
SEC Gives Nod to Use of Social Media Under Regulation FD—If Done Correctly

2013-04-29

On April 2, 2013, the Securities and Exchange Commission issued a [Report of Investigation](#) that concluded an investigation by the SEC's Division of Enforcement into whether the CEO of Netflix, Inc. had violated Regulation FD by posting an updated corporate metric on his personal Facebook page, without the company making any other simultaneous public disclosure of that metric.

Key Takeaways:

- The SEC has confirmed that social media can be used to disseminate material information in a manner that satisfies Regulation FD.
- Whether a particular disclosure through social media complies with Regulation FD is assessed using the principles contained in the SEC's 2008 guidance on the use of company websites. Under that guidance, a company must consider whether: (1) the communication is made via a recognized channel of distribution; (2) the information is disseminated in a manner that makes it available to the securities marketplace in general; and (3) there has been a reasonable waiting period for investors and the market to react to the information.
- Companies that want to use social media to disseminate material nonpublic information must inform investors about the specific channels they plan to use and the types of information that may be disclosed through those channels. A company using social media as the sole means of disseminating material information will also need to carefully consider whether and when that dissemination has been sufficiently broad so that the information can be repeated in a private conversation without violating Regulation FD.
- Companies should carefully consider whether using social media as the exclusive means of disseminating material nonpublic information is the best way to communicate with investors. At least for now, as was the case before the new report issued by the SEC, most public companies will continue to be best served by disseminating material information through a press release or a Form 8-K, supplemented by website posting, social media and other means of dissemination targeted at various intended audiences.

Read [SEC Gives Nod to Use of Social Media Under Regulation FD—If Done Correctly](#).

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