

PUBLICATION

SEC Issues Guidance on Shareholder Communications

June 23, 2010

The staff of the SEC's Division of Corporation Finance recently issued guidance on the rules regarding public companies' private communications with investors. In updated compliance and disclosure interpretations (C&DI) released June 4, the SEC staff stated that Regulation FD does not prohibit directors from speaking privately with a shareholder or group of shareholders.

Regulation FD—or Fair Disclosure—was adopted to end the practice of selective or private disclosure of material non-public information to certain investors who could then use that information to trade on the public company's stock. Citing concerns that some companies were using Regulation FD as a reason to avoid talking to shareholders, the SEC's Investor Advisory Committee urged the staff to clarify that Regulation FD does not restrict all communications between companies and their shareholders.

In response to the Investor Advisory Committee's concerns, the staff released the new C&DI that makes clear that directors are not prohibited from speaking privately with shareholders or groups of shareholders. To avoid Regulation FD violations, the staff recommended that companies adopt policies such as pre-clearing with management topics to be discussed with shareholders or having counsel present in meetings. Because Regulation FD does not apply to disclosures made to a person who agrees to maintain the information in confidence, companies can also avoid Regulation FD issues by having shareholders enter into a written confidentiality agreement before private discussions.

If you have questions about this or any other securities-related issue, please contact your Baker Donelson attorney.