

Market News

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A monthly review of IR developments for our clients and friends. . .

Got an SEC comment letter? Pick up the phone!

During a September conference of the New York State Society of Certified Public Accountants, Steven Jacob, an associate chief accountant for the Securities and Exchange Commission, sent out a clear message: “If you receive a comment letter about your financial statement, pick up the phone and start a dialogue with us.” He said that too many companies rush to restate their financial results without first discussing the matter with the SEC reviewer. Others will just give a quick, terse response that triggers a second comment letter, and may raise SEC staffers’ suspicions. According to the Sarbanes-Oxley Act, the SEC must review the financial filings of publicly traded companies at least once every three years. Last year, the filings of 38 percent of all public companies were reviewed. Each review took 25.2 days, on average. Jacob said that since companies have only 10 days to respond, it makes sense to pick up the phone to clarify the SEC’s request. “Take advantage of the opportunity to explain your accounting in sufficient detail to the SEC staff member, and understand what he or she is requesting.”

Guidance still rewarded

Although there is a trend for public companies not to provide earning guidance during these uncertain times, a recent study by Sharon Merrill Associates and research firm eventVestor finds that might be a mistake. According to the study, the stock price of companies providing performance guidance did better than companies not providing guidance. Stocks of companies whose earnings fell below analysts’ expectations fared better when a preliminary earnings warning was released, versus stock of companies that didn’t publish a warning. Conversely, shares of companies providing guidance rose higher when results exceeded analyst expectations than did share prices of companies that also outperformed analysts’ estimates but did not provide guidance. “This study just shows you the more you allow people to see what is going on in your company, the less you are harmed,” responded Jeff Morgan, president and CEO of the National Investor Relations Institute.

Former CFO agrees to \$25,000 Reg FD fine

Add Christopher Black to your file of what-not-to-do examples on Regulation FD compliance. Black, former CFO at Louisville-area American Commercial Lines, will pay a \$25,000 fine in an SEC settlement for knowingly leaking an earnings warning to eight analysts from his home computer in June 2007. The email was sent on a Saturday; the company announced the revised forecast of a 50 percent cut from previous earnings guidance late in the trading day the following Monday, after a nearly 10 percent stock drop on triple normal volume for the barge builder and operator. According to the settlement, Black didn’t tell anyone else at ACL that he planned to send the e-mail, so the SEC isn’t taking any action against the company. Black left the company in March 2008.

IPOs have sunk to a new low

Initial Public Offerings have all but disappeared in 2009, with only 14 making it to market in the first half, raising a mere \$2.4 billion. That's down from 35 offerings in the first half of 2008, raising \$26.8 billion. More than twice the number of the IPOs making it to market in the first half of 2009 withdrew their offerings due to a lack of pricing. The silver lining: IPOs are highly cyclical and come in waves. Experts believe this will be the case as we climb out of the recession to satisfy pent-up demand.

"There's a shortage of non-lawyers in the SEC"

That was the premise of SEC Commissioner Troy Paredes at a Securities Industry and Financial Markets Association (SIFMA) conference last week in New York City. "For an agency regulating the world's largest financial markets to be dominated by lawyers is ill-advised," Paredes, a lawyer and Washington University law school professor, said. "The SEC needs more staff with a deep understanding of financial markets." Paredes recommended hiring more economists and analysts, whose deep understanding of market issues may better equip them to act more quickly when needed. He also warned against regulatory changes that would restrict markets and discourage innovation, and pointed to the right people handling oversight of the law as the right answer.

Small cap shrinkage marked by the Russell Index

The playing field certainly has changed after the markets shook with the largest downturn since the Great Depression. After the annual rebalancing of the Russell 2000 Index in June, the market cap of the smallest company in the index was down 53 percent, to \$78 million from \$167 million. The last time the bottom end of the index was this low was 1993. At the 2007 re-balancing, the smallest market cap was \$262 million. Traditional strategies usually define small-cap stocks as those with a market cap of less than \$2 billion, and large caps as those with more than \$10 billion, with mid-cap in the middle.

Cramer: I Wasn't Wrong, I Trusted Too Much

Jim Cramer's devoted a recent "Mad Money" show to 'fessing up about his picks gone wrong over the last year. The Glenn Beck of the Balance Sheet admitted he was too high on POT (Potash Corp, NYSE:POT), Monsanto, Terra Nitrogen and Airgas. These misses may seem surprising if you would expect him to know a lot about fertilizer and gas. Less surprising might be the crash of his Dreamliner-based bet on Boeing. Cramer simply said he trusted the companies too much. "When you're too reliant on what a company has to say about itself," Cramer said, "and not reliant enough on the big picture, you can really screw things up."

The financial crisis on film and on stage

With Michael Moore's latest film, "Capitalism: A Love Story" now in a theater near you, what else is in the entertainment industry's pipeline to dramatize, satirize, or otherwise make a buck off the meltdown? Plenty, but it will take a while to hit the stage or screen. The Brits are ahead of Hollywood and Broadway, with a play called "The Power of Yes" about toxic securities, and the BBC with a docudrama about the collapse of Lehman Brothers starring James Cromwell ("Babe," "24") as former U.S Treasury Secretary Hank Paulson. Evidence suggests there's a ready audience for dramatic retellings of financial flops. "Enron," a British play about the 2001 demise of the American energy giant, is moving to Broadway next April. If you'd rather wait for Hollywood's retelling of the Madoff story, best bet so far is independent filmmaker Edmund Druilhet's "Madoff: Made Off with America", in production now. It casts several Madoff victims as themselves.



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