

## Corporate Securities Law

March 10, 2017

### CSA Provides Disclosure Expectations for Reporting Issuers Using Social Media

On March 9, 2017, the Canadian Securities Administrators (CSA) released Staff Notice 51-348 *Staff's Review of Social Media Used by Reporting Issuers* (the “**Staff Notice**”), which summarizes staff’s findings and disclosure expectations for reporting issuers that use social media.

The CSA reviewed disclosure provided by 111 reporting issuers, including on social media websites such as Facebook, Twitter, YouTube, LinkedIn, Instagram and GooglePlus, and information posted by issuers on their own websites (and on message boards or blogs hosted on those websites) in order to assess whether the disclosure complies with the principles outlined in National Policy 51-201 *Disclosure Standards* (“**NP 51-201**”) and the requirements of National Instrument 51-102 *Continuous Disclosure Obligations*.

The results of the CSA review identified three key areas of regulatory concern with social media disclosure:

1. Selective Disclosure on Social Media. In the Staff Notice, the CSA clarified that disclosure on a social media website does not meet the requirement in NP 51-201 that material information be “generally disclosed” to the public. The CSA observed that many reporting issuers who use social media as a tool for general marketing and customer outreach may be disclosing material information on social media in advance of being generally disclosed via news release or on SEDAR. The CSA also expressed an expectation that reporting issuers generally disclose material information posted by

third parties through online blogs, message boards or other social media websites by third parties, if such information has not previously been generally disclosed by the issuer.

2. Misleading and Imbalanced Disclosure on Social Media. NP 51-201 provides that an issuer’s disclosure must be factual and balanced, giving unfavourable news equal prominence to favourable news. While information posted by issuers on social media websites may have a positive tone, in several instances the CSA observed that social media postings were unduly promotional or imbalanced that they raised concerns under securities law (such as including links to analyst reports or other articles provided on social media without providing names and/or recommendations of all independent analysts who cover the issuer and prominent disclosure regarding analyst reports or articles that were not independently prepared).

3. Insufficient Social Media Governance Policies. The CSA encourages reporting issuers to consider implementing a specific internal policy on social media to ensure high standards are met in the disclosure they provide on social media that addresses the following factors: (i) who can post information about the issuer on social media; (ii) what types of websites can be used; (iii) what type of information about the issuer can be posted; (iv) what, if any, approvals are required before information can be posted; (v) who is responsible for monitoring the issuer’s social media accounts, including third party postings about the issuer; and (vi) what other guidelines and best practices are followed (for example, if an employee posts about the issuer on a personal social media site, they should identify themselves as an employee of the issuer).

# Goodmans<sup>LLP</sup> Update

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Given the significant growth in the popularity and use of social media in recent years, the CSA has indicated it will continue to monitor the areas where deficiencies and issues were identified in its review program activities. Issuers that do not meet the CSA's expectations may be required to take corrective action, including providing clarifying disclosure on SEDAR and/or removal of social media disclosure, and provide a commitment to improving prospective social media disclosure and/or their internal controls and policies.

Please contact any member of our Corporate Securities Group to discuss the Staff Notice or any corporate governance or other continuous disclosure requirements.