in such prospectuses must comply with the rule, including information incorporated by reference or reprinted from an Exchange Act filing.

Post-Effective Amendments to Form S-3

A post-effective amendment to a Form S-3, which was filed prior to the plain English requirements, must comply with the plain English rule if either:

- ⚡ the amendment incorporates by reference audited financial statements that are more recent than those incorporated by reference in the original registration statement or an earlier post-effective amendment; or
- ⚡ the filer is required to file a new post-effective amendment because the prospectus is being used more than nine months after the effective date of the registration statement, and the information within it is more than 16 months old.

About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

The Corporate Securities Group

The firm's corporate finance and securities attorneys regularly represent underwriters and issuers, both foreign and domestic, in a wide variety of matters, including:

- ⚡ debt and equity offerings, including initial public offerings, structured debt

Risk Factors

Risk factors should be presented concretely, concisely and with enough information to allow an investor to assess the degree of the risk. Issuers should also specifically tie each risk to one of the following risk categories:

- financings, aircraft securitizations, dual-class equity structures and sophisticated preferred stock instruments;
 - ✂ capital formation, for initial capitalization, financing ongoing operations and acquisitions;
 - ✂ corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
 - ✂ private placement of securities including Rule 144A and Regulation S transactions;
 - ✂ tender offers, mergers and acquisitions and recapitalizations and restructurings;
 - ✂ international offerings of securities and compliance by foreign issuers with the U.S. securities laws; and
 - ✂ litigation, administrative and arbitration proceedings involving various securities fraud claims, disclosure issues and regulatory enforcement matters.
- ✂ **Industry risk** – the risks a company faces because of the nature of the industry in which it operates.
 - ✂ **Company risk** – the risks a company faces that are specific to that company.
 - ✂ **Investment risk** – the risks a company faces because of a security involved in the transaction.

In addition, boilerplate language that a given risk would have a material adverse effect on operations should be replaced with a specific discussion of those effects.

Practice Pointers

In the bulletin, the SEC provides a sampling of comments it has issued since the plain English rule took effect. In addition to the points already noted, the SEC has directed registrants to:

- ✂ use the actual name of the company, or a shortened version of it, instead of "the Company";
- ✂ refrain from using capitalized terms;
- ✂ minimize the use of footnotes;
- ✂ draft the prospectus with the uninformed shareholder in mind to clarify technical terms;
- ✂ limit information on the cover page to items key to an investment decision, and eliminate extraneous items such as par value, cascading margins, information repeated in the summary of the prospectus and the use of all capital letters; and
- ✂ limit information in the summary of the prospectus to only the most important highlights of the offering.

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Issuers that ignore plain English principles in drafting prospectuses can expect a multitude of plain English

comments from the staff.

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