

# Making the most of corporate disclosure

**Catherine Gordon**

“In the post-Enron era, the reaction the regulators have taken is to tighten down on governance – to enforce regulations and procedures to try to combat misleading information, fraud, etc. While it’s important, some of it is completely meaningless and gets in the way of good business.”

*CEO of a publicly held corporation*

The regulations this executive is talking about are, of course, the many changes to rules about how companies disclose related-party transactions, director independence, corporate governance practices, executive compensation, proxy voting and more.

## **Disclosure requirements are getting more onerous**

The number of changes is making compliance more costly and time-consuming than ever. Few, however, will argue with the fact that change is necessary.

The regulations are designed to prevent the kind of

misrepresentations we saw in Enron’s documents. Enron’s management did, in fact, include information about related-party transactions in their disclosure, but they didn’t include enough detail or context to make it easy to understand what this information really meant.

William Powers, member of the Enron Board of Directors and Chairman of the Special Investigation Committee, said in his report to the Enron Board of Directors in February, 2002: “...the Company’s proxy statement descriptions of the related party transactions ...were factually correct, as far as they went. Nevertheless, it is difficult for a reader...to understand the nature of the transactions or their significance...”

## **Look at disclosure as an opportunity**

Reality is, though, that despite the recent scandals, few companies have anything to hide. As one

executive in a large public company puts it, “Companies are really a bunch of people who make decisions and can sometimes make mistakes.” So how can you make the most of the time and expense required to comply with disclosure rules? You can look at it as an opportunity to communicate more effectively with your shareholders and others who read your documents.

The same CEO who made the comment about regulations getting in the way is also a firm believer in making disclosure do more for his company:

“The commodities business is risky. Our readers need to understand what those risks are, why we’ve made the decisions we’ve made, how that’s affected our performance, and what we’re doing to make sure we continue to be successful. We present the facts in a clear, compelling way, so nobody comes back to us later saying they didn’t understand.”

### ***Make more information into better information***

The Canadian Coalition for Good Governance, a group of over 45 of the largest institutional investors in Canada, includes disclosure in its analysis of the companies its members invest in. The Coalition believes that truly effective disclosure is:

- easy to find
- easy to understand
- accurate and complete
- given in context so that the information has meaning.

In its guidance document, *Best practices in shareholder communication (2005)*, the Coalition says: “The more transparent a company is in their disclosure practices, the better risk assessment can be made...The Coalition has focused on the importance of transparency and exemplary disclosure because this is the only window shareholders have into the boardroom. Shareholders have no choice but to assess the calibre of directors, the board and its governance regime based on the

quality and clarity of the picture presented through its disclosure.”

***Make it part of a broader communications strategy***

Shareholders aren't the only audience for disclosure. Publicly filed corporate documents are used by corporate directors, investment analysts and potential investors, company employees and the communities the company operates in, among others.

Using this opportunity to talk to all of these audiences in a clear and consistent way simply makes good business sense. It:

- increases your company's credibility
- gets you to focus more on your audience – as part of the process you'll ask yourself if people can find what they need and understand what you're telling them

- gives readers a better understanding of your business and your industry, and the things that affect your corporate performance.

***Three ways to make your disclosure better***

- structure it for shareholders, not regulators — don't just follow the order of the items in the rule
- write in the active voice — it's more direct and gives readers a better sense of your personality as an organization
- design it — make it look like you actually *want* people to read it.

Finally, when you're describing your business, tell it like a story so people get a better sense of who you are.

This will put the information in context, make the discussion more interesting, help investors make informed decision, and may even help to improve shareholder value.

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## **What's in the works for companies listed on a U.S. stock exchange?**

“Once...SEC-mandated information is available, is it understandable? The answer all too often is a resounding and frustrated *no*”, SEC Chairman Christopher Cox said in his April 2006 speech to the U.S. Senate Committee on Banking, Housing and Urban Affairs. The SEC is looking at three ways to improve disclosure:

### **1. Reducing the complexity of accounting rules and regulations**

“...what we're finding is that, in many cases... the complexity of the disclosure mandated by our rules too often adds nothing to function.”

### **2. Making information interactive**

“The beauty of interactive data is that it will not only make today's 10Ks, proxies and mutual fund prospectuses more useful to investors, but it will also reduce much of the time and expense that companies currently devote to filing SEC reports.”

### **3. Using plain language**

“Since the purpose here is to improve communications, the proposed rules require that all of this disclosure be in plain English — the new official language of the SEC. That will be true whether information is in a proxy statement, an information statement, or an annual report.”