

SEC Changes Position on Use of Social Media for Company Announcements

by KENNETH C. OH on APRIL 9, 2013

The Securities and Exchange Commission (SEC) recently made headlines when it issued a press release announcing that it was OK to use social media to disseminate company news. Under the [SEC's new social media position](#), companies can use sites Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD) so long as investors have been alerted about which social media will be used to disseminate such information.

An SEC investigation into a post by NETFLIX CEO Reed Hastings on his personal Facebook page prompted the announcement. As detailed on the [Martindale.com Blog](#), the post stated: *Congrats to Ted Sarandos, and his amazing content licensing team. Netflix monthly viewing exceeded 1 billion hours for the first time ever in June. When House of Cards and Arrested Development debut, we'll blow these records away. Keep going, Ted, we need even more!*

The SEC subsequently issued Wells Notices to Netflix and Mr. Hastings asserting that the Facebook posting ran afoul of [Regulation FD](#). The SEC rule, which aims to ensure full and fair disclosure, provides that when an issuer discloses material nonpublic information to certain individuals or entities, such as stock holders or analysts, it must also disclose that information to the public.

The SEC's report of investigation makes it clear that the Netflix post may still run afoul of Regulation FD, while also recognizing that there has been a great deal of uncertainty about how the rule applies to social media. Accordingly, it elected to publish the results of the investigation rather than take enforcement action.

As the SEC explains, "The report of investigation explains that 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 an acceptable method of disclosure under the securities laws. 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."

As the guidance in the SEC enforcement report highlights, not all social media posts will comply with disclosure rules. Therefore, it is important for companies to continue to conduct careful Regulation FD analysis.

If you have any questions about the SEC's new social media policy or would like to discuss how it may impact your operations, please contact me, [Kenneth Oh](#), or the [Scarinci Hollenbeck](#) attorney with whom you work.