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## 1 hot issues

### Social Media, Investor Relations and Canadian Securities Law

Investor Relations (“IR”) programs are incorporating social media (Twitter, blogs, YouTube, Facebook, Flickr etc.) much more these days. Social media can be used to communicate with analysts, investors, media, customers and others and its use is increasing exponentially especially in North America.

#### Did you know:

- IR social media advocates trumpet the use of twitter, blogs etc. as a fast and efficient method of communicating with investors and disseminating information
- Q4 Web Systems (a software provider for investor relations websites) in late 2009 reported that 121 publicly listed companies in the U.S. were using Twitter for investor relations purposes\*
- 63% of U.S. retail investors say blogs and social networks will play an increasingly important role in investment decisions in the future\*\*
- 47% of institutional investors read financial blogs for investment research and ideas\*\*\*
- 20% have used blog research to execute a recommendation or investment decision\*\*\*
- 65% of the largest 100 international companies have active accounts on Twitter\*\*\*\*
- 54% have a Facebook fan page\*\*\*\*
- 50% have a YouTube channel\*\*\*\*

\* Public Companies and their Use of Twitter for Investor Relations, An Analysis of Corporate Reporting using Social Media”, Q3 2009 at [www.q4websystems.com](http://www.q4websystems.com)

\*\* [www.irrmatters.com/uncategorized/theisler/social-media-for-investor-relations-%E2%80%93-equicom%E2%80%99s-latest-service-offering](http://www.irrmatters.com/uncategorized/theisler/social-media-for-investor-relations-%E2%80%93-equicom%E2%80%99s-latest-service-offering)

\*\*\* Brunswick Group study of 500 buy-side and sell-side Sept 2009

\*\*\*\* [http://www.burson-marsteller.com/Innovation\\_and\\_insights/blogs\\_and\\_podcasts/BM\\_Blog/Lists/Posts/Post.aspx?ID=160](http://www.burson-marsteller.com/Innovation_and_insights/blogs_and_podcasts/BM_Blog/Lists/Posts/Post.aspx?ID=160)

#### Ways Social Media is currently being used in Investor Relations:

##### TWITTER

- Key messages or weblinks back to issuer’s website regarding major announcements
- Does not have to be a daily on-going conversation

##### BLOGGING

- More in depth perspective than the press release
- Can serve as a forum to clarify your IR position

##### VIDEO

- Make it inexpensively with an in-house video recorder and download it to your computer, quickly edit and post the same day to YouTube
- Provides tonality and expression to major spokespersons such as the CEO, CFO

##### SOCIAL MEDIA MONITORING

- A new frontier – subscribe to web social media tools or hire a social media monitoring service

In the fast pace to disseminate social media information, the securities laws applicable to public disclosure must not be ignored or forgotten! Electronic communications, including social media containing material information (i.e. material information is any information relating to the business or affairs of an issuer that results in or would reasonably be expected to result in a significant change in the market price or value of any of the issuer’s listed securities – Section 407 of TSX Company Manual). Companies can put themselves at risk if they have not created social media disclosure practices, just like they would have for their website.

Some of the relevant Canadian rules, policies and guidelines related to securities law on continuous disclosure such as the periodic reporting (annual /quarterly disclosure), timely disclosure of material information and forward looking information rules are:

- **National Instrument – 51 -102** Continuous Disclosure – set out in 2002 that the disclosure of material information is best made by news release followed by an open and accessible conference call
- **National Instrument – 51 -210** Disclosure Standards
- **TSX Rules** on timely disclosure of material information
- **TSX’s Electronic Communications** Guidelines

The legal challenges of using social media in investor relations is difficult as the nature of social media is mostly quick, interactive, short (character limitations i.e. Twitter of 140) and it can sometimes have isolated material, and there is the potential for reflex or “off the cuff” responses. Whereas, traditional disclosure required by securities law is generally more reflective, slower, more fulsome and usually reviewed by many stakeholders.

In Canada, with the passing of Bill 198 in December 2005, investors have a statutory right of action against public companies, directors, officers and those with actual, implied or apparent authority to speak on behalf of the company, for material misrepresentations made in public disclosure and for failure to disclose material changes in a timely manner. The statutory liability for material misrepresentations can be made in continuous disclosure documents, including electronic communications (i.e. news releases, web sites, tweets, blogs, Facebook posts etc.) or “public oral statements” made on behalf of the public company (i.e. analyst calls, earnings announcements, investor presentations – made either by webcast or conference call).

Therefore, IR professionals should ensure that their company’s **Disclosure Policy** and the **Employee Code of Conduct** includes the use of social media to ensure that securities laws are complied with and liability is avoided. Items to include:

- Create a Disclosure Policy (NP 51-201 Section 6.2 – it is best practice for issuers to have a written policy)
- Ensure that employees are aware that, under the policy, undisclosed material information cannot be communicated directly to the market
- Information that is disclosed via social media networks must be restricted to material that has been previously disclosed through traditional methods of disclosure (such as press releases and Sedar filings)
- Blogs, tweets etc. should linked to more fulsome disclosure as tweets do not allow for the inclusion of necessary forward looking information, risk factors etc.)

For social media, include limits as to WHO can participate in the communication, rules related to the type of information that can be disseminated, procedures for information approval and how the media will be monitored.

Ensure broad public disclosure by press release, Sedar filing, website posting and then live tweet, webcast, conference call etc.

**Disclosure Committees (“DC’s”)** are an important part of an issuers disclosure policy.

Currently, there is no legal requirement for companies to create DC’s although securities regulators in Canada and the US recommend that companies establish them. The way companies handle DC’s varies and there is a huge variance regarding DC functions among issuers. The majority of companies do currently have one in place. A 2006 Canadian Investor Relations (“CIRI”) survey revealed that 80% of respondents have a committee – with 60% having a DC in place for more than one year.

The committees varied in size from two to 18 people, and included a wide range of participants. Frequently cited as members of the DC were the CFO, CEO, general counsel, corporate secretary and the head of investor relations (or IR consultant). Other members included the COO, media spokespersons, corporate communications representatives, selected board members, and heads of the operating divisions.

The frequency of DC meetings varied from once a week, to once every three months (to discuss quarterly results); with almost 50% meeting on an ad hoc basis, as disclosure issues arose.

The majority of DC’s are chaired by the President, the CEO or the CFO.

The DC can report to the Audit Committee or the Board and in some cases if the CEO is not on the DC, the DC reports to the CEO.

#### **DC TIPS**

- have the Board approve the Disclosure Policy
- have DC members and Board sign the Disclosure Policy annually
- communicate the Disclosure Policy to all employees
- a few days in advance of the DC meeting send ahead the financial statements, press releases, and analyst/investor presentations to all DC participants
- keep internal minutes of the meeting
- have a formal assessment of the DC at least once a year

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