

## DEALS &amp; DEAL MAKERS

## IPO Planners Find 'Plain English' Elusive

IPO  
OUTLOOKBy RAYMOND HENNESSEY  
Dow Jones Newswires

English continues to be a second language for companies that are planning to go public.

Or so it would appear. More than two years after the Securities and Exchange Commission mandated that companies apply "plain English" standards to certain parts of their registration statements for their initial public offerings of stock, the agency still is ordering some companies to rewrite certain passages and make changes to comply with the rules.

These companies planning IPOs "still don't get it," said Lois Yurow, a former securities lawyer who runs Investor Communications Resources LLC, a consulting firm in Westfield, N.J., that focuses on converting business documents into plain English.

(The IPO market itself, by the way, is deep into its post-holiday winter hibernation, as typically happens at year end. There are no IPOs scheduled to make their debuts this week.)

Companies and their lawyers have come a long way, but the SEC continues to suggest more language changes to IPO documents. Most of these are minor. Still, even this long after the rules are in place, the issue of plain English was highlighted at a conference for securities lawyers in New York last month.

First, some history. Back in October 1998, the SEC told issuers they must change the way offering documents are prepared by using only plain English on the cover pages, in describing the risk factors facing the company, and in summarizing the company's business.

The goal was to make the prospectuses more clear, concise and understandable so that individual investors could get a better feel for the information in them. At the time, they were densely written documents laden with legalistic language and technological jargon that were often indecipherable to the lay reader.

It was a major initiative for SEC Chairman Arthur Levitt, so much so that, in his retirement announcement last week, he thanked his wife for her willingness to sit through his "sermons on plain English," among other crusades.

So, the SEC took the role of Composition 101 professor, ordering that companies use short sentences, that these sentences be written in an active voice and common language, and that such confusing constructions as double negatives be phased out.

Also, risk factors had to be written more clearly, and the cover pages of the prospectus had to be redesigned to make

## The Pipeline/Securities Offering Calendar

There are no initial public offerings of stock scheduled for this week.

## This Week's IPO Lockup Expirations



Here are companies whose officers and other insiders will become eligible to sell shares in their newly public companies for the first time. Such sales are watched because the selling can impact highflying stocks.

**Dec. 25: Virage (VRGE); Capstone Turbine (CPST)**

**Dec. 26: Accord Networks (ACCD); Precise Software Solutions (PRSE); EXFO Electro-Optical Engineering (EXFO); CareScience (CARE)**

**Dec. 27: Storage Networks (STOR); Mobility Electronics (MOBE)**

Source: CommScan

## Other Stock and Bond Offerings

Here are other U.S. Treasury, corporate and municipal offerings that are tentatively scheduled for sale this week, according to Dow Jones Newswires.

## Treasury

## Tuesday

\$22 billion of three- and six-month bills

## Wednesday

\$10 billion of two-year notes

## Corporate

## Investment-Grade Debt

\*There are no issues firmly scheduled for the remainder of the week.

## High-Yield Debt (Junk Bonds)

There are no issues firmly scheduled for the remainder of the week.

## Follow-On Stock Offerings

There are no issues firmly scheduled for the remainder of the week.

## Municipals

There are no issues firmly scheduled for the remainder of the week.

the document easier to navigate and read. The SEC encouraged bullet points, graphs and pictures.

It might sound easy on the surface, but the regulations caused a bit of a stir.

As with any major regulatory changes, securities lawyers predicted that the imposition of plain English would lead to confusion and delays in the IPO process. Those fears haven't played out. "Like a lot of people, I was wary," said Laird Simons, chairman of the securities group at Fenwick & West LLP, a law firm. "Now, I'm a believer."

Most issuers have gotten the hang of plain English, and securities lawyers have said that most of the changes now requested are fairly minor. The lawyers themselves have given up on many of the legalisms that were commonplace before the new rules. "The 'hereinafters' and 'heretos' have long since vanished," Mr. Simons said.

New companies are taking a bit longer to adapt. One area the SEC was targeting was an elimination of vague words in company descriptions such as the ubiquitous "solutions." Yet, dozens of prospectuses use the word freely, as they do many other buzzwords that are common in the technology business.

"Sometimes companies want to express something in plain English, but are using, for lack of a better word, Silicon Valley-speak," Mr. Simons said. "It's really how they talk to each other, how they talk to their customers."

It's not the language of the SEC, which

didn't return calls seeking comment. In comment letters Mr. Simons has compiled from the SEC, the agency is clear that it doesn't like "solutions" in particular. "Its use implies that a problem is being solved when in fact none has been presented," the SEC wrote one issuer, requesting a change. "Without identifying a problem or question, the term 'solution' is abstract and should be replaced by a more concrete term or terms."

In another instance, the SEC told an IPO candidate that the word solutions "raises more questions than it answers."

Even outside the technology world, longtime company executives still have trouble shedding old habits. Trained accountants are especially bad, said Investor Communications' Ms. Yurow. "Any sentence written by an accountant sticks out like a sore thumb and needs to be changed," she said.

In the end, there could be a much more practical impediment to clear language: money. Most companies want to adopt the minimum requirements of plain-English rules and are often averse to allowing their lawyers to spend time making wholesale changes to documents before the SEC makes any comments.

"Companies don't feel they should be paying their lawyers \$300 an hour to be an editor," Ms. Yurow said.



**Journal Link:** Track the market performance of the latest initial public offerings, in the online Journal at [WSJ.com](http://WSJ.com).