

Business 101: Must Apple discuss CEO Jobs' health?

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(AP) -- This week, Apple Inc. wasn't shy about touting the sales of its latest mobile device. But the company didn't say anything confirming reports from over the weekend that co-founder and CEO Steve Jobs had a liver transplant two months ago.

What happens to Jobs matters to Apple's investors, largely because he has become the public face of the company he started in 1976 - and because he's widely seen as the creative force behind the company's products. Apple's stock has fluctuated along with Jobs' health since 2004, when investors first learned that he had cancer.

So do investors across corporate America have the right to know this sort of information as they struggle to manage their recession-hit portfolios? What are the rules under U.S. securities laws?

Here are some questions and answers about disclosure requirements.

Q: Why did news about Jobs' liver transplant come from The [Wall Street Journal](#) and not from [Apple](#)?

A: Companies don't have to give updates on their executives' health. That is typically not considered "material information," which must be disclosed under rules put forth by the [Securities and Exchange Commission](#).

"Nothing is required to be disclosed unless the health issue affects his

ability to steward the company appropriately," said Charles Elson, director of the Weinberg Center for Corporate Governance at the University of Delaware.

Jobs also has been on medical leave since January, which means he technically isn't working for the company in an executive capacity.

Q: What is meant by "material information"?

A: The SEC requires companies to disclose information that would affect a reasonable investor's decision to buy or sell a stock. That includes information regarding earnings, mergers and acquisitions, new products and contracts, changes in auditors, bankruptcies and events relating to investments in a company, like dividends and stock repurchase plans.

Companies also must disclose certain information relating specifically to their top executives, including stock ownership, securities transactions, compensation and personal and professional biographical data.

When a CEO retires, dies or has his duties removed, a company must also inform the public. That is why Apple disclosed in January that Jobs was going on medical leave and chief operating officer Tim Cook would assume oversight of the day-to-day operations at the company.

Q: But Jobs is an iconic figure and Apple's fortunes seem to rise and fall with his health. Shouldn't that require greater disclosure?

A: If information isn't deemed "material," then the decision to disclose lies in the hands of Apple's board, said Alexa A. Perryman, a professor of management at the Neeley School of Business at Texas Christian University.

She said the SEC rules lack specific guidelines regarding executive health disclosures, which means corporate directors have discretion over what kind of information they decide to tell the public.

"It's a fuzzy, gray area of what is required," Perryman said. "There is certainly interest among investors, but that doesn't mean they have a right to know."

However, even though Apple isn't required to disclose information about Jobs' health, it might make sense for the company to do so - even if that can rattle the stock.

When Jobs announced in January that he was taking a leave of absence through June because his medical problems were more complex than he initially thought, Apple shares sank 7 percent. Apple's stock fell more than 1 percent on Monday to around \$138 a share in the first day of trading since the transplant news came out on Saturday.

"From a legal standpoint, Apple doesn't have to disclose a thing. But from a transparency standpoint, they should disclose," said Elson, from the University of Delaware. He says that even though Jobs' health may be his personal business, Jobs represents so much of the Apple brand that investors deserve to be updated on the status of his health.

Q: Will Apple ever have to disclose the [liver transplant](#)?

A: No.

"This can be deemed a private situation and can be kept confidential," said G. William Speer, senior counsel at the law firm Bryan Cave in Atlanta. "The information only has to be known by the board and the company."

If Jobs returns to work in the coming weeks as the company says he plans to do, then there is even less likelihood that the company will feel the need to disclose any specifics relating to his transplant.

J. Robert Brown, a professor at the University of Denver Sturm College of Law, said even though investors would like to get updates about his health, "the courts are going to be hesitant to require companies to disclose medical histories."

That may be particularly true in this case, Brown said, because the transplant apparently didn't impede Jobs' ability to return to Apple.

Even though companies for the most part don't have to disclose CEO health issues, many companies do - but well after the fact. Perryman, who has studied corporate health disclosures, has found many companies wait until the executive is healthy again to tell investors about the problem.

Q: That seems to set up a situation whereby insiders at a company - the board and top executives - may know about a health problem, but the public doesn't. Aren't there potential conflicts in that?

A: Even if a company doesn't tell investors about a CEO's health issue or something else, the information is considered "material" for those insiders who know about it. That means they aren't allowed to trade the company's stock on that news, or they could face allegations of insider trading if the news ever got out, securities law experts said.

Q: Does the Securities and Exchange Commission monitor whether companies are making proper disclosures?

A: This is the meat and potatoes of what the SEC does.

For example, a case filed earlier this month was brought against three former executives of mortgage lender Countrywide Financial Corp., charging them with violating the anti-fraud provisions of the Securities Exchange Act of 1934 and of the SEC's disclosure rules.

The SEC alleges that former CEO Angelo Mozilo, former chief operating officer David Sambol and former chief financial officer Erick Sieracki repeatedly misrepresented to the public that Countrywide was a prime quality mortgage lender with conservative lending policies, while in reality they knew that Countrywide had loosened its loan policies and had accumulated a large number of high-risk, "toxic" mortgages.

The SEC further alleges that Mozilo made approximately \$140 million in profit by selling large amounts of his Countrywide stock while in possession of material, nonpublic information.

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