

Reg FD Enforcement Update: the Perils of Implied Messages

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The SEC today announced settled Reg FD charges against Office Depot and its CEO and former CFO related to “signals” that Office Depot made in one-on-one conversations with analysts implying that it would not meet future earnings expectations. The Office Depot settlement, which is the SEC’s third Reg FD action in a little over a year after an approximately four-year hiatus, is distinctive because the challenged statements appear to have been crafted—unsuccessfully, as it turned out—to walk the FD compliance line by avoiding express references to changes in the company’s business.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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