



Cheat Sheet

**PR & The SEC:**

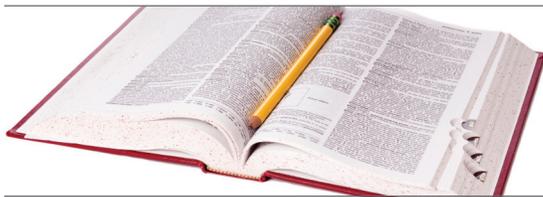
**What You Don't Know Can Hurt You**

A cheat sheet for every company subject to SEC regulations





Publicly traded companies must adhere to strict SEC guidelines in a number of areas, and understanding what – and what not – to communicate can sometimes seem daunting. This communications “cheat sheet” outlines some of the critical regulations for public companies so you can ensure senior executives are aware of important concepts and restrictions in the public relations process – before they speak to a reporter.



**All the terms you need to know for public company communications.**

### Forward-Looking Statements

A forward-looking statement predicts, projects, or uses future events as expectations or possibilities. The SEC encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. Forward-looking statements should be publicly disclosed and are subject to Regulation Fair Disclosure (see below).

### Insider Trading

“Insider trading” is a term that includes both legal and illegal conduct. The legal version is when corporate insiders—officers, directors and employees—buy and sell stock in their own companies. When corporate insiders trade in their own securities, they must report their trades to the SEC. (See SEC Forms 3, 4, 5 in the box below.)

Illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of “material, nonpublic information” about the security. Insider trading can be attributed to:

- Corporate officers, directors, and employees of a company who had access to material, nonpublic information;
- Friends, business associates, family members, and other acquaintances that have received material, nonpublic information;
- Employees of law, banking, brokerage, public relations and printing firms who were given access to such information in order to provide services; and
- Government employees who learned of such information because of their employment by the government.

### Resources to Keep Handy



- >> [SEC Forms 3, 4, 5](#)
- >> [SEC Report on Social Media for Company Announcements](#)



## Material Information

According to the U.S. Supreme Court information is deemed 'material' if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding whether to take some action with respect to a company's securities, such as how to vote in response to a proxy solicitation or whether to buy, sell or hold the securities."

In particular, material information is information about the company that has not yet been made public but that will have at least a small impact on the company's share price once released. It is illegal for holders of material insider information to use the information - however it was received - to their advantage in trading a stock or to provide the information to family members, friends or others who may act upon this information. Examples of material information include:

- Earnings information;
- Mergers, acquisitions, tender offers, joint ventures or changes in assets;
- New products or discoveries, or developments regarding customers or suppliers (e.g., the acquisition or loss of a contract);
- Changes in control or management;
- Change in auditors or auditor notification that the issuer may no longer rely on an auditor's audit report;
- Events regarding the company's securities-e.g., defaults, calls, stock splits, public or private sales of additional securities; and
- Bankruptcies or receiverships.

## Regulation Fair Disclosure (FD)

Regulation FD was issued by the SEC to prevent "selective disclosure" of material information to securities professionals and investors before that information has been disseminated to the general public. The SEC issued this regulation because it has been concerned that selective disclosure of information unfairly benefits analysts and institutional investors at the expense of other holders of a company's stock. Therefore, all material information must be disclosed to the public at the same time - so all individuals have access to the information at the same time. In order to satisfy the disclosure requirements, companies can:

- Issue a press release (traditional and most used method)
- File a Form 8-K (SEC filing)
- Conduct a conference call (providing adequate notice of - which usually requires a press release - and open access to)
- Post on a company website (including a blog, see SEC Guidelines for Social Media in box above).
- Post on a company's social media platforms, as long as investors have been alerted about which social media will be used to disseminate such information (see [SEC Report on Social Media for Company Announcements](#)).



## The do's and don'ts for interviews and social media engagement.



All spokespersons are subject to SEC regulations, so before any executives speak with reporters, it's important for them to understand a few key do's and don'ts. In practical terms, here are some guidelines for how SEC regulations apply to a media interview – and to posting on social media.

### DO:

- Do refer to your legal team for advisement on all SEC restrictions and regulations
- If making an announcement, do wait until the press release crosses the wire or is otherwise officially announced before having any discussion with a third-party (media and/or social media)
- Do use all public information in your interview (i.e., from a press release, website, former announcements, sales collateral, etc.)
- Do use previously approved company messaging

### DON'T:

- Don't hint at or advance notify anyone about an upcoming announcement – even without details as to the nature of the announcement
- Don't provide any 'material' information that has not yet been included in a company announcement. This includes:
  - o Financial information
  - o Any business plans, such as for new deals or product developments/service offerings
  - o Any senior executive/management changes
- Don't provide any forward-looking statements (predictions) about what an announcement could mean for the company in terms of new revenue, new customers or products
- Don't speculate on any changes to the financial, executive or operational structure of the company
- Don't disclose any customer names that have not given their express permission to be used as a reference

When in doubt, speak to your legal team for guidance on how to proceed or what information to share. Since SEC regulations may be subject to change, it's also important to keep a close eye on developments and adjust your communications strategies accordingly. By making sure your communications team and executives are well versed on SEC communications requirements, you can ensure your spokespeople will remain on message for every media interaction.



## Sources:

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