

# SEC Explains How to Use Social Media for Regulation FD Compliance

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Regulation FD, adopted by the SEC in 2000, prohibits “selective disclosure” by requiring public companies to disclose material information through broadly accessible channels. Thirteen years ago, this meant EDGAR filings, press releases and quarterly earnings calls.

This week the SEC issued a report of investigation under Section 21(a) of the Securities Exchange Act of 1934 regarding its inquiry into a post by Netflix’s CEO on his personal Facebook page. In the report, the SEC affirmed that a company may use social media to communicate with investors without violating Regulation FD – as long as the company had adequately informed the market that material information would be disclosed in this manner. The report states that whether a company’s social media disclosure satisfies Regulation FD will depend upon the principles outlined in the SEC’s 2008 guidance, Commission Guidance on the Use of Company Web Sites, while recapping that guidance in a way that should make these principles more workable for companies that want to use websites, social media and other evolving communication methods to disclose important information to the market.

With the benefit of this Section 21(a) report, companies should be comfortable using evolving communication methods for corporate disclosure. Companies should continue to thoughtfully plan how to ensure that these methods alone can satisfy Regulation FD, and should remain alert to other possible federal securities law concerns that can arise when they or their executives use these methods to deliver corporate news. Below we offer a few insights into the report as well as some strategies to follow when making Regulation FD-sensitive corporate disclosures via non-traditional channels.

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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