Davis Polk

SEC Staff Allows Hyperlinks to Satisfy Legending and Other Required Disclosures When Using Twitter

April 22, 2014 | Client Update | 2-minute read

In response to questions about the use of Twitter and certain other social media platforms under securities laws given the restrictions on the amount of information that can be conveyed, the SEC staff has provided guidance on the use of technology that limit the number of characters or amount of text when used in three types of communications:

- Made in reliance under Rule 134 (communications not deemed a prospectus) to satisfy **Rule 134(b) or Rule 134(d)**
- A legend under the exemption to satisfy Rule 165(c)(1) related to business combinations and also solicitations under Rule 14a-12 and pre-commencement written **communications**
- A legend required by Rule 433(c)(2)(i) for **free writing prospectuses**

In these limited circumstances, the Staff has indicated that it will not object to the use of an active hyperlink to satisfy the various rule requirements if:

- The electronic communication is distributed through a platform that has technological limitations on the number of characters or amount of text that may be included in the communication;
- Including the required statements in their entirety, together with the other information, would cause the communication to exceed the limit on the number of characters or amount of text; and
- The communication contains an active hyperlink to the required statements and prominently conveys, through introductory language or otherwise, that important or required information is provided through the hyperlink.

Namely, only when using technology that clearly restrict the ability to include all the statements required under the securities rules because of space limitations can hyperlinks be used to satisfy those rules, but the user must also indicate “prominently” that the hyperlink contains important or required information. It appears that the **examples** we have seen this season of tweets to support shareholder proposals would need to follow the guidance.

.

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.

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com