

# PUBLICATION

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## SEC Approves Social Media Announcements If Investors Are Alerted

April 04, 2013

On April 2, 2013, the Securities & Exchange Commission (SEC) announced that companies may use Facebook, Twitter and other social media sites to announce key information so long as investors have been alerted about which social media will be used to disseminate such information. As noted by George Canellos, the SEC's acting enforcement chief, "Most social media are perfectly suitable methods for communicating with investors, but not if the access is restricted or if investors don't know that's where they need to turn to get the latest news."

Until the SEC's announcement, it was unclear whether social media would be considered a compliant form of communication. Regulation FD and Section 13(a) of the Exchange Act prohibit companies, or persons acting on their behalf, from selectively disclosing material, non-public 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's announcement was prompted by Netflix's CEO posting in July 2012 on his personal Facebook page certain company information that had not been revealed through more traditional means, i.e., a company press release or 8-K. While the SEC decided not to initiate an enforcement action or allege wrongdoing in that case, the SEC clarified that the disclosure of material non-public 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 securities laws.

While the SEC has formally approved the use of social media for disclosing company information provided that investors have been notified, we don't anticipate in the short term any dramatic changes in how companies will communicate with investors. Most companies will likely wait for further guidance and best practices to develop in order to avoid the initial pitfalls of using a new form of communication.

If you have questions about the SEC's announcement, please contact your Baker Donelson attorney.