

## CORPORATE DISCLOSURE

A regulatory tweet spot ... or will 140 characters ever be enough?

For the uninitiated, the above cryptic text or instant messages translate into “Taking rest & relaxation. Be back later ... Steve Jobs” and “Taking care of business with girlfriend. Ta ta for now ... Gov. Mark Sanford.” Given recent regulatory changes effected by the New York Stock Exchange, those who follow the financial markets and corporate disclosure news may soon find themselves becoming more familiar with txtspk (textspeak), # (Hashtags) and TinyURLs.

Effective May 7, 2009, NYSE-listed companies may disclose material financial information through channels “reasonably designed to provide broad, non-exclusionary distribution of the information to the public” subject to certain conditions. This means Web pages and webcasts, so long as the public is provided adequate notice and granted access. But the change is most notable for signaling the broader use of advanced technology sites such as LinkedIn, Facebook and Twitter, and is consistent with Securities and Exchange Commission guidance on regulation fair disclosure.

Regulation fair disclosure mandates that all publicly traded companies disclose material information to all investors at the same time. The Nasdaq Stock Market has already made the change. Yes, companies are still encouraged to use the “Press Release” or the “Current Report” on the SEC’s Form 8-K, but once the technological portal is opened, it’s unlikely to be closed. When, for example, was the last time you read a paper prospectus?

### Disclosure 4 n00bs

(That’s “for newbies.”) While the technological disclosure floodgates have been opened, the statutory framework through which the information must flow hasn’t. So how should officers navigate these com-



### EMPLOYMENT LAW

**John T. Palter**

munication avenues without a detour to the courthouse?

**First, review the fundamentals:** The

Securities Exchange Act of 1934 prohibits false or misleading statements with respect to any material fact in connection with the purchase or sale of a security. This includes both material misstatement of facts and the omission of facts needed to avoid misleading information.

These concepts are best exemplified by the recent public disclosures of South Carolina Gov. Mark Sanford and Apple CEO Steve Jobs. Sanford’s spokesperson’s statement that he was “hiking the Appalachian Trail” was just plain inaccurate.

On the other hand, Jobs’ Jan. 14 press release that he was taking a six-month leave of absence, “in order to take myself out of the limelight and focus on my health,” may have been factually accurate. The disclosure of Jobs’ liver transplant, however, would have presented the facts in a clearer context.

**Second, comply with the disclaimers:**

Review any disclosure to determine whether forward-looking statements require “meaningful” cautionary language; non-generally accepted accounting principles information requires comparable GAAP reconciliation; and Web site communications in advance of a stockholder meeting will meet the substantive and filing rules regarding the solicitation of proxies.

Clearly, this disclosure dilemma is compounded by the micro-byte nature of in-

stant messaging. On Twitter, for example, “tweets” are limited to 140 characters or less. According to one expert, then, no less than four separate tweets would be required to cover the minimum required financial disclaimers — inclusive of hyperlinks to further cautionary information.

**Third, control the information flow:** For starters, limit official communications to authorized spokespersons and, when disclosures are made, make them as public as possible. Along the same lines, be sure to:

- Date all information and disclaim any duty to update.

- Keep records of all public disclosures and marketplace company information.

- Review the company’s insider trading policies to ensure that Web site information, social and business networking tools, and communications technologies fall within its scope; and

- Consider “exit notices” for all embedded third-party information links.

### Remember: PRW

(That’s “People are watching” ... not to be confused, in this context, with PSOS, or parent standing over shoulder.)

The irony of the Internet is that investors have unprecedented access to terabytes of real-time company data — but, despite all this access, frauds upon the market are occurring at an unprecedented pace and magnitude (think Madoff Investments and Stanford Financial, to name a few).

While the use of shorthand instant messages or Web sites hyperlinked to full company disclosures will not increase these frauds, these suggestions may avoid unintended disclosure-related exposure.

---

**PALTER** is a trial lawyer and managing member of Riney Palter PLLC ([www.rineypalter.com](http://www.rineypalter.com)). Contact him at [jtpalter@rineypalter.com](mailto:jtpalter@rineypalter.com)