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Jefferies' Promotion of Evergreen: Poor Judgment or Actionable Misrepresentation?

Jefferies and Co. ("Jefferies") has had a history of perpetuating Evergreen Energy Inc.'s (NYSE: EEE, $9.78) promotional claims since the firm initiated coverage on Evergreen in 2002. Two years later Jefferies was tied to the Evergreen controversy that led to the resignation of the Alaskan Attorney General (<a href= http://www.asensio.com/Reports/ReportView.aspx?ReportId=590&CompanyId=142&CompanyName=KFx+section%3a+- Here to read about former Alaskan Attorney General Greg Renkes ties to Jefferies).

On a November 1, 2006 conference call Evergreen announced a shift from promoting K-fuel plants built at the source to building the plants directly at the user's facility (K-Direct). This is extremely odd for many reasons not the least of which is that Evergreen's plan was to save money on transportation.

Jefferies continued its Evergreen promotion in a November 2, 2006 research report. Summarized as the first in a series of "Key Points" contained in their latest report is "EEE Reiterated Its Commitment To Secure A K-Direct Agreement Before Year-End 2006." The idea that Evergreen will secure a K-Direct deal before the end of the year has also been circulated in e-mails that appear to have been sent by Jefferies' sales personnel.

Jefferies latest report comes after Evergreen announced devastatingly poor operating and financial results. (Click Here to read "Evergreen Releases Devastating Results") Evergreen also announced on the call that target plant utilization had been cut in half (<a href=http:///http://www.asensio.com/Reports/ReportView.aspx?ReportId=768&CompanyId=156&CompanyName=Report Here to read "Evergreen's Capacity? Capacity of What?").

This was not the first time that Jefferies passed off Evergreen's promotional statements in a research report as material developments to promote the stock.

According to a June 28, 2004 Jefferies report, the investment bank expected "that after demonstrating efficacy, KFx should quickly expand its original plant to produce 2.75 million TPY(Tons Per Year)." Jefferies predicted that the expansion would take place by mid-2006. Jefferies made the prediction despite the repeated delays in plant start-up. These delays were euphemistically characterized in the report as "speed bumps" and Jefferies estimated that taking into consideration all potential delays the plant would still open in the first quarter of 2005.

In a September 25, 2006 Jefferies research report the investment bank also perpetuated Evergreen's "stated goal of 50 million tons of annual capacity in 5 years." This statement came as the recent developments regarding plant utilization, product sales and pricing disclosure controversies, and fundamental plant design and efficiency problems, were becoming clearly evident.

Jefferies is a National Association of Securities Dealers' ("NASD") member-firm. As Jefferies' management is certainly aware, the NASD has rules that prohibit "false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." The NASD also requires that "no member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading."

Sadly for investors, Jefferies Evergreen promotion has turned a blind eye to answering basic questions. Among them, if Evergreen could not successfully operate a plant at a remote mine site, that cost 6.5 times more to be constructed and took 4 times more to build than estimated, then how will they find a willing utility who will deal with the added burdens of constrained space, more environmental regulation, heavier licensing requirements, and other problems arising out of operating at a power plant?

Media inquiries can be submitted to Reports@asensio.com.