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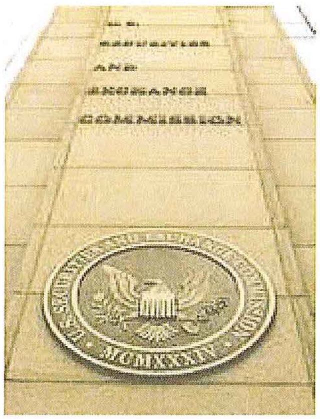

SEC'S WHITE EYES CORPORATE, BANK DISCLOSURE REVAMP

Suggesting that investors are being inundated with "information overload," the nation's top securities regulator outlined a package of potential changes that may soon be in the works to reform and streamline a disclosure regime that most observers acknowledged is bloated and has some dated aspects that were more relevant before the Internet age. Speaking at a corporate directors forum, Securities and Exchange Commission Chairwoman Mary Jo White said, "We must continuously consider whether information overload is occurring as rules proliferate and as we contemplate what should and should not be required to be disclosed going forward."
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Advertising technology hits the road

Consolidation may thin the ranks

BY THOMAS ZADVYDAS

New players in the advertising technology space have made bets with the public markets in growth bids, becoming attractive for big fish in the new media world in the process.

As new and old media place increasing emphasis on online video and mobile content, successfully monetizing these efforts via advertising means big money. Several companies in this space have raised capital through initial public offerings in recent months, the path smoothed for many by the JOBS Act. These businesses have had mixed financial results since going public, and some suggest that the market for ad tech companies could become overcrowded. But large strategic suitors like **AOL Inc.** and **Google Inc.** could still pick off these emerging companies as they grow in the public eye to gain proprietary technology. That sort of consolidation would thin the ranks.

"There's a lot of these ad tech network companies out there, and there's a real question as to who the real winners are going to be, how consolidation is going to occur, and whether with Google controlling 40% of the ad market, whether that is sustainable for other entrants in the marketplace," said David Weild, founder and chairman of New York-based investment bank **Weild & Co.**

Industry watchers believe the IPO market for the tech sector, as well as other areas, has turned a corner. As of Sept. 26, at least 147 companies have gone public in the U.S. this year, up 52% from the same period in 2012, according to IPO tracking firm **Renaissance Capital**.

"With the initial debacle of the Facebook IPO, that certainly spooked a lot of people, but I think finally the turtle's coming out of its shell a little bit. There's a little bit of stability here," said Mitchell Littman, a founding partner of **Littman Krooks LLP**, who specializes in securities law. "I actually think this could really be a shot in the arm for technology companies."

But how these companies perform after their IPOs will determine the level of interest from the bigger players. In an overcrowded market, executives may have a tough time making companies stand out.

The Jumpstart Our Business Startups Act, signed into law in April 2012, is easing the path for growing companies in the advertising tech sector to go public. The new law encourages funding for small and middle market

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Increase in expungement of broker records

BY DAN LONKEVICH

An analysis of 1,625 investment arbitration cases from 2007 to 2011 found an "alarming" increase in the number of instances in which stockbrokers accused of misconduct were allowed to expunge their disciplinary records after a settlement or award, according to a study by the Public Investors Arbitration Bar Association.

The study examined the process for how disciplinary records contained in the Central Registration Depository, which is overseen by the Financial Industry Regulatory Authority, are expunged after an investor complaint against a broker is settled by an arbitrator overseen by Finra. Central Registration Depository records are used to maintain BrokerCheck, Finra's online service that investors can use to check brokers' disciplinary records.

The 1,625 cases represented 9.2% of the 17,635 customer-initiated cases brought during the five-year time period in question, PIABA said.

From Jan. 1, 2007 to May 17, 2009, the study found that expungement was granted in 89% of the arbitration cases resolved by settlement or award. From May 18, 2009 to Dec. 31, 2011, the percentage of cases expunged increased to 96.9%.

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businesses by easing and modifying various security regulations.

"[Several] things are really helping the market," explained Weild, "particularly the 'testing the waters' provision, and the confidential filings provision."

Weild said that under the JOBS Act, any company with less than $1 billion in sales can elect to be treated by regulators as an "emerging growth company," which opens up several options on how to market securities to new investors. Among these, which is important for many of these new ad technology businesses pitching their businesses, is a change in how soon stock presentations can be made to investors.

"[You can] meet with multiple investors and develop a set of relationships and tell the story kind of repeatedly through multiple meetings," said Weild. "That's called 'testing the waters.' That was not legal before the JOBS Act. You can [now] go out and market to institutional investors a year before the IPO and straight through."

Weild said that the standard practice previously was that companies would not market stock to institutional investors six months or more before the IPO to avoid a potential legal charge called "conditioning the market."

For new companies in the ad tech sector with complex technological premises, this added marketing time gives a company more flexibility to make a pitch.

"[Few] investors are going to make a five-year, $5 million commitment to a company on the basis of one 45-minute meeting on the IPO road show," said Weild. "Venture capitalists don't invest that way."

One banker explained that many of the ad tech companies going public are likely seeking capital to build up marketing and sales operations. "They are not capital intensive to start, they're not capital intensive to build product. Companies in many aspects of new media, when they go out looking for investors, or strategic partnerships, or to be bought, their pitch is, 'well, if we only had a sales and marketing arm, we'd be golden,'" said managing director Ken Sonenclar of media-focused investment bank **DeSilva+Phillips LLC**.

Encouraged by the new legislation, several ad tech businesses initially founded through venture money have gone public, though there is concern that the ad tech market may become overcrowded with new middle market entrants, causing an already-competitive space to overflow.

"What's catching people's attention are advertising models that are highly customizable," said **Morgan, Lewis & Bockius LLP** partner E. John Park. "The hot areas continue to be anything related to social, mobile or cloud. I would put advertising within the social realm in some ways."

Companies such as **Rocket Fuel Inc.**, **YuMe**

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Inc., **Marin Software Inc.**, **Tremor Video Inc.**, and **Millennial Media Inc.** fit this description.

New York-based Tremor Video, which provides video advertising to major brand advertisers and publishers of Internet videos, priced its IPO of 7.5 million shares at $10 each on June 26. Its stock has risen $1.57, or 18.4%, since going public as of Oct. 2, and recorded a revenue increase of 16.3% to $105.1 million from $90.3 million between 2011 and 2012. It did run losses in net income and Ebitda between these periods. Net losses fell from $21 million to $16.6 million between 2011 and 2012, a 20.9% decrease, and adjusted Ebitda losses narrowed from $10.9 million to $7.2 million, a 33.9% slide.

"In my view, [ad tech] companies can persist for far longer on limited capital as long as they're not bleeding cash. There's so much of the business now that's automated, personal needs and capital needs in general are less significant," said Sonenclar.

YuMe priced an offering of 5.1 million shares for $9 each in early August for $46.1 million, the low end of its range. YuMe develops software for video ad campaigns on Internet-connect devices. It developed a software platform that monetizes, distributes and traffics advertising against digital video streams. It also sells multiscreen digital video media to TV brand advertisers and their agencies.

Rocket Fuel went public on Sept. 20, selling 4 million shares at $29 per share and raising $116 million. The Redwood City, Calif.-based company had 784 active customers, including 65 major national advertisers and over 40 Fortune 100 companies as of June 30, filings said. This company uses predictive modeling and data-driven targeting to drive digital marketing campaigns.

YuMe "would be great for Google or Facebook to acquire," said Park. "I think when people are trying [to] value these offerings, they think 'How likely is it that this company will be acquired?' I think that's what's driving some [of] the interest in some of these IPOs. Google and Facebook are in an intense competition right now, and they have huge amounts of cash to acquire start-ups. It's going to be companies like YuMe that have to fill this niche."

YuMe's stock was in a slight decline for the first month of its existence as a public company but it began to gain ground after Sept. 6. It's up $1.20, or 13.3%, since going public as of Oct. 2. According to its S-1 filing, YuMe reported sales of $116.7 million and net income of $6.2 million for 2012, compared with sales of $68.5 million and a loss of $11 million for 2011. Sales had grown 70.3%. Although YuMe reported growing losses between 2010 and 2011, it reported a 32.2% increase in sales in that time.

"Fast-growing companies are always going to be the darling of the IPO market place," said Neil Dhar, partner and co-head of IPO and capital raising services at **PricewaterhouseCoopers LLP**.

According to PwC's quarterly IPO survey IPO Watch, released Oct. 2, the third quarter saw 14 IPOs in the technology sector with a total value of $1.3 billion, compared with eight tech IPOs with a value of $864.6 million. Dhar himself said Sept. 16 that about 150 IPOs had come to market for all of 2013, and about 30 of those, or one-fifth, were tech companies.

Large players like AOL and Google are expected to play an important role in thinning the ranks via strategic acquisitions. Private equity firms will likely stay away. "For the most part these are not the kind of companies private equity is going to buy," said Sonenclar, explaining that these advertising tech companies don't necessarily have the predictable flow of Ebitda that PE typically looks for. He does believe that more technology players have gotten in on the advertising game through M&A.

"IBM, they've made several acquisitions in the ad-tech space over the last few years, IBM and Oracle. As advertising becomes more automated and computer driven, it becomes more amenable to their own business models," Sonenclar said.

For example, **IBM Corp.** in August 2010 bought Unica Corp. for $480 million in cash in a deal that moved the technology giant deeper into the advertising business. Waltham, Mass.-based Unica makes software that helps companies analyze and predict customer behavior and designs marketing campaigns based on that data. It has more than 1,500 customers, including **Best Buy Co.**, **eBay Inc.**, **ING Groep NV** and **Starwood Hotels & Resorts Worldwide Inc.** The Unica purchase was said to complement its $1.4 billion purchase of Sterling Commerce from **AT&T Inc.**, announced in May that year, as well as its June 2010 deal for **Coremetrics Inc.**, whose terms were undisclosed. Combined, the purchases expanded IBM's portfolio of marketing tools.

Most recently, IBM said Oct. 3 that it acquired New York cloud-based mobile messaging technology company **Xtify Inc.** for undisclosed terms. Xtify was launched in 2009 and develops mobile message tools that help organizations drive in-store traffic, improve mobile sales, and engage customers with personalized offers.

Oracle Corp. meanwhile in late December 2012 agreed to pay $871 million for **Eloqua Inc.** Vienna, Va.-based Eloqua, which went public in August that year at 11.50 per share raising proceeds of about $72 million, makes cloud-based software that tracks marketing and consumers trends. The target is backed by private equity firms **JMI Equity Fund LP**, **Bay Partners** and **Bessemer Venture Partners**. Eloqua has done work for a handful of NBA teams including the Golden State Warriors, Utah Jazz and Miami Heat as well as some software companies including **McAfee Inc.** and **Rosetta Stone Inc.**

Weild and others said they believe tech strategics are not finished and that they may well look for newly public targets in ad tech. "I'm sure they'll make acquisitions of things that fill technology gaps. There's said to be over 100 different ad networking companies in the private markets," said Weild.

"These [newly public] companies, if you acquire them, there's value to acquiring the hot startup," said Park. "That's a very positive trend of course for IPOs [in general] because it creates the sense among the institutions that they will be able to sell their stock or make money if a company is acquired, and I think that's sort of helped the aftermarket performance."

Continued advances in technology will spur new business models, particularly as it relates to online mobile video delivery. "We've got a shift going on with online video ads," says Weild. "The next wave is probably more video, mobile video." New entrants will continue to jockey for position both before and after they gather enough attention to warrant public investment. "

The question of course in a public offering is what kind of profitability and growth are any of these companies going to show, and that's what remains to be seen," said Sonenclar.

"In every space, every niche, every corner, the situation is startlingly competitive," Sonenclar said. "There are dozens of companies out there vying for dollars across the entire spectrum."

—*Chris Nolter contributed to this report.*