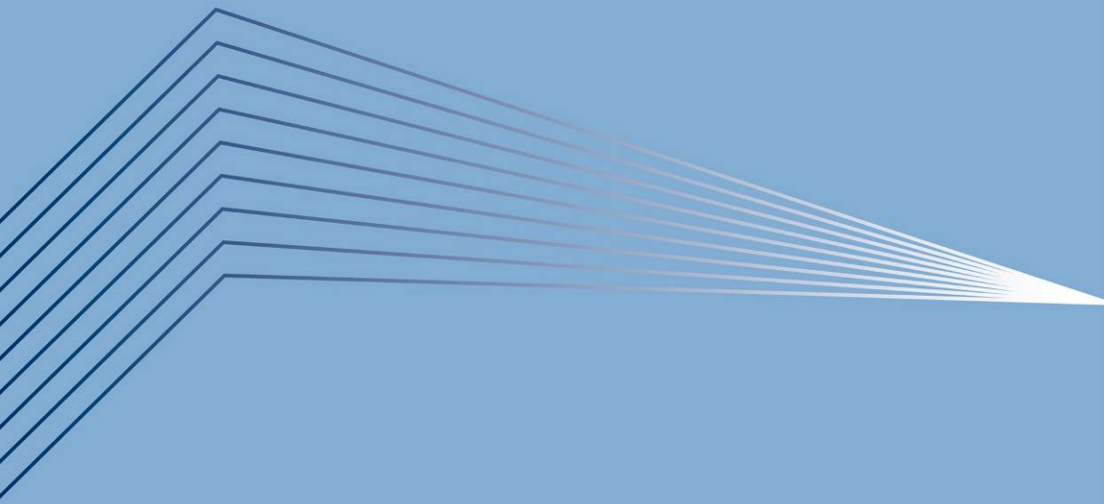SHEARMAN & STERLING

The SEC's Plain English Initiative

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March 19, 2012

Plain English Rules — Application

- Prospectuses filed with the SEC under the 1933 Act.

- The rules do not technically apply to Rule 144A or Reg S offerings. However, offering memos are being written in plain English.

- The rules became effective in 1998 and have significantly affected the drafting and format of all prospectuses.

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The Plain English Rules

- The rules require an issuer to prepare the forepart of the prospectus in plain English

    - Front and Back Covers

    - Prospectus Summary

    - Risk Factors

- Write the remaining portions of the prospectus in a clear and understandable manner

- Design the prospectus to be visually inviting and easy to read

What is a "Plain English" Document?

- Using plain English assures the orderly and clear presentation of complex information so that investors have the best possible chance to understand it.

- A plain English document uses words economically and at a level the audience can understand.

- A plain English document is easy to read and looks like its meant to be read.

Plain English Writing Principles

- Short sentences

- Definite, concrete, everyday words

- Active voice

- Tables or bullet lists

- No legal or highly technical business terminology

- No multiple negatives

Short Sentences

Before:

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION OTHER THAN THOSE CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED.

(Sadly, is it all too easy for you to write the above sentence … the words seemed to flow quite naturally …)

After:

You should rely only on the information contained in this document or that is incorporated by reference. We have not authorized anyone to provide you with information that is different.

("I'm sorry this letter is so long, but I did not have time to make it shorter." Mark Twain)

Omit Superfluous Words

superfluous	simpler
in order to	to
in the event that	if
subsequent to	after
prior to	before
despite the fact that	although
because of the fact that	because, since
in light of	because, since

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Jargon, Formalistic Phrases and Legalese

Jargon/Technical Terms
- proprietary drug
- intravenous solutions
- logistics capabilities
- coordinated manufacturing and distribution efforts
- proprietary medicines
- vertically integrated cost-efficient providers
- revenue synergies
- lower margin
- products utilization realigning sales forces
- centralized management information systems
- profit-enhancing synergies
- global platform

Legalese
- definitive agreement
- consummation
- those preceded by
- herein
- set forth under
- by such forward-looking statements
- without limitations
- cease to conduct
- completion of the combination
- commencing
- hereinafter so surrendered
- defeased
- as amended
- qualified in its entirety

Active and Passive Voice

Passive Voice

This prospectus should be read carefully before making an investment in the Common Stock.

Active Voice

You should read this prospectus carefully before you make an investment in the common stock.

Bring Abstractions Down to Earth

Before:

No **consideration** or **surrender** of XYZ Stock will be required of shareholders of XYZ in return for the shares of ABC Common Stock **issued pursuant to the Distribution**.

After:

You will not have to turn in your shares of XYZ stock or pay any money to receive your shares of ABC common stock from the spin-off.

Find Hidden Verbs

Before

- We made an application ……
- We made a determination ……
- We will make a distribution ……

After

- We applied ……
- We determined ……
- We will distribute ……

Write in Positive

Before:

Persons other than the primary beneficiary may not receive these dividends.

After:

Only the primary beneficiary may receive these dividends.

Steer Clear of "Respectively"

Before:

The Senior Notes and the guarantee (the "Guarantee") of the Senior Notes by Island Holdings will constitute unsecured senior obligations of the Issuer and Island Holdings, respectively.

After:

The Senior Notes are an unsecured senior obligation of the issuer, while the guarantee of the Senior Notes is an unsecured senior obligation of Island Holdings.

The Do's and Don't's of Prospectus Writing

THE DO's

- Clear and concise sections, paragraphs and sentences, using bullet lists when possible

- Descriptive headings and subheadings

- Avoid legal and highly technical business terminology — using clear descriptions and concrete examples instead

The Do's and Don't's of Prospectus Writing

THE DON'T's

- Legalistic, overly complex presentations

- Vague "boilerplate" explanations

- Complex information copied directly from legal documents without a clear and concise explanation

- Repetitive disclosure

- Use a glossary and defined terms <u>only</u> if it facilitates an understanding of the disclosure — not for commonly understood acronyms, like NYSE, or for terms created solely for the registration statement

Emphasizing Text

Before

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT APPROVED OR DISAPPROVED THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

After

The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

After

The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Prospectus Design Tips

- Use a two-column or other format to break-up dense copy
- Limit the number of characters in a line (the smaller the type size, the shorter the line length)
- Choose a legible type size and easy to read typeface
- Use left justified margins and "ragged" right margins
- Use bullets and table to increase clarity
- Do not use only capitalized letters
- Change the font size, use *italics,* boldface or *red ink* or place a box around text to make it stand out
- Use clear and descriptive headers

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Prospectus Design Tips

- Use a lot of white space
- avoid clutter

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Sample SEC Plain English Comments

- Many of the terms you use are unique to this prospectus. By creating terms that exist only for use in this prospectus, you are forcing investors to learn a new vocabulary before they can understand your disclosure…

- The term "such" is typically legalese for "this", "these", or "the". Please replace this term throughout your prospectus with a concrete, everyday word that means the same thing.

- Currently, your prospectus is written from the perspective of someone who is already quite familiar with the transaction and the entities involved. For example, throughout your prospectus, you make several references to "certain circumstances", "certain matters", "certain amendments", "certain persons", and "certain extraordinary matters"…   Replace the term "certain" with a brief description of what makes the information qualify as "certain".

Recent Plain English Initiative

Changes to executive compensation disclosure requirements in 2006:

- The rules require companies to prepare most of the information using plain English principles in organization, language and design

- One number reflecting the total compensation for each named executive officer

- New narrative discussion of the company's compensation policies:

  - Cast aside the boilerplate

  - Written in plain English to provide necessary overview and context for the numbers in the tables that follow it

Plain English Rules – Implementation

When the rules just took effect:

- Extremely extensive and detailed plain English comments

- Comments often apply to the entire prospectus, not just the forepart

- Comments sometimes went well beyond the purposes of plain English rules

Plain English Rules – Implementation

- Willing to work with banks and issuers and to avoid excessive or egregious plain English comments

- Released a compilation of the most frequent plain English comments to provide guidance

- Tried to "get out of the back of the book" when it comes to plain English