

SEC Issues New C&DIs For Use of Social Media

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On April 21, the Securities and Exchange Commission's Division of Corporation Finance issued new Compliance and Disclosure Interpretations (C&DIs) on the use of social media in the context of securities offerings, business combination transactions and other similar transactions, providing guidance to issuers seeking to use social media in compliance with certain SEC rules, including rules requiring inclusion of legends in certain public communications.

In a number of new C&DIs, the staff identified circumstances where hyperlinks can be used to satisfy requirements that communications made in reliance upon certain SEC rules be accompanied by cautionary legends. C&DIs 110.01, 164.02, and 232.15 clarify that the staff will not object to the use of hyperlinks to satisfy the requirement that legends accompany electronic communications made in reliance upon specified sections of the Securities Act of 1933 (Securities Act) and the Exchange Act of 1934 in various contexts, including in connection with securities offerings, business combination transactions, proxy solicitations, and tender offers, where:

- the communication is distributed through a platform, such as Twitter, that has technological limitations on the number of characters or amount of text that may be included in the communication;
- including the required legend in its entirety, together with the other information, would cause the communication to exceed the limit on the number of characters or amount of text; and
- the communication contains an active hyperlink to the required legend and prominently conveys, through introductory language or otherwise, that important or required information is provided through the hyperlink.

In addition, C&DIs 110.02 and 232.16 provide guidance regarding an issuer's responsibility to ensure compliance with applicable SEC rules (in particular, Securities Act Rules 134 or Rule 433) by third parties who retransmit (such as by "re-Tweeting" on Twitter) communications made by the issuer in reliance upon those rules on an electronic or social media platform that allows re-transmission. The Division of Corporation Finance clarified that if a third party is neither an offering participant nor acting on behalf of the issuer or an offering participant, and the issuer has no involvement in that third party's retransmission beyond having initially prepared and distributed the communication in compliance with applicable SEC rules, the retransmission will not be attributable to the issuer.

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