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IR Update

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How to become the 'plain English' expert in your company

By Lois Yurow

Plain English is coming. You have heard about it, and perhaps have read about the SEC's new rules for prospectuses. More than a year ago, in an article summarizing those new rules, Update advised IROs to "seize the moment" and become more involved in drafting offering documents. Perhaps you can go even further —taking the initiative in drafting your company's periodic reports, like the 10-Ks, 10-Qs, and proxy statements.

IROs are already on the front lines for informal disclosure — conference calls, press releases and meetings with institutional investors and analysts. Most are also involved in developing the theme and coordinating the "front half" of the annual report. But in most companies, proxy statements are the province of the legal department, and 10-Ks and 10-Qs originate in finance. We know where that division of labor has gotten investor relations officers. In the words of SEC chairman Arthur Levitt, disclosure documents contain prose that "trips off the tongue like peanut butter." Even worse, chairman Levitt speaks of two levels of information: "the information made available to investors, and the information that actually gets across to investors."

Whom do you trust?

IROs are the logical people to help reduce the gap between information that public companies offer, and information that investors can digest. Yes, it's true that investor relations people already have enough work and enough headaches. But there are at least two reasons to play a larger role in drafting the company's periodic reports.

First, the SEC is determined to force public companies to simplify disclosure. When the proposed plain English rules for prospectuses were released, the SEC stated that its "ultimate goal is to have all disclosure documents [i.e., 10-Ks, 10-Qs, and proxy statements] written in plain English." The question becomes, Why wait for the inevitable new rules when your company can be a leader?

Second, the SEC and companies' own corporate Web sites make it easy and convenient for anyone with Internet access to locate and read formal disclosure documents. Individual investors who, in the past, may have been reluctant to call a company or a broker to request financial information because they didn't want all the paper, didn't know exactly what they needed or didn't want to end up on someone's mailing list can now search for information on their own. Do managements want people to pull up a well-organized 10-K that clearly describes your company and its financial performance, or a 10-K that alienates potential investors with its "peanut butter prose"?

An investor who reads a well-written and honest 10-K will have a better understanding of the company, and may even trust it more, simply because the company took the time to explain things carefully. Plus, plain English documents that are clear to investors will save your office time in answering questions and explaining what the company really meant to say. That should compensate for some of the extra time spent writing the documents.

A new approach

If we want disclosure documents to communicate, rather than just offer up facts for the experts and the intrepid to decipher, we need to adopt a whole new approach to presenting information. Updating the numbers and the details in last year's 10-K or last quarter's 10-Q will not suffice. Most of the documents out there need to be restructured and rewritten — ruthlessly. Even the best need a regular housecleaning to keep them from getting bloated and stale.

Now, who should do the work? Accountants must generate and interpret financial results. An attorney who understands the scope and the application of the securities laws must review everything that gets filed with the SEC. But among accountants, lawyers, and IROs, who is most likely to have both the writing skills and the audience sensitivity necessary to explain earnings, business segments and market information (not to mention management's response to a shareholder proposal or the board's reasons for rejecting a takeover bid) to your average intelligent investor?

Our suggestion: Make it your goal to shepherd your company into a plain English 10-K for 1998. If you start the process now, you will have time to read, edit, think, collect information, edit and edit again, all without too much time pressure. First, read the SEC's Plain English Handbook (available on the SEC's Web site or by calling 1-800-SEC-0330). It is easy to read and informative. Then pick up your 1997 10-K and follow these seven steps to a better 10-K:

1. Respect your audience. Many people who write disclosure documents (or who pay others to

write them) assume that investors do not want to read them anyway. A writer with that attitude strives for nothing more than the floor of basic legal compliance. IROs know better. Start with the premise that investors would love to have the information that you are required to give them, and are intelligent enough to understand at least some of it, if only you would make it convenient to read.

Eliminate ambiguity

2. Eliminate ambiguity. Read the entire 10-K and think about it critically. If you see a lot of hedge words and vague language, the original drafter either did not understand what the company wanted to say, did not know how to say it clearly or intentionally avoided making an unequivocal statement. Most of the time, the problem is lack of knowledge or writing skills. In those cases, find someone who thoroughly understands the information, and ask a lot of questions. Then translate what you learned into a logical, orderly explanation that gives readers specific, useful information (including any background or definitions that they need).

If the ambiguity was intentional, find out why, and see if there is a legal and responsible way to be more forthright. In all cases, be precise. If your words are subject to more than one meaning, the audience will select the one that is the least favorable to your company. If your words are too vague to be interpreted at all, the audience will be justifiably annoyed.

3. Speak to your audience. If the way you explain a particular accounting concept in the 10-K is substantively correct but an accountant looking at it might not recognize it as an accounting concept at all, that's great. Unless all of your investors are accountants, why should your documents use their language?
4. Delete outdated, superfluous and repetitious details. Many 10-Ks suffer from one or more of three similar problems.

First is once-relevant information that has outlived its useful life. For example, in 1994 your company may have disclosed that it acquired a new subsidiary on June 3 in Miami after extensive negotiations regarding three items in the May 1 term sheet. Unless something has gone wrong, the 1998 10-K should discuss the subsidiary's results and prospects, not the details of the acquisition. Many people hesitate to delete things from their 10-K, but information that is past its prime distracts readers from things that are truly important.

The second is paragraphs that have been in

the 10-K "forever," even though nobody knows why. Most of these were copied years ago from some industry leader's 10-K because "they looked good" but do not respond to any of your company's current disclosure obligations. If you and your lawyers cannot think of a good reason to keep an apparent filler paragraph, get rid of it.

Third is repetition of the same information under different headings. Try giving a thorough explanation in one logical place, and replace the other incidents with a summary and cross-reference.

Anticipate and answer questions

5. Anticipate and answer questions. A pharmaceuticals company filed a petition with a government agency more than 15 years ago to challenge the agency's approval of a competitor's product. Until this year, the company's 10-K described the ensuing administrative and appellate proceedings at length. A typical investor likely wants to know three things about that litigation: How significant is the product to the company and to competitors, what does the company stand to gain if the government now retracts its approval and does the potential gain outweigh 15 years of legal bills? The company's 10-Ks did not answer any of these questions. Just as bad, the litigation must have ended recently because the 1997 10-K did not mention the matter at all. Certainly, an investor would be curious about the outcome.
6. Don't make your readers work too hard. Many writers assign a nickname (such as the "8.5% Notes") to every special word or long phrase that they introduce, thinking they will use the nickname (known as a defined term) several times. However, it is not unusual for a defined term to appear once in a long document, never to be seen again. This frustrates readers who try to learn terms that supposedly will be useful.

At a more basic level, the presence of unemployed defined terms indicates that no one proofread the document for content before it was filed. Strike defined terms if you realize that you don't need them at least three times. Conversely, if you intend to use an unfamiliar term several times, explain it clearly the first time that you use it. Make your explanation obvious (indented, set off in a box, or in bold print) so that readers can easily find it again. Another way to ease a reader's load is to avoid the commonly used word "respectively." Think about it. Which of these examples is easier to follow:

"Net income for 1997, 1996, and 1995 was

\$2.6 million, \$3.1 million, and \$1.4 million, respectively." Or "Net income was \$2.6 million in 1997, \$3.1 million in 1996, and \$1.4 million in 1995."

7. Be direct. People are not fooled when they read that a company "rationalized" its workforce, and it demeans the folks who weren't "rational."

No doubt, an IRO who spearheads an effort to produce a plain English 10-K will meet with some institutional resistance, not to mention the bruised egos of the original drafters. If it has been years since anyone touched your company's 10-K except to add current facts and financial information, your new plain English document will do a much better job of explaining the company to the market than last year's model.

Lois Yurow is manager of Investor Communications Services in Westfield, NJ.

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