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## **Social Media: Best Practices for Public Companies in Canada – Part Two**

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### **Introduction**

Social media use is proliferating at an unprecedented rate. What many people once thought was a silly fad has now become a ubiquitous part of our daily lives. It is widely reported that there are 50 million "tweets" on Twitter and over one million "check-ins" on FourSquare every day, over 24 hours of video uploaded to YouTube every minute and more than 700 status updates every second on Facebook.

Public companies are particularly vulnerable to negative or misleading statements posted on social media sites and can also suffer damages resulting from inadvertent posts which can reveal confidential information about a company to the world.

For these reasons and others, it is particularly important that companies put policies and procedures in place to deal with potential bad press posted on social media sites and also to govern the use of social media by directors, officers employees and consultants.

### **Upside of Social Media**

Social media provides companies with a chance to interact and have a conversation not only with current shareholders, but also with potential investors, analysts and other interested parties. The two-way capabilities of Twitter, Facebook and blogs allow companies to collect information from interested parties and respond to them in real time.

There are five main ways companies use social media: creating brand awareness, as an online reputation management tool, for recruiting, to learn about new technologies and competitors and as a lead generation tool to intercept potential prospects.

### **Downside of Social Media**

There is an unbelievable amount of information published every second through social media networks. As a public company, it can be daunting to try and sift through the information and determine if defamatory or damaging statements are being made about your company, management or operations.

It has been reported that every negative comment shared via social media reaches at least 30 other people and negative information can go "viral" as a result of re-posting and re-tweeting. Collecting information and monitoring it to ensure that damaging information is not being posted is a full-time job and companies may wish to hire someone to undertake this task.

If rumours or misleading statements are discovered which could have a negative effect on the market price of their securities, public companies should consider issuing news releases dealing with those rumours or misleading statements.

Information shared through social media sites could be damaging to both individuals and companies: misleading or malicious statements could be taken out of context or seemingly innocuous updates could reveal privileged or confidential information. This could result in selective disclosure and also possibly lead to tipping and insider trading. In the worst case scenario, breaches of confidentiality could lead to investigations by regulators and potential trading halts in order to give the company additional time to press release the leaked information.

Any unauthorized release or use of confidential information can directly harm a company, causing loss of competitive advantage and investor confidence, damage to relationships with suppliers and industry contacts and harm to employees. Proper procedures should be put in place to deal with any leak of confidential information.

### Social Media Use by Directors, Officers, Employees and Consultants

Companies should put in place a Corporate Disclosure Policy which includes a section addressing guidelines around the use of social media. This Corporate Disclosure Policy should contain rules and guidelines for directors, officers, employees and consultants of the company who may inadvertently or maliciously post confidential, misleading or suggestive information about the company.

The policy should prohibit these individuals from discussing corporate matters on social media sites. This will help protect your company from the liability that could arise from well-intentioned, but sporadic efforts of directors, officers, employees or consultants to correct rumours or defend the company.

The policy should also require that these individuals report any discussion pertaining to your company they have come across on the internet so that management can determine the best way of dealing with the posted information.

Companies are likely unable to restrict directors, officers, employees or consultants from using social media sites for personal use; however, they can prohibit these individuals from disclosing information on the company. Companies should also ensure that these individuals are not holding themselves out as authorized representatives of the company online. In addition, companies should educate directors, officers, employees and consultants on best practices for social media use in order to limit the potential for leaked confidential information.

### Using Social Media to Understand Shareholder Concerns

Public companies have recently started using social media to reach out to shareholders and get feedback on what issues are important prior to conference calls. Companies can use Twitter, Facebook or blogs to collect questions in advance of earnings calls and use that information to tailor key messages around those issues on the call. This can decrease the number of follow-up calls received after the conference call is over.

Companies may also wish to tweet information in real time to the public during earnings calls. The best way to do this would be to set up the tweets in advance based on the earnings release and script and then tweet during the call. These tweets are google-searchable and can reach a much larger market than those interested parties who have joined in on the earnings call.

### Conclusion

Companies can no longer ignore the positive and negative impact of social media. All companies should put policies in place to protect their organization and to control the use of social media by their directors, officers, employees and consultants.

See Part One of this bulletin for a discussion of using social media effectively within the securities regulatory framework.

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