Reg FD and the Riskiest of Phone Calls

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Stepped-up Reg FD enforcement may be on the table

On March 5, the SEC **announced** charges against AT&T and three members of its IR team for violating **Regulation FD** (Fair Disclosure), the agency's marquee rule forbidding companies from "selectively disclosing" material information to analysts and other securities market professionals. AT&T **disputes** the charges and intends to fight them in federal court, where the SEC's Reg FD track record is **not** pristine.

The regulation, adopted in 2000, requires companies to disclose material information to all investors at once. Information that is not material—in other words, information that would not factor into a reasonable investor's decision to buy, sell, hold or vote securities—is not covered.

According to the allegations in the SEC's complaint, AT&T violated the rule in 2016 when its IR staff "made private, one-on-one phone calls to analysts at approximately 20 separate firms" to "let them know a steeper-than-expected decline in its first quarter smartphone sales would cause the company's revenue to fall short of analysts' estimates for the quarter." After the calls, the company's analysts lowered their estimates—on average to below the numbers the company ultimately reported.

The federal courts will have final say over whether AT&T violated Reg FD. But for now—particularly in light of the SEC's willingness to litigate five-year-old conduct—it would be fair to read the lawsuit as a warning to expect heightened enforcement interest in companies' conversations with securities analysts, particularly when they result in changes to estimates or otherwise provoke commentary.

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