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Reg FD & Annual Shareholder Meetings



Sometimes we get asked by clients: "Can you say things during an annual shareholder meeting without triggering a disclosure obligation under Regulation FD?"

Hopefully, most of you out there know the answer to this one — but maybe not since shareholder meetings tend to be dull affairs. A non-event event. The answer is: "Disclosure at shareholder meetings typically doesn't satisfy Reg FD."

In a CDI issued a while back (Regulation FD CDI 102.05), Corp Fin made clear that a company can provide material information at its shareholders meeting in compliance with Regulation FD's public disclosure requirement only if the meeting is webcast in a way that is reasonably designed to provide broad, non-exclusionary distribution of the information in accordance with Rule 101(e)(2) of FD. It is not sufficient that the meeting merely be open to the public.

So you don't get a free pass here. You have to carefully scrutinize the information delivered at an annual meeting that is held in person only to ensure that MNPI wasn't leaked out accidentally. That typically would happen in response to a question. Perhaps by a director who might not be as trained as your CEO to keep things on the down low.

That's why some companies review a written transcript of the meeting — not so they can post the transcript — but so they can read through what was said and evaluate if anything mentioned was material and nonpublic.

Before the pandemic, one of the reasons why some companies opted to webcast these meetings was due to Reg FD. Annual meetings aren't required to be webcast, not by the SEC, not by the exchanges. But some companies have long done so, primarily to handle any potential FD issues. Other companies prefer not to make a webcast broadly accessible — but then they have to be more careful about avoiding disclosure slip-ups.

You can avoid the risk of a potential Reg FD violation by ensuring the webcasted annual meeting is conducted in a way that is considered broad, non-exclusionary distribution under FD. You provide prior notice of the meeting and indicate how anyone can access the webcast, without the need to provide a control number or other evidence of being a shareholder. Those attending the broadly-accessible webcast likely are not considered "present" at the meeting for state law purposes, but your people can then speak a little more freely.

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