

# COMPLIANCE WEEK

## Some IPOs Embrace Transparency, Go Beyond SOX

By Paul J. Martinek — December 14, 2005

**A**lthough all public companies have been forced to become much more transparent by the Sarbanes-Oxley Act, some IPOs appear to be embracing that transparency, going “above and beyond” the openness required of them by SOX.

That’s due to both cultural and legal issues; Sarbanes-Oxley has required enormous change for public companies—but for *newly* public companies, SOX is all they’ve ever known.



Smith

“IPOs don’t have any pre-Sarbanes-Oxley internal legacy to challenge the Investor Relations departments’ desire to be transparent,” notes Bradley Smith, the director of marketing/communications for

Massachusetts-based Shareholder.com, which provides shareholder communications and intelligence services for publicly traded companies.

As a result, newly public companies tend to be “transparent from the get-go,” says Smith. “The company says, ‘We’re doing this. Transparency is *de rigor*.’”

According to Smith, more established publicly traded corporations typically have legacy cultural issues that make transparency transitions difficult. “For existing companies, [SOX] was a change—change is always hard,” he says. “They may have had endless meetings in-house to convince more conservative people within the company about the benefits [of being more transparent].”

But for newly public companies, says Smith, the cultural issues are largely moot. “The IPOs going live now are post-SOX. There’s no debate about embracing transparency.”



Jones

But others aren’t so sure. Julie Jones, a partner with the law firm Ropes & Gray in Boston, says she’s “always found IPOs to just be more forthcoming,” even before SOX. According to Jones, that’s partially because companies are absolutely dependent on the Securities and Exchange Commission in making the registration statement effective. “The SEC does a very good job of drilling down into sensitive areas,” she says. “You have to make sure your disclosure is as absolutely full as you can make it.”

As a result, Jones argues that she “hasn’t seen dramatic shift in IPOs being more transparent in



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light of Sarbanes-Oxley.” Instead, she says, the trend for all companies is toward more robust disclosure. Competition plays a key role there, in addition to the regulations. “Every company watches other companies, whether newly public issuers or seasoned public companies,” she says. “You don’t want to be the one who investors view as having disclosures that are not as complete.”

## Outwardly Open

One example of enhance IPO transparency is ITC Holdings, an electricity transmission company based in Novi, Mich. The company went public in July in an effort to raise \$250 million.

### EXAMPLES

 [View The "Briefcase" At ITC Holdings' Web Site](#)

The ITC Holdings Web site allows investors to receive email alerts informing them of SEC filings and press releases, as well as company Webcasts at a predetermined time before the event (see box at right). Investors can also receive daily or weekly updates

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about the stock’s price, and can be alerted if the stock value reaches, or falls to, a particular level.

In addition, the company provides other shareholder tools, allowing them to request literature, download corporate documents and sign up for RSS (“Really Simple Syndication”) news feeds—which highlights fresh material so investors don’t have to repeatedly check the site for updates. The site also makes it extremely easy for shareholders to click a single link and communicate with all members of the board.

Chicago-based research firm Morningstar, which went public in May 2005, actively solicits questions about its business from investors through promotions and the company’s Web site. On the first Friday of every month, the answers are not only posted on the Morningstar Web site, but they are included in the company’s 8-K filings (also in box above, right).

Many other recent IPOs are making it easier for investors to view insiders’ Form 4s, which must be posted on corporate Web sites by the end of the business day after filing. While most companies satisfy the requirement by simply linking to the document at EDGAR or another third-party Web site, some companies are providing detailed “at-a-glance” information on insider trades, volume and shares held. The information provides useful, valuable context when tied to stock ownership and pricing data.

Another company going all out with transparency is Hoku Scientific, which develops custom membrane components for proton exchange membrane fuel cells. The Hawaii-based energy-alternatives company went public in August 2005. In addition to providing shareholder tools such as a download library and a “briefcase” to collect files, the Hoku website provides a stock graph that allows shareholders to see how the company’s stock price reacted to news events. The shareholder merely has to hover over a dot on the stock graph to view the news that took place on a particular date.



Welch

Joseph L. Welch, the president and CEO of ITC Holdings, says that, as a newly public company, ITC approaches things differently. “Institutional companies come to the table with a thought about their management and management skills that we didn’t have,” Welch says. “We didn’t think we were better than anyone else. Our job is to prove that we are better. The only way to do that is to be outwardly open. We let anyone come that wants to judge us, if they want to do it.”

Welch says ITC “started business with the idea that we would be 100 percent open—that we’re going to put it out there in front of people every day to the best of our ability. ... Disclosure to me is a second-nature thing. I came to this position with 20 years of doing regulatory work for [a Detroit-based energy company]. I’ve learned that it’s a heck of a lot easier to explain things while you were doing them than after you’ve done them.”



Nakamoto

Darryl S. Nakamoto, the CFO of Hoku, notes that the company doesn’t even have to be SOX compliant for a few more years. “But we do things with SOX in mind, knowing we better have our controls in place and our access in place because having to change it later on will cause more problems,” he says. “We’re better off getting ahead.”

In terms of transparency, Nakamoto says he has nothing to hide. “Shareholders can pretty much view the things we do to the best of our ability. We have a strong business model. Our business approach is that, if we focus on the business, everything else will take care of itself. There’s no reason people can’t see what we do and make their own [judgments].”

However, transparency and compliance are sometimes two different things, and some take a bleaker view of how IPOs are dealing with SOX compliance issues.

“What we’re finding is the small caps, which most IPOs are—they’re the guys who think they’ve got the reprieve not to do anything,” says **Tim Leech, the principle consultant and chief methodology officer for Paisley Consulting**. “They’re not using the extra time as the SEC intended it.” Leech’s sentiment has been echoed by several accounting firms in the pages of Compliance Week and elsewhere, who claim that smaller firms are not making appropriate use of the extra time afforded them by the SEC’s delay of the internal control provisions of Sarbanes-Oxley for smaller public companies.

Of course, resources and cost play key roles there. “The [recently issued] COSO for small business guidance is 200 pages long,” says Leech. “Imagine being the CEO or CFO of a small biotech that’s pre-IPO. Imagine how you’d feel after you read it: You might not want to go back to work.”