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#### HEADLINE ARCHIVED:

#### **21st Century Disclosure** **By: Aaron Brown**

Glasser LegalWorks., wallstreetlawyer.com. February 2002

Excerpt: Disclosure, Seattle Style -- Remember when ordering a cup of coffee meant mumbling "cuppajoe" to the waitress, or just slumping in the direction of the coffee cup for those too caffeine-deprived to speak? Thanks to Seattle, you now have to inform your barista, "tall skinny harmless dry doppio cap" or whatever it is you like to drink. Well, the same thing is happening to disclosure. It used to be the Securities and Exchange Commission asked issuers for disclosure--the stuff that goes in 10-Q's and 8-K's and such. Now SEC Chairman Harvey Pitt is making speeches calling for 24/7 plain-English soft no-tears disclosure. It could mean that the Chairman spends too much time at Starbucks, or it could mean big changes in the way issuers communicate with investors. In the latter case, we could also see big changes in the corporate election system. Rather than analyze these possible new disclosure mandates one at a time and consider them in relation to current practice, it's easier to see their potential impact by considering them together and assuming they have been accepted as law. Suppose an issuer's security has fallen sharply in price and an angry investor, who bought before the fall, sues. Clearly she did not buy the security intending to lose money, so she must have been unaware of the event that caused it to fall in price. If the triggering event was an announcement by the issuer, she can claim the surprise announcement demonstrates earlier failure to disclose the "soft" information that would have alerted her to the risk. If the triggering event is anything else, she can claim the issuer did not practice 24/7 disclosure because the market found out something material before the issuer announced it. If the issuer complied with every reasonable disclosure duty, she can still claim the disclosures were not in plain English, as demonstrated by the fact that she did not understand them, which in turn is demonstrated by her failure to sell the security before the fall. While the case above is not unanswerable, it is clear the new disclosure mandates, if adopted, give investors important new weapons, and issuers will be in a weak position to fight back.

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