

SEC Corporate Finance CDI: April 21, 2014

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<http://www.sec.gov/divisions/corpfm/guidance/securitiesactrules-interps.htm#110-01>

Select Rules Pertaining to Social Media Below

Question 110.01

Question: A communication made in reliance on Rule 134 must contain the statement required by Rule 134(b)(1) and information required by Rule 134(b)(2), unless the conditions of Rule 134(c) are met. In addition, if the communication solicits from the recipient an offer to buy the security or requests the recipient to indicate whether he or she might be interested in the security, it must include the statement required by Rule 134(d).

Some electronic communication platforms, such as those made available through certain social media websites, limit the number of characters or amount of text that can be included in the communication, effectively precluding display of the required statements together with the other information. Under what circumstances would the use of a hyperlink to the required statements satisfy the Rule 134(b) or Rule 134(d) requirements?

Answer: Recognizing the growing interest in using technologies such as social media to communicate with security holders and potential investors, the staff will not object to the use of an active hyperlink to satisfy the requirements of Rule 134(b) or Rule 134(d) in the following limited circumstances:

- The electronic communication is distributed through a platform that has technological limitations on the number of characters or amount of text that may be included in the communication;
- Including the required statements in their 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 statements and prominently conveys, through introductory language or otherwise, that important or required information is provided through the hyperlink.

Where an electronic communication is capable of including the required statements, along with the other information, without exceeding the applicable limit on number of characters or amount of text, the use of a hyperlink to the required statements would be inappropriate. [April 21, 2014]

Question 110.02

Question: Some electronic communication platforms, such as those made available through certain social media websites, permit users to re-transmit a posting or message they receive from another party. When an issuer distributes an electronic communication in compliance with Rule 134 or Rule 433, must the issuer ensure compliance with Rule 134 or Rule 433 of a re-transmission of that communication by a third party that is not an offering participant?

Answer: If the 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 the third party's re-transmission beyond having initially prepared and distributed the communication in compliance with either Rule 134 or Rule 433, the re-

transmission would not be attributable to the issuer. As explained in Securities Act Release No. 33-8591 (July 19, 2005), “[W]hether information prepared and distributed by third parties that are not offering participants is attributable to an issuer or other offering participant depends upon whether the issuer or other offering participant has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information.” [April 21, 2014]

Question 164.02

Question: An electronic communication relying on the exemption in Rule 165 must contain the legend required by paragraph (c)(1) of that rule. Some electronic communication platforms, such as those made available through certain social media websites, limit the number of characters or amount of text that can be included in the communication, effectively precluding display of the legend together with the other information. Under what circumstances would the use of a hyperlink to the legend satisfy the Rule 165(c)(1) requirement?

Answer: Recognizing the growing interest in using technologies such as social media to communicate with security holders, the staff will not object to the use of an active hyperlink to satisfy the requirements of Rule 165(c)(1) in the following limited circumstances:

- The electronic communication is distributed through a platform that has technological limitations on the number of characters or amount of text that may be included in the communication;
- Including the 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.

Where an electronic communication is capable of including the required legend, along with the other information, without exceeding the applicable limit on number of characters or amount of text, the use of a hyperlink to the required legend would be inappropriate. This position also applies to written communications that constitute solicitations made in reliance on Exchange Act Rule 14a-12 and pre-commencement written communications subject to Exchange Act Rules 13e-4(c), 14d-2(b) and 14d-9(a). [April 21, 2014]

Question 232.15

Question: With the exception of free writing prospectuses that comply with Rule 433(f)(1), a free writing prospectus distributed in reliance on Rule 433 must contain the legend required by Rule 433(c)(2)(i). Some electronic communication platforms, such as those made available through certain social media websites, limit the number of characters or amount of text that can be included in the communication, effectively precluding display of the required legend together with the other information. Under what circumstances would the use of a hyperlink to the required legend satisfy Rule 433(c)(2)(i)?

Answer: Recognizing the growing interest in using technologies such as social media to communicate with security holders and potential investors, the staff will not object to the use of an active hyperlink to satisfy the requirements of Rule 433(c)(2)(i) in the following limited circumstances:

- The electronic communication is distributed through a platform 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.

Where an electronic communication is capable of including the required legend, along with the other information, without exceeding the applicable limit on number of characters or amount of text, the use of a hyperlink to the required legend would be inappropriate. [April 21, 2014]

Question 232.16

Question: Some electronic communication platforms, such as those made available through certain social media websites, permit users to re-transmit a posting or message they receive from another party. When an issuer distributes an electronic communication in compliance with Rule 134 or Rule 433, must the issuer ensure compliance with Rule 134 or Rule 433 of a re-transmission of that communication by a third party that is not an offering participant?

Answer: If the 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 the third party's re-transmission beyond having initially prepared and distributed the communication in compliance with either Rule 134 or Rule 433, the re-transmission would not be attributable to the issuer. As explained in Securities Act Release No. 33-8591 (July 19, 2005), "[W]hether information prepared and distributed by third parties that are not offering participants is attributable to an issuer or other offering participant depends upon whether the issuer or other offering participant has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information." [April 21, 2014]