

SFbulletin

By Stephen Barlas, Karen Jett, Mark Kovacic, C.S. "Bud" Kulesza, Babu I. Razack, Kathy Williams



Business Disputes Some Provisions of New Generally Lauded SEC Capitalization Leeway

By Stephen Barlas

A WKSI may sound like a character from a Star Wars movie, but it's actually a Securities & Exchange Commission (SEC) acronym that stands for "well-known seasoned issuer." Given the difficulty many companies are having raising capital, WKSIs are of significant relevance—as is the change the SEC has proposed to allow a WKSI to use brokers and/or dealers to "sound out" capital markets before the WKSI actually weighs in with a stock offering. While many business groups applaud the SEC proposal issued in December 2009, some are also criticizing it for not going far enough.

Backing up a second, the proposal would eliminate a prohibition in the SEC's 2005 regulation creating "Rule 163." The rule creates an "exception" in the Securities Act allowing WKSIs to communicate with potential investors prior to a registration statement being filed without violating the "gun jumping" provisions of the Securities Act. A WKSI is generally a large corporation with at least \$700 million in worldwide market value of outstanding voting and nonvoting common equity held by nonaffiliates and who might meet some other conditions. When it created Rule 163, the SEC prohibited WKSIs from using dealers or underwriters to test the market. The SEC now wants to eliminate the dealer/underwriter ban, subject to some conditions. Back in 2005, the SEC thought companies would estab-

lish shelf registrations, and that would allow them to use the Rule 163 exemption. That didn't happen. It may have been because corporations just didn't have wide enough contacts in the investment community or were worried about disclosing material, nonpublic information about their plans to raise funds without first obtaining a confidentiality agreement. Allowing brokers and dealers to engage in informal chats on their behalf would surmount that roadblock, apparently, at least legally.

The expansion of Rule 163 would impose three requirements: First, the underwriter or dealer must receive written authorization from the WKSI before making any communication on its behalf; second, the issuer must authorize or approve any written or oral communication by the underwriter or dealer before it is made; and third, any authorized dealer that makes a communication on behalf of the issuer in reliance on Rule 163 must be identified in the prospectus filed in connection with the corresponding securities offering.

Many groups, including the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness and the Securities Industry and Financial Markets Association (SIFMA) Capital Markets Committee, are enthusiastic about the SEC proposal. But some—including SIFMA and the Committee on Securities Regulation of the New York City Bar, for example—take issue with the requirement that a broker or dealer get written and oral authorization. Robert E. Buckholz, Jr., chair of the latter committee, thinks the "written" requirement would "seriously inhibit meaningful dialogue with prospective investors."

Leslie K. Gardner, managing director and associate general counsel at J.P. Morgan and chair of the SIFMA committee, doesn't see the need for preapproval of oral communications either. "By requiring that WKSIs authorize or approve oral communications before they are

BOOKS



Be a Better Leader

As a long-time manager and someone who has designed her own training for first-time managers, I consider my management skills to be fairly strong. Yet despite my background, Kevin Eikenberry's *Remarkable Leadership* effectively challenged my thinking and clearly showed me where my skills could be expanded.

The basic premise of *Remarkable Leadership* is that remarkable leaders become remarkable by learning and applying a series of skills. The remarkable leader doesn't necessarily need to excel in all of the selected skills, but she is most likely strong in several—especially communication and interpersonal skills. While Eikenberry doesn't state it explicitly, he sees leadership as the ability to not just accomplish tasks through other people, but to help those other individuals to grow and become the best they can be in the process. In other words, a remarkable leader excels by helping those around him to excel.

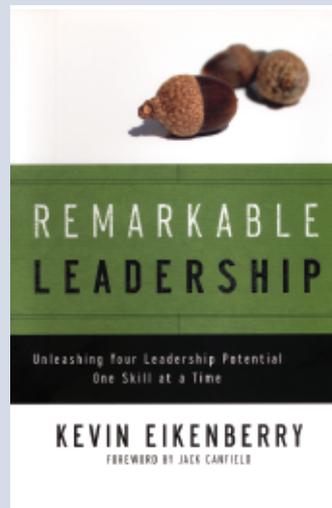
Remarkable Leadership breaks down leadership into 13 essential competencies, including:

- Learn continually,
- Communicate powerfully,
- Build relationships,
- Develop others,
- Focus on customers,
- Solve problems and make decisions, and
- Think and act innovatively.

Each chapter of the book includes a story that illustrates why a particular competency is relevant. The reader is then challenged to evaluate his or her personal ability. Each competency is broken down into several skill areas, each of which includes a "Your Now Steps" section that provides specific directions on how to apply this skill immediately. For those who want more, the book is supported by a website that contains a great deal of additional information.

I enjoyed this book for three reasons. First, the content is well presented. *Remarkable Leadership* is easy to read and comprehend despite the fact that many topics are explored in great depth. The book is well organized and provides examples and directions that are easy to relate to and readily applicable. For example, the chapter titled "Remarkable Leaders Think and Act Innovatively" provides eight different approaches to help spark creativity, such as "think in opposites" and "make thoughts visible."

Second, I value and agree with Eikenberry's philosophy: "We all are given a unique bundle of talents at birth, and it is our job/opportunity to use that per-



sonal set of skills and abilities to maximize our potential throughout our life. Some of our unique talents will help us in our journey to becoming a remarkable leader, and other skills may not come as naturally to us, and so we may need to be more diligent or conscious in developing them."

Eikenberry successfully conveys this philosophy throughout the book by addressing every topic directly, simply, and with compassion.

Third, after reading this book, I understood more clearly why I excelled as a manager. Many of the techniques that I used to help my people to excel are based on the principles and skills in this book.

If you are a manager who would like to expand your skill set and become a remarkable leader, I recommend you read *Remarkable Leadership*. You'll find something of value whether you read it from cover to cover or simply flip to the chapters that interest you most. Wherever you start, just remember: Knowing what to do isn't enough. Applying what you read is what will make the difference.—Karen L. Jett, CMA, Jett Excellence, Kjett@JettExcellence.com

SFbulletin

made, a risk is created that an underwriter or dealer would not be able to rely on Rule 163 if it made a pre-filing oral communication that was not precisely in line with the text the issuer had approved,” he explains, adding the potential legal liability could dissuade brokers and dealers from wanting to take soundings.



SEC Policy Statement on Cooperation by Corporate Officials

Issues of potential liability are also raised in another recent SEC action: publication on January 19 of a policy statement that lays out a new Commission approach to corporate officials who cooperate with SEC investigations. Rob Khuzami, the SEC director of the division of enforcement, called the policy a “potential game changer.” The new tools the SEC will bring to bear are techniques long used by the Justice Department, including cooperation agreements, deferred prosecution agreements, and nonprosecution agreements. Thomas Gorman, chair of the securities litigation practice group at Porter Wright and cochair of the American Bar Association’s White Collar Crime Securities Section, agrees that the new policy statement could be a big deal, but adds, “It is unclear how the SEC intends to implement these practices. If Department of Justice practice is followed with a nonprosecution agreement, there would not be any complaint or detailed statement of wrongful conduct. Rather, there would only be a brief press release. This could be a very attractive prospect for some organizations.” On the other hand, a corporate officer who agreed to enter into a deferred prosecution agreement would typically be required to admit certain facts, in contrast with the usual SEC settlement that’s made on a “neither admit nor deny” basis. “If this is a requirement it will clearly limit the usefulness of either type of an agreement as an inducement to cooperation,” Gorman states.



Tips for Business Owners

By Kathy Williams

BizMove.com recently launched a comprehensive free resource of small business information titled “The Small Business Management Knowledge Base.” Found at www.bizmove.com/small-business-management, the website features hundreds of guides, worksheets, checklists, and more. Its president, Meir Liraz, offers some advice for small-business owners on how to fight the current recession. IMA members know most of these, but the tips are still a good reminder.

- 1. Stay current.** Join an industry association related to your product or service, subscribe to the magazines that cover your business, read blogs, and constantly research topics about your business.
- 2. Make sure you have a financial plan.** Also have a budget and a measurement process to keep track of how you’re doing monthly.
- 3. Do cash forecasting.** You need to understand your cash flow.
- 4. Get an advisory board or a mentor.** Having someone you can bounce ideas off and get an objective opinion from is critical.
- 5. Maintain a balance between work, play, and family.** This is critical for long-term success.
- 6. Network.** Force yourself to get out and meet with others who can provide a business support structure so you can share ideas and not get stuck in an isolated mode.
- 7. Create the discipline and motivation to work each day.** If you’re in a small business or home-based business, it’s easy to become distracted and put off essential tasks.
- 8. Don’t rest on your laurels if you’re doing something successfully.** Always be prepared to change, particularly if you want to improve your service or product.
- 9. Do something you love.** If you haven’t done so, find where your true talents and skills lie, and find a

LETTERS



Add a Step in the Ethics Process

I enjoyed reading Dr. Grover Porter's letter to the editor ("Increase Profits at All Costs," November 2009 *Strategic Finance*) and heartily agree with his point that, "the current IMA Statement appears to only support whistleblowing for legal violations but not ethical violations." There needs to be a step or place in between where concerns about illegal or unethical activities or behavior can be confidentially vetted with a neutral third party. Sometimes it is a matter of level setting: Is the activity truly illegal or really unethical? Once the issue is clarified, then action may or may not be taken. This area may be open for us (IMA) to fill the gap with training and counseling. At a minimum, we should consider filling the gap in our standard and clarifying the issue for our members by placing a new step in the process that assists them with guidance for handling perceived unethical activities.

Mark S. Kovacic, CBA

An Excellent Example

Congratulations to Iwona Tarnowska and Tasheé Singleton on putting together a much needed article titled "Take Networking to the Next Level." It was great to see it published in the February issue of *Strategic Finance* so others could benefit from reading it.

Their insights are far beyond their years and help us all focus on what networking can and can't do for us. Their fresh perspective helps the reader understand the tremendous benefits and obligations of networking and clearly emphasizes that networking needs to begin with us and that we need to start networking sooner than we think to get the most benefit.

I particularly appreciate their drawing from their personal

experiences and sharing them with us. It has a way of resonating with those who have similar experiences, and the authors' openness helps them understand how another person handled a similar situation.

Thanks to both for taking the time and using their talents to write this article.

They serve as an excellent example for others in our organization when they take such a proactive approach in engaging themselves in the profession and in IMA.

C.S. "Bud" Kulesza, CMA, CFM
Former IMA Chair

Learn from Haier's Restructuring Efforts

"Haier Is Higher," the article by Thomas W. Lin published in the December 2009 issue of *Strategic Finance*, is very interesting. The author narrates step-by-step stages of Haier's growth from its stage of bankruptcy to achieving a status of being ranked third on *Forbes's* Top 600 list of the World's Most Reputable Companies. We should really appreciate CEO Zhang Ruimin and President Yang Mianmian for their sincere efforts to apply various management strategies and techniques and to turn them into results. As the author rightly said, in an increasingly global economy, many companies can learn from the restructuring efforts that led to Haier's multiple success stories.

Babu I Razack CMA, AICWA
Ali Alghanim & Sons Trading & Contracting Group Co.
Kuwait

We welcome all opinions on articles and departments published in *Strategic Finance*. E-mail correspondence to Kathy Williams at kwilliams@imanet.org.

business that can use them.

10. Don't give up. Some of the most successful entrepreneurs failed several times before doing well. Learn from your mistakes, and try again.

Corrections

In the article "Nurturing the Right Customers" by V. Kumar and Bharath Rajan, which appeared in the September 2009 issue of *Strategic Finance*, there is an error

in Figure 3 on page 32. Cell 1 should be Butterflies, Cell 2 should be True Friends, Cell 3 should be Strangers, and Cell 4 should be Barnacles. The names in Cells 1 and 4 were swapped inadvertently.

On page 27 in the Books section of "SF Bulletin" in the January 2010 issue, the e-mail address for Dallon Christensen was listed as dallon@firststepconcepts.com. It should have been dallonc@firststepconcepts.com.

We apologize for the errors.