

SEC Approves Communications Via Social Media

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The Securities and Exchange Commission ("SEC") has taken a new position that publicly traded companies may use social media to communicate information to investors, so long as investors are first advised of the communication channels and the communications still comply with Regulation FD.

In July 2012, Netflix, Inc. CEO Reed Hastings posted to his more-than-200,000 Facebook fans that: "Netflix monthly viewing exceeded 1 billion hours for the first time ever in June." The SEC sent Netflix a Wells notice of a possible enforcement action that Hastings' post violated Regulation FD, addressing public companies' communication of material information to investors.

This month, the SEC issued a report on its investigation on the alleged Netflix/Hastings violation. Rather than sanctioning Netflix, the SEC took a new position on the issue of corporate communications via social media. In the report, the SEC reiterated that "issuer communications through social media channels require careful Regulation FD analysis comparable to communications through more traditional channels." The SEC further stated that its regulation of public communication "apply with equal force to corporate disclosures made through social media channels." The SEC highlighted the importance of a company alerting investors to the specific channels the company will use to disseminate material information.