

Despite Phony Avon Bid, SEC May Resist Edgar Makeover

By **Ed Beeson**

Law360, New York (May 19, 2015, 5:44 PM ET) -- The U.S. Securities and Exchange Commission is facing new pressure to tighten controls over its Edgar database after last week's bogus buyout offer for Avon Products Inc. left some burnt traders blushing, but former agency staffers say the system for corporate filings should remain open and accessible and that the real lesson here is one of caveat emptor.

In an example of knee-jerk investing, shares of Avon surged Thursday morning after a purported private equity firm claimed to have tendered an offer for the company for \$18.75 a share, or nearly three times its market value at the time. Yet the offer, filed to the SEC's electronic data gathering, analysis and retrieval system, came with clear red flags, including the fact that it was rife with typos and was made by an unknown firm that turned out to be nonexistent.

Attorneys say whoever submitted the bogus bid clearly aimed to take advantage of short-term traders and profit off the temporary boom they would create in Avon's share price, which lasted about 20 minutes and came before the makeup giant published a statement disclaiming the false information.

But the fact that the offer showed up on the same government system that companies use to tell investors about their quarterly earnings took many by surprise, as it revealed how easy it is to become an Edgar filer, submit false information to the system and have it appear online, and potentially move the markets, without so much as a glance by the SEC beforehand.

"The idea of fake material in an official database is very troubling," Sen. Charles Grassley, R-Iowa, said in a statement on Friday. "I plan to ask the SEC what it does to verify the authenticity of information to prevent wrongdoing."

Others, however, said this is simply the nature of Edgar system, which is intended to let a host of market participants, from issuers to investors, fulfill their public reporting duties in an easy and efficient fashion.

"This is the cost or consequence of having an open system. Maybe it's a buyer-beware to digest the information," said Tom Sporkin, a partner at BuckleySandler LLP and a former chief of the SEC's Office of Market Intelligence.

Contrary to what some may have assumed, an Edgar filing "doesn't have the stamp of approval of the SEC," he added.

Nor could it, notes John Reed Stark, a cybersecurity consultant and former chief of the SEC's Office of Internet Enforcement. The SEC said it receives about 4,000 filings each day, which are made available automatically to the public.

"The reality is this is not an SEC failure," Stark said. "It's not possible to look at everything. That's why you have the Division of Enforcement."

According to new reports, the SEC has opened a probe into the Avon hoax filing, as has the Federal Bureau of Investigation.

An SEC spokeswoman declined to comment on either the probe or Grassley's remarks. But in a separate statement last week, the agency said "filers are responsible for the truthfulness of their filings, and they are subject to enforcement actions when they are false or misleading."

Among other things, the SEC's Enforcement Division is likely requesting so-called blue sheets trade reports to figure out who may have been trading heavily off of the Avon false takeover bid, according to Sporkin.

The process, however, is intensive and time-consuming, particularly when compared to what the Enforcement Division could do if it had the proposed consolidated audit trail at its fingertips now, he added.

"If they had CAT today, they could go into the computer, pick through the Avon data and find the anomaly," he said.

To Carl Malamud, the Internet technology advocate who helped build the first iteration of Edgar, it is clear that the SEC hasn't been thinking about making access to the filing system more secure.

"They better damn well think about it now," said Malamud, who warned of inevitable copycats looking to repeat the Avon formula for illegal gains.

One immediate and simple step the SEC could take would be to require corporate Edgar filers in the U.S. to provide a taxpayer identification number, said Malamud, founder of the nonprofit Public.Resource.Org Inc., which publishes federal government records online. At present, the application system allows corporate filers to enter a string of zeros if they claim they don't have a tax ID.

"It's certainly disturbing that this could go all the way from Edgar filing to the New York Stock Exchange that quickly," he said.

Sporkin, however, contends there is only so much the SEC can do in the end to prevent misuse of Edgar.

"Anyone intent on breaking a system that's designed to be open is going to figure out a way to do that," he said.

--Editing by Jeremy Barker and Katherine Rautenberg.