Tulip Bulbs, the SEC and Twitter

Hello *IR Web Report* readers, I'm here to hopefully provide you with a bit of perspective on how the U.S. federal securities laws can come into play in the context of a web-based investor relations practice. But, being that I am a lawyer, the first thing I have to do is refer you to a disclaimer (I know, I know, I can't help it … besides would you have really expected anything less?). Disclaimer: my posts are not a substitute for, and you should always seek, competent legal advice based on the details of your particular situation.

Formalities aside, in trying to figure out where to begin with this first post I asked Dominic what he thought, and, in so many words, he aptly advised me to start at the beginning, so, without further fanfare, once upon a time:

Tulip Bulbs

In the Netherlands, in the early 1600's, there was a huge run up in the price of tulip bulbs, which were considered a luxury good and status symbol. By 1637 a single tulip bulb is said to have sold for more than ten times the annual income of a skilled craftsman. However, just a short time later, the tulip bulb market completely collapsed and that same tulip bulb was worth only 1-2% of its peak value, leaving many tulip investors in a state of financial distress. This episode, dubbed "tulip mania", is widely regarded as one of the first recorded instances of a speculative bubble. There are many other examples of speculative bubbles available throughout history, including the South Sea bubble, Florida's very first real estate bubble, the infamous Dot-com bubble and the recent U.S. housing bubble.

The 1920's brought us another infamous bubble in the form of the U.S. stock market, with the 1929 stock market crash marking the end of an eight-year bull run fueled by excessive leverage, insider manipulation and widespread speculation. By the time the market finally bottomed, three years later, the Dow Jones Industrial Average had lost 89% of its value.

Then in 1932, at the height of the Great Depression, the U.S. Senate Banking Committee launched an investigation into the causes of the 1929 crash and how we might prevent future crashes from occurring. The Committee's findings ultimately led Congress to enact the first U.S. federal securities law: the Securities Act of 1933; also referred to as the "Truth in Securities Act". One year later Congress enacted the Securities Exchange Act of 1934.

Flash forward more than 75 years and these two statutes remain the foundation of the federal securities laws in effect today.

The SEC

The Securities and Exchange Commission, formed as part of the Securities Exchange Act of 1934, is the federal agency charged with:

- administering and enforcing the federal securities laws;
- protecting investors;
- maintaining fair, orderly and efficient markets; and
- facilitating capital formation.

In furtherance of its mission Congress has granted the SEC authority to enact rules and regulations, so that from time to time it may supplement the existing securities laws, such as, for example, when the SEC promulgated Rule 10b-5, to address liability for false or materially misleading statements, or Regulation Fair Disclosure, to address disclosures of material non-public information. The SEC also issues policy statements and interpretive guidance aimed at facilitating compliance with the federal securities laws.

Organizationally, the SEC is overseen by five presidentially-appointed Commissioners, one of which is designated the Chairman (the equivalent of a CEO), and each of which serves for a staggered five-year term. The current Chairman is Mary Schapiro, who was appointed by President Obama in January 2009 and who is the first woman to serve as the SEC's permanent Chairman.

Operationally, the SEC is organized into five Divisions and a number of Offices. The Divisions we'll talk most about are Corporation Finance and Enforcement, the remaining three are Trading and Markets, Investment Management, and the recently established Division of Risk, Strategy and Financial Innovation. If you'd like to take a look at the entire SEC organizational structure you can find a chart here.

The Division of Corporation Finance, often referred to as Corp Fin, is responsible for overseeing and addressing company compliance with disclosure requirements and accounting standards. Corp Fin does this primarily by reviewing filings that a company is required to make with the SEC, such as quarterly and annual reports and shareholder proxy materials. Corp Fin also issues interpretive guidance, such as no-action letters, and proposes new rules and regulations to the SEC.

The Division of Enforcement is responsible for recommending that the SEC investigate potential securities law violations and recommending that the SEC bring civil actions where appropriate, as well as for prosecuting any actions that are brought on the SEC's behalf. The Division of Enforcement does not have the authority to bring criminal actions, but often collaborates with other agencies, such as the U.S. Department of Justice, which do. The Division of Enforcement receives information about possible securities law violations from a variety of sources, including its own market surveillance, investor tips and complaints and from other Divisions and Offices of the SEC.

Twitter

So, if you've gotten this far you're probably wondering: what does any of this have to do with Twitter?

Well let's go back for a second. The U.S. securities laws came into being following a period of rampant speculation and market manipulation. They were designed to protect investors not by passing on the merits of a given investment but rather by ensuring that investors had the information necessary to make educated investment decisions. At the same time they were also designed with broader economic interests in mind, and sought to balance the need for investor protection with the need for business capital formation. All of which dovetails quite nicely into the SEC's mandate to maintain a fair, orderly and efficient marketplace, where investors and companies can meet and transact business.

It's all really rather elegant, considering that these laws were enacted around the same time that talking pictures and televisions were just coming into widespread use. It's doubtful the drafters ever had an inkling that anything like Twitter or web disclosure would exist, yet these laws apply to your Tweets in the same way that they applied to the communications of the day; that is to say our tools may be different but the underlying principles remain the same.

These days even the SEC is on Twitter and can be followed at @SEC_News and @SEC_Investor_Ed.