



Client Alert

August 2008

SEC Issues Guidance Regarding Company Websites

The Securities and Exchange Commission (SEC) on August 1, 2008 issued important new guidance on the use of company websites. The guidance relates to:

- Use of company websites to disclose material, non-public information as contemplated by SEC Regulation FD
- Liability of companies under the federal securities laws for information posted on their website or available by website hyperlinks to other sources
- The organization and formatting of company websites
- Disclosure controls and procedures as they relate to website information

With respect to Regulation FD, the new guidance explicitly recognizes that, depending on the circumstances, a company website may be sufficiently “public” that website posting of material, previously non-public information may serve to “provide broad, non-exclusionary distribution of the information to the public” as required by Regulation FD without the need to resort to filing a Form 8-K to disclose such information.

The guidance also discusses factors for a company to consider in determining whether its website is, indeed, “public” and “non-exclusionary.” The guidance indicates, for example, that website information may be “read-only” and not necessarily “printer-friendly” in order to be readily accessible to the public.

We would expect public companies that maintain websites to begin taking steps now to see that their websites are or eventually will become recognized by investors and other constituencies as a channel for public distribution of company information.

The guidance provides updated advice to companies regarding the application of the federal securities laws such as Rule 10b-5 to various types of information posted or available through hyperlinks on the company's website. It also offers advice as to how companies may organize or format their website information so as to avoid “republishing” or “re-releasing” historical information or becoming “entangled in” or “adopting” third-party information for purposes of the federal securities laws.