



Icahn Enterprises L.P. issued a [press release](#) on March 7, 2014 announcing that its Chairman—famed investor Carl Icahn—intends to use [Twitter](#), [Facebook](#), and the website [Shareholders' Square Table](#) to communicate from time to time with the public about the company.

The press release was careful to note that the information Mr. Icahn may choose to share via social media could be deemed material, and therefore encouraged "investors, the media, and others interested in our company to review the information that Mr. Icahn posts," in addition to the information the company discloses on its investor relations website. Like Icahn Enterprises, many companies and executives are using social media to not only market to the public, but to share information with investors. The SEC's Regulation Fair Disclosure ("Regulation FD") [requires](#) that if material, non-public information is disclosed, the company must disclose that information in a manner reasonably designed to distribute broadly the information to the public. This leads to an

inexorable question: *If a company decides to use social media to share material information with investors and the public, how can it ensure compliance with Regulation FD?* The SEC has spoken to this question directly, providing [guidance](#) on how companies can satisfy Regulation FD when posting information to social media such as Facebook, Twitter or blogs. Exchange Act Release No. 69,279 (April 2, 2013). The SEC largely relied on its [previous guidance](#) regarding distribution of information on company websites to inform companies how to satisfy Regulation FD when posting to social media. As with websites, a company can satisfy Regulation FD when posting to social media by making investors, the market, and the news media aware of the channels it will use to provide information—in other words, investors, the market, and the news media need to know where to look for disclosures. In its March 7 press release, Icahn Enterprises did just this, by notifying investors that Mr. Icahn would be using social media to communicate about Icahn Enterprises. More generally, in looking to satisfy Regulation FD when posting to social media, companies should question whether:

- the company has notified investors and "the market" (*i.e.*, through SEC filings, reports, and press releases) that social media will be used to distribute information?
- the company has a pattern and practice of posting information to social media?
- the news media regularly reports on information the company posts to social media?
- the company otherwise keeps its social media accounts current and accurate?
- investors and the market would not know to look at social media for information, because the company's other channels of communication so predominate over the use of social media?

In issuing this guidance, the SEC specifically noted that it did not wish to stifle companies' use of social media to share information with the investing public, as the use of social media for this purpose is a positive development which fosters broader and faster dissemination of information. In fact, the SEC reminded companies that if information is inadvertently distributed by social media, the company can promptly follow up with broad disclosure, through existing established channels of communication, to satisfy Regulation FD. Social media provides an instantaneous avenue by which to share information with the public. It stands to reason that companies can use these channels to share information with investors. By following the simple principles set forth in this SEC guidance, companies can ensure that they remain compliant with Regulation FD.

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