
SEC Settles Regulation FD Matter with AT&T and Investment Relations Executives for Record Penalty

On December 2, 2022, the Securities and Exchange Commission (“SEC”) entered into a settlement agreement (the “Settlement”) with AT&T, Inc. (“AT&T” or the “Company”) and three executives in its Investor Relations Department (the “Individual Defendants”) to resolve alleged violations of Regulation FD under the Securities Exchange Act of 1934 brought in the United States District Court for the Southern District of New York.¹ Regulation FD prohibits selective disclosure of material nonpublic information (“MNPI”) by publicly traded companies to individual market participants, including securities analysts (among several others).²

I. Complaint and Summary Judgment

On March 5, 2021, the SEC charged AT&T and the Individual Defendants with violating Regulation FD.³ The Complaint alleged that, in March and April of 2016, the Individual Defendants conducted one-on-one telephone conversations with approximately 20 securities analysts, during which the Individual Defendants disclosed internal smartphone revenue trends to the analysts in order to “walk the analysts down” from their first quarter 2016 revenue estimates. The Complaint alleged that this information was material to investors and that the information was disclosed solely to analysts, rather than to the public. Our previous firm memorandum regarding the Complaint, which also includes a discussion of the background of Regulation FD, can be found [here](#).

On September 8, 2022, the District Court denied both the SEC’s and the defendants’ motions for summary judgment, observing that “[t]his case is a rare litigated enforcement action brought by the Securities and Exchange Commission . . . arising out of the SEC’s Regulation FD—Fair Disclosure.”⁴ In order to prevail on an alleged violation of Regulation FD, the SEC must prove that the information was material, nonpublic, and selectively disclosed with scienter.⁵ The court determined that “overwhelming evidence” supported the SEC’s allegations that the information selectively disclosed to analysts was material and nonpublic.⁶ However, the court held that the SEC could not prevail

¹ Settlement Agreement, *SEC v. AT&T et. al.*, No. 1:21-cv-01951 (S.D.N.Y. Dec. 2, 2022).

² 17 C.F.R. § 243.100(b)(1) (prohibiting disclosure to brokers, dealers, investment advisors, investment companies, and “holder[s] of [an] issuer’s securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer’s securities on the basis of the information”).

³ Complaint and Jury Demand, *SEC v. AT&T et. al.*, No. 1:21-cv-01951 (S.D.N.Y. Mar. 5, 2021), available at <https://www.sec.gov/litigation/complaints/2021/comp-pr2021-43.pdf> (“Complaint”).

⁴ Opinion & Order at 1, *SEC v. AT&T et. al.*, No. 1:21-cv-01951 (S.D.N.Y. Sept. 8, 2022), available at <https://www.nysd.uscourts.gov/sites/default/files/2022-09/21-cv-1951%20PAE%209-8-2022.pdf> (“Summary Judgment Opinion”).

⁵ *Id.* at 3; see also *id.* at 119-20.

⁶ *Id.* at 108, 119.

on summary judgment against the Individual Defendants or the Company, at least in part because “[a] reasonable jury could find for the [I]ndividual [D]efendants, at a minimum, on the element of scienter,” and the Company’s liability depended upon the Individual Defendants’ scienter.⁷ The defendants also raised several legal challenges to Regulation FD, but the court rejected each of these challenges in its order denying summary judgment.⁸ Upon denying the motions for summary judgment, the District Court ordered that the case proceed to trial unless the parties agreed to settle.⁹

II. Settlement

On December 5, 2022, the District Court approved the Settlement and entered judgment against the defendants. As part of the Settlement, AT&T agreed to pay a penalty of \$6.25 million, which the SEC announced represented the largest penalty “ever in a Regulation FD case.”¹⁰ The three Individual Defendants agreed to pay a penalty of \$25,000 each.¹¹ Additionally, the court permanently enjoined the Company from violating, and the Individual Defendants from aiding and abetting violations of, Section 13(a) of the Securities Exchange Act of 1934 and Regulation FD.¹² Both AT&T and the Individual Defendants consented to the judgment without admitting or denying any of the allegations.¹³

In announcing the penalties against AT&T and the Individual Defendants, the Director of the SEC’s Division of Enforcement, Gurbir S. Grewal, stated that “[t]he actions allegedly taken by AT&T executives to avoid falling short of analysts’ projections are precisely the type of conduct Regulation FD was designed to prevent.”¹⁴

III. Conclusion

The Settlement emphasizes the importance of implementing best practices for complying with Regulation FD. Although there have been few SEC enforcement actions relating to Regulation FD in the past, the SEC’s vigorous enforcement in this matter may signal a renewed focus on enforcing Regulation FD. Companies should review their compliance programs to ensure that there are sufficient safeguards in place to prevent the selective disclosure of material information to analysts.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Bradley J. Bondi (partner) at

⁷ *Id.* at 3.

⁸ These challenges included that (1) Regulation FD violates the First Amendment; (2) Regulation FD violates the Fifth Amendment; (3) the SEC did not have the legal authority to enact Regulation FD, and (4) Regulation FD is “logically inoperable.” See *generally id.* at 57-86.

⁹ *Id.* at 129.

¹⁰ *AT&T Settles SEC Charge of Selectively Disclosing Material Information to Wall St. Analysts*, Securities and Exchange Commission (Dec. 5, 2022), available at <https://www.sec.gov/news/press-release/2022-215>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

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