

Practical Advice on How Companies Can Use Social Media to Comply with Regulation FD

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When the SEC began an investigation of whether a Facebook post by the Netflix CEO violated Regulation FD, companies became alarmed that it represented the regulator's views that social media should not be used to disclose important information to the market. As we explain in our [memo](#), the SEC has recently issued a report that affirmed the availability of social media as an appropriate channel of dissemination, but only in accordance with specific principles that builds on its prior guidance from 2008. [Joe Hall](#), a partner in our capital markets group, explains the key aspects of how companies can avail themselves of this benefit without tripping the regulatory requirements.

- *What is most helpful about the new guidance that the SEC has given companies about Regulation FD compliance in the context of social media?*

The SEC has now said that the key to satisfying Regulation FD depends on whether the company has adequately informed investors, the market and the media that it will use social media to communicate information. This emphasis on advance notice takes us away from the prior focus on whether a company's website was already a recognized channel. Companies can now take concrete steps to take advantage of social media for this purpose.

- *What's the first step a company should take if it decides that it wants social media to be a Regulation FD distribution source?*

Companies need to decide which channels they want to use and be specific in identifying the precise location where material information will appear, such as the specific URL, Twitter handle or Facebook pages, rather than generic home pages. It can also be helpful to tell investors when you will provide information in some cases, such as an upcoming earnings release, as well as where.

- *Once a company identifies the social media venues, how should they communicate that to investors?*

Companies should prepare a brief statement explaining what they plan to disclose, and where they plan to disclose it. This paragraph should be published regularly in annual and quarterly reports, as part of press releases (perhaps in "about the company") and on the home page of the corporate website. Changes should be publicized well in advance.

- *Given that many companies may be adding to the number of different places that investors are expected to find information, can "push" technology help alleviate the possible burden to investors in terms of keeping track?*

It would be ideal for companies to have mechanisms available for investors to receive alerts when there is new information, such as the ability to subscribe to RSS or other feeds. Companies should make clear what feeds are available and how to subscribe, and give sufficient time to investors to do so before using the particular channel.

- *What are your thoughts on whether companies will start using social media to comply with Regulation FD?*

We expect that practice will continue to vary on whether companies will use social media this way and for what types of information. An important point to keep in mind is that once a company has announced to the market that it will be using, for example, the CEO's Facebook page to distribute important information, the company needs to use it the way it described. Sporadic or inconsistent use may prevent the development of the kind of market following that the SEC is

clearly looking for.

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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