

## Can Corporate Tweets Violate Securities Disclosure Rules?

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Many Fortune 500 companies have corporate Twitter accounts and use them to disseminate information to the public. Depending on the subject matter, however, using this handy, real-time marketing tool could also lead to an inadvertent violation of the Securities and Exchange Commission's disclosure rules.

The SEC's Regulation FD (for "fair disclosure") prohibits publicly-traded companies from selectively disclosing material information - that is, disclosing it to some persons but not others. If a public company wishes to disclose material information about itself, it must make public disclosure, either by filing a Form 8-K or through some other method reasonably designed to provide broad public distribution. If a corporate Twitter post, or "tweet," which is not a public disclosure under the regulations, contained discussion of an impending merger or acquisition or other material information that had not previously been disclosed publicly, there could be a Regulation FD violation. Also, federal and state securities laws generally require that any disclosure of material information not omit information necessary to keep the information that is disclosed from being misleading. The dilemma is that tweets are limited to 140 characters in length, which is unlikely to be enough to include all legally required information. For these reasons, corporate tweets containing material information about the company or its securities should be avoided.

Other forms of online communications, however, can be effectively used to address such subjects. Microsoft Corporation recently announced that it will use its investor relations website to issue the company's earnings announcements. While the website contains links to Microsoft's Twitter and Facebook pages, it doesn't appear that either are used by the company for announcements to investors.