

# PUBLICATION

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## Regulation FD Update [Ober|Kaler]

February 01, 2013

In December, Netflix announced that the company and its CEO, Reed Hastings, had each received a notice from the SEC Staff indicating that the staff intended to recommend to the SEC that it institute proceedings against them related to Reed's posting on his company blog and on his Facebook page that Netflix members were viewing "nearly a billion hours per month." The company did not issue a press release or file a Form 8-K to report this information, which the SEC deemed material. While Mr. Reed's position is that this information was public due to the large number of people (over 200,000) who subscribe to his Facebook page, and in any case was not material, he acknowledged that "we don't currently use Facebook and other social media to get material information to investors." Therefore, his blog and Facebook page would not have been a "recognized channel of distribution" and, if the posted information was material, the posting would have violated Regulation FD.

This case highlights some of the difficulties that social media represents when company personnel discuss company matters on social media. Companies whose corporate communications policies (or codes of ethics that cover Regulation FD matters) have not been updated in the last few years may want to consider updating their policies to address the use of social media and emphasizing in training that personnel should not use social media to disclose material nonpublic information without the simultaneous filing of a form 8-K with the SEC.