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Groupon Chairman Remarks May Require Company to Make New Filing

By Cory Johnson, Douglas MacMillan and Brian Womack

June 7 (Bloomberg) -- Remarks by Groupon Inc. Chairman Eric Lefkofsky, who said the money-losing daily-coupon provider will be “wildly profitable,” may force the company to make new filings before it sells shares to the public.

Lefkofsky, Groupon’s co-founder and biggest shareholder, made the comments June 3, a day after Chicago-based Groupon announced plans to raise $750 million in an initial public offering.

The U.S. Securities and Exchange Commission limits what companies planning IPOs can say about their prospects before listing shares. Groupon may need to file new documents that disclose Lefkofsky’s comments and either discount or ratify them, said Noah Hagey, a managing partner at Braun Hagey LLP.

“Where you have somebody with insider knowledge and status making predictions about how the company is going to perform, which conflicts or potentially conflicts with what’s in the registration statement, I think that draws attention,” Hagey said in an interview on Bloomberg Television.

While Groupon’s sales surged 14-fold to $644.7 million last quarter, the company has racked up operating losses of $540.2 million since its founding in 2008. That has left investors such as Pat Becker Jr., a portfolio manager at Becker Capital Management Inc., leery of owning the company’s shares.

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Lefkofsky made his remarks in response to questions about the companies he has run or founded, including Starbelly.com, InnerWorkings Inc. and Echo Global Logistics Inc.

“I’m going to be in technology for a long time,” Lefkofsky said June 3. “I’m going to start a lot of companies. These are not sham companies. These are great businesses. InnerWorkings is profitable. Echo is profitable. Groupon is going to be wildly profitable.”

John Nester, a spokesman for the SEC in Washington, declined to comment, as did Julie Mossler, a spokeswoman for Groupon.

To reconcile Lefkofsky’s comments with SEC rules, the company could file regulatory documents that say Groupon may be “profitable” over the next decade or two, without saying exactly when, said Marc Morgenstern, managing partner of Blue Mesa Partners, a San Francisco-based investment firm.

“In effect, you have let Pandora out of her box,” said Morgenstern, who is also a lawyer. “So, so you need to construct a new box around Pandora.”

Playboy Interview

In 2005, the SEC adopted new rules to update securities- offering requirements after Google Inc.’s $1.67 billion IPO a year earlier. Playboy published an interview with Google’s founders before the offering, raising concern about selective disclosure. Under the revised rules, executives may speak to the media, as in Google’s Playboy interview, provided they file a copy of the remarks with the SEC.

“There was an effort to relax some of these restrictions,” Hagey said. “These restrictions, in dealing with new media issues, still present a problem for folks like Mr. Lefkofsky.”

Groupon Chief Executive Officer Andrew Mason barred employees in a June 2 memo from making comments about the company.

“For the next 90 days or so, we are in a ‘quiet period’ where we can’t make any forward-looking statements about the company,” Mason wrote in the memo, obtained by Bloomberg News. “Anything we say now can be perceived as ‘fluffing the stock’ or something like that. So please don’t say anything like ‘Groupon is awesome’ around anyone you don’t fully trust.”

Track Record

Lefkofsky, in his remarks to Bloomberg, referred to his record in founding and running businesses. In 2001, he founded printing-service provider InnerWorkings, which went public in 2006. He also helped found Echo Global Logistics, a shipping- technology company, in 2005. That company held its IPO in 2009.

Lefkofsky also co-founded Starbelly.com, an online promotional-merchandise seller, in 1999 and sold it a year later to Ha-Lo Industries Inc. for $240 million. Ha-Lo filed for bankruptcy protection from creditors in July 2001 after writing down the acquisition.

Before Starbelly.com, Lefkofsky and his business partner, Brad Keywell, bought children’s apparel company Brandon Apparel Group. It later faltered, Lefkofsky explained in his blog.

“Along with our sales growth came lots of debt which eventually crippled the company when fashion trends changed in the late 90’s,” Lefkofsky wrote.

Groupon has surged in the past year as consumers in more than 500 markets worldwide flock to daily discounts of up to 90 percent at hotels, restaurants and nail salons. Its success has inspired more than 480 imitators.

“Groupon is a huge business,” Lefkofsky said.

Lefkofsky gave Mason $1 million to start The Point, a precursor to Groupon that began in 2007. It was created to help would-be activists raise funds and build petition lists by recruiting friends on the Web. The Point inspired Mason to try a new site based around the idea of collective buying.

The biggest shareholder of Groupon is Green Media LLC, which is owned by Lefkofsky and his wife, Elizabeth Kramer Lefkofsky. Green Media owns 21.6 percent of Class A shares and 41.7 percent of Class B stock.

--With assistance from Joshua Gallu in Washington, Ari Levy in San Francisco and Amy Thomson in New York. Editors: Tom Giles, Nick Turner

To contact the reporters on this story: Cory Johnson in San Francisco at cjohnson114@bloomberg.net; Douglas Macmillan in San Francisco at dmacmillan3@bloomberg.net; Brian Womack in San Francisco at Bwomack1@bloomberg.net.

To contact the editors responsible for this story: Tom Giles at tgiles5@bloomberg.net; Dan Colarusso at larusso@bloomberg.net.