

(Not-so) 'Quiet Period'

U.S. Securities and Exchange Commission changes allow officials to talk more about their companies while issuing stock

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Pam Lagano is used to the grind of selling a company's initial public offering to investment houses and underwriters.

Traditionally known as the road show, it's the one time when a company engages in a whirlwind national, and sometimes international, tour in which they educate those who will set the company's initial stock price. The price is based on what the company does, its prospects for the future and its worth as an investment.

As president of [Lagano & Associates](#), a Clearwater firm that specializes in investor relations, Lagano once prepared extensive information packets, corporate profiles and other information that Wall Street insiders would find useful in assigning an appropriate stock price for a company.

But companies were prohibited from sharing such information publicly with average investors, under regulations imposed by the [U.S. Securities and Exchange Commission](#), during a time known as a "quiet period."

Beginning next year, those regulations will be phased out, in favor of more modern information disclosure rules approved by the SEC in late June.

"Now someone will actually see that information," Lagano said. "Companies are going to have to totally rethink their communication strategies leading up to an IPO."

Though they appear to be largely clerical changes for the SEC, the changes to pre-stock offering "quiet periods" are the biggest in the SEC's 70-year history. The rule changes significantly affect how companies can communicate during the time before a stock issue.

Under the old regulations, companies were forbidden from making any public statements which could "materially affect" the company's opening stock price. The company's prospectus, filed to begin the initial public stock offering process, would traditionally supply all the information available to an investor.

Though companies could comment on the prospectus, such comments were frowned upon by the SEC. The rules created a unique situation for officials at companies going

public -- typically at the height of interest from outside parties and investors. Company officials could not discuss anything about their business publicly, only during private road show meetings with select investment firms.

"The road show used to be the most exhausting part of the process," said Kirby Chritton, shareholder and securities expert at Jacksonville law firm [Rogers Towers](#). "Just as company executives are at the peak of excitement about the process, they have to shelter themselves from the outside world. This new system will really encourage a much more natural dialogue between the company and potential investors."

The SEC began to formally review this policy in 1998, at the height of the Internet stock boom. In its proposed rule changes from November, the agency's market analysts found that companies, because of the free-wheeling business climate of the Internet boom, often changed dramatically from the time of their prospectus filing to the time of their IPO.

"You had young, very agile companies changing very rapidly," Lagano said. "The old model just didn't work anymore."

Individual investors were no longer receiving the same level of information about companies, compared to their institutional counterparts, in an era when information was easier to get than ever before.

The new rules seek to strike a compromise, creating a level playing field for investors while keeping companies from making wildly inaccurate statements that could still "materially affect" a company's stock price. Chritton said the rules are nothing less than "fantastic."

The new regulations separate companies into four categories, which vary according to the size of the upcoming stock offering compared to any of the company's previous stock offerings.

The biggest changes will come for the top tier of public companies. Labeled as well-known, seasoned issuers, these corporations will have the most leeway in public discussions.

These companies would be eligible for filing a form S-3, as opposed to a form S-1, and must have \$700 million in outstanding public equity or more than \$1 billion issued in non-convertible securities in the preceding three years.

Well-known seasoned issuers will be able to engage, at any time before a stock offering, in oral and written communications with outside parties, including interviews with any media outlet.

So-called seasoned issuers, the second tier of companies, are those that have filed a shelf registration statement previously with the commission. Shelf registrations -- registered

stock offerings to be released at an unknown date within two years of the registration filing -- also underwent a minor revision.

Rather than continually filing registration statements every two years for shelf stock, companies will only be required to file one revolving registration statement updated every three years.

Public companies in the top two levels will also be able to use a new document created by the agency called a "free writing prospectus." The new document allows written or oral discussions by a company with the public to be gathered and disseminated by the SEC. This creates a central storehouse of information about a company that any investor can access at any time.

Issuers of the top three classes, which include unseasoned issuers, will be able to release regular business information and forward-looking information while in any offering quiet period.

Non-reporting companies, the final class, are permitted to continue releasing information about their business operations, if that information is used by people who are not potential investors in the company.

All communications by a company are permitted up to 30 days before a securities offering, as long as those statements do not mention the upcoming offering.

Lagano said she already has had several inquiries from clients looking to offer stock in 2006. "They're getting in early. They're realizing the value of effective communication in this new process. And it just might make the road show less strenuous."

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