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Icahn Enterprises Notifies Public of Social Media Use as SEC Examines Possible Use of Universal Proxy Ballots

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Last Wednesday, an **8-K** from Icahn Enterprises L.P. reported that its chairman, Carl Icahn, intends to use Tumblr, Facebook, Twitter and a particular website (www. www.shareholderssquaretable.com) to communicate about the company and "other issues." The 8-K acknowledges that it is possible that the information he posts could be deemed to be material information, and therefore the company encourages investors, the media and other interested parties to review this information along with traditional investor relations communications channels such as its own website, SEC filings and press releases.

The 8-K notes the SEC staff guidance issued in April on the appropriate use of social media in different circumstances, which we previously discussed **here**. According to ***Law 360*** (subscription required), Icahn's Facebook and Twitter are far more active than his Tumblr. Icahn has tweeted 153 times since joining Twitter in June 2013, and has 182,000 followers. The SEC itself has four twitter accounts, on news, enforcement, investor education and jobs.

In terms of other regulations that may affect activism, SEC Chair White indicated in remarks to the SEC Investor Advisory Committee that the SEC staff has submitted a recommendation to the Commission regarding the use of universal proxy ballots in proxy contests. A universal ballot would allow a shareholder to mix and match the company's nominees and the dissident's nominees on one ballot without attending the meeting. We previously **discussed** Commissioner's Stein's public support of this type of ballot. Chair White indicated that the Commission intends to hold a roundtable early next year on universal ballots as well as other proxy matters, which she did not specify but perhaps includes additional proxy plumbing issues.

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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