

SEC develops social media rules

By Dina ElBoghdady, Washington Post

Companies can use social media such as Facebook and Twitter to unveil key information about their operations as long as they've told investors where to look for it, the Securities and Exchange Commission announced Tuesday.

The decision averts a showdown between the SEC and Netflix. The Internet video streaming service got into trouble with the agency last year after chief executive Reed Hastings used his personal Facebook account to boast that his company had streamed more than 1 billion hours of content in June.

The SEC told Netflix that the July posting may have run afoul of a rule that requires companies to distribute important information broadly to the public, and avoid feeding it to a select group of shareholders who could trade on it ahead of other investors.

When the SEC warned that Netflix may face enforcement action, the agency was widely mocked as a plodding regulator unable to keep up with evolving technology.

The SEC said that its disclosure rule allows for such changes.

In 2008, the agency determined that companies can use Web sites to distribute material information as long as they've alerted investors that the sites would be used for the purpose. On Tuesday, the SEC issued guidance making it clear that the same principles apply to social media.

"Most social media are perfectly suitable methods for communicating with investors, but not if the access is restricted or if investors don't know that's where they need

to turn to get the latest news," George Canellos, acting director of the SEC's enforcement division, said in a statement.

The SEC said it came to realize during the Netflix investigation that there was confusion about how the fair-disclosure rules apply to social media, so it decided not take legal action against Netflix.

But it also pointed out that Hastings had not previously used his Facebook page to announce company news, and Netflix never notified investors that Hastings' personal Facebook page might be used to disseminate information about the company.

In a company filing, Hastings had said that the information he relayed on Facebook was not "material." But the SEC suggested that it was, citing a rise in the share price, which jumped from \$70.45 at the time of the Facebook posting to \$81.72 at the close of trading the following day.

A Netflix spokesman said the company appreciated "the SEC's careful consideration and resolution of this matter."

Eugene Goldman, a former senior counsel in the SEC's enforcement division, said in a statement that the SEC had cleared up the confusion about the use of social media. "Next time material information is disclosed on an executive's Facebook page without the company alerting all shareholders to look there for information, the matter will likely be met with an SEC lawsuit," said Goldman, a partner at McDermott Will & Emery.