



SEC Opens Door for Public Companies to Make Announcements Using Social Media

The Securities and Exchange Commission (SEC) released a [Report of Investigation](#) on April 2, 2013, that addresses whether public companies may use social media to make certain announcements.

Regulation FD and Section 13(a) of the Exchange Act prohibit public companies, or persons acting on their behalf, from selectively disclosing material, nonpublic information to certain securities professionals, or shareholders where it is reasonably foreseeable that they will trade on that information, before it is made available to the general public.

The SEC discussed Regulation FD and whether public companies can make announcements on their company websites in its [2008 Guidance on the Use of Company Web Sites](#). In the most recent guidance, the SEC stated that the principles outlined in the 2008 Guidance apply with equal force to corporate disclosures made through social media channels.

Rather than establishing specific rules for making announcements using social media, the SEC stated that a company's communications through social media channels require careful analysis to determine if they are subject to, and comply with, Regulation FD.

In order to be a public statement under Regulation FD, the statement must be disseminated through "recognized channels of distribution." The 2008 Guidance explained that whether a company's website is a recognized channel of distribution depends on the steps the company has taken to alert the market to its website and its disclosure practices, as well as the use by investors and the market of the company's website. Some factors, though certainly nonexclusive ones, for companies to consider in evaluating whether their company website is a recognized channel of

distribution and whether the company information on such site is "disseminated" include:

- Whether and how companies let investors and the markets know that the company has a website and that they should look at the company's website for information. For example, does the company include disclosure in its periodic reports (and in its press releases) of its website address and that it routinely posts important information on its website?
- Whether the company has made investors and the markets aware that it will post important information on its website and whether it has a pattern or practice of posting such information on its website.
- Whether the company's website is designed to lead investors and the market efficiently to information about the company, including information specifically addressed to investors; whether the information is prominently disclosed on the website in the location known and routinely used for such disclosures; and whether the information is presented in a format readily accessible to the general public.

Turning to the question of making announcements using social media, the SEC stated, "Although every case must be evaluated on its own facts, disclosure of material, nonpublic information on the personal social media site of an individual corporate officer, without advance notice to investors that the site may be used for this purpose, is unlikely to qualify as a method 'reasonably designed to provide broad, non-exclusionary distribution of the information to the public' within the meaning of Regulation FD. This is true even if the individual in question has a

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large number of subscribers, friends, or other social media contacts, such that the information is likely to reach a broader audience over time. Personal social media sites of individuals employed by a public company would not ordinarily be assumed to be channels through which the company would disclose material corporate information. Without adequate notice that such a site may be used for this purpose, investors would not have an opportunity to access this information or, in some cases, would not know of that opportunity, at the same time as other investors.”

Although the SEC has provided some guidance for companies that wish to use their social media channels to make public statements, a careful analysis of Regulation FD and the 2008 Guidance should be conducted before such statements are made on social media platforms.

For more information about this and other digital media issues, please contact [James D. Taylor](#) or [Kenneth R. Florin](#).

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