#NoMaterialInformation — CSA Provides Guidance on Social Media Use

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Before sending out that next tweet or posting to a blog, hit the pause button and consider whether the timing and content pass muster. Reporting issuers and their representatives must take note of Staff Notice 51-348 — *Staff's Review of Social Media Used by Reporting Issuers* — released by the Canadian Securities Administrators (the "CSA") on March 9, 2017 and summarizing findings from its review of social media disclosure of 111 reporting issuers in Alberta, Ontario and Québec (the "Report"). The Report provides guidance based on a review of disclosure by reporting issuers made on social media websites including Facebook, Twitter, YouTube, LinkedIn, Instagram, GooglePlus, amongst others and disclosure posted by issuers on their own websites, message boards and blogs.

The Report focuses on issues of selective or early disclosure, as well as misleading or unbalanced disclosure through social media, including violations of disclosure obligations relating to forward-looking information or non-GAAP measures.

In addition, the CSA suggests that issuers who use social media should have governance policies and disclosure practices in place to ensure compliance with continuous disclosure obligations.

1. Selective or early disclosure

The CSA considers that it is fundamental that everyone investing in securities have equal access to information that may affect their investment decisions. It likens dissemination of material information through social media to disseminating such information through the issuer's own website. Both are considered not to be “generally disclosed”. Issuers must first disseminate any such material information broadly to the investing public by a press release. While issuers may use social media to further broadcast information disclosed in a press release, issuers are cautioned on the timing of the use of social media. Selective disclosure concerns may arise when information is disclosed on social media first: not everyone who needs to know has followed an issuer on Twitter, or subscribed to its website and postings. Issuers should take precautions to ensure that their social media disclosure policies take into account any timing differences between social media disclosure and disclosure through press releases and SEDAR filings. The CSA noted variances from minutes to hours to days between the

release of information through social media and when the information was broadly disclosed elsewhere. Finally, the CSA expressed concerns where third parties post material information about a reporting issuer on social media: if such information had not already been reported, it could lead to selective disclosure.

2. Social media disclosure is subject to general disclosure requirements

Issuers are reminded that the general rules regarding disclosure apply equally to information disseminated by reporting issuers through social media. In the Report, the CSA noted concerns relating to disclosure of both forward-looking information and non-GAAP financial measures on social media that did not meet applicable disclosure requirements.

The CSA found instances where issuers provided material forward-looking information such as revenue, earnings per share and cash flow targets through social media channels which led to significant share price increases. All forward-looking information disclosure must comply with general continuous disclosure obligations such as the requirement to provide material factors and assumptions to support the forward-looking information.

In addition, the CSA noted in the Report that it found several instances where issuers provided non-GAAP information through social media without appropriate accompanying disclosure such as a quantitative reconciliation to the most directly comparable GAAP measure.

3. Unbalanced or misleading disclosure

Issuers need to ensure that the content of information provided through social media channels is balanced and not misleading, with unfavourable news being disclosed as prominently as positive news. The CSA was concerned that the social media disclosure of some issuers it examined was too promotional or unbalanced. Issuers are also cautioned to ensure that any disclosure that is linked through their social media posts must also include proper disclosure and be fairly balanced. The CSA also noted that if issuers provide links to analyst reports or news articles, they should provide links to all analyst reports, not just the most favourable reports, and if such reports contain outdated estimates or targets, issuers should make a note of such fact and update the forward-looking targets.

4. Governance policies

As social media has become increasingly important and common as a form of communication for information, issuers should be aware of certain pitfalls that come with social media use. If issuers are using social media as part of their communication to stakeholders, the CSA stresses the importance of having policies, procedures and controls in place to ensure that the disclosure complies with continuous disclosure obligations and other regulations applicable to issuers. In particular, a social media governance policy should address **who can post** information about the issuer on social media, **which social media site** may be used, **what type of information** may be

posted, **whether approvals are required** before information may be posted and **who will monitor** the issuer's social media accounts.

Given the significant growth in the use of social media, the CSA stated that it will continue to monitor the use of social media and that issuers who do not comply with applicable rules will be expected to take corrective action.

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