

ELECTRONIC COMMUNICATIONS DISCLOSURE GUIDELINES

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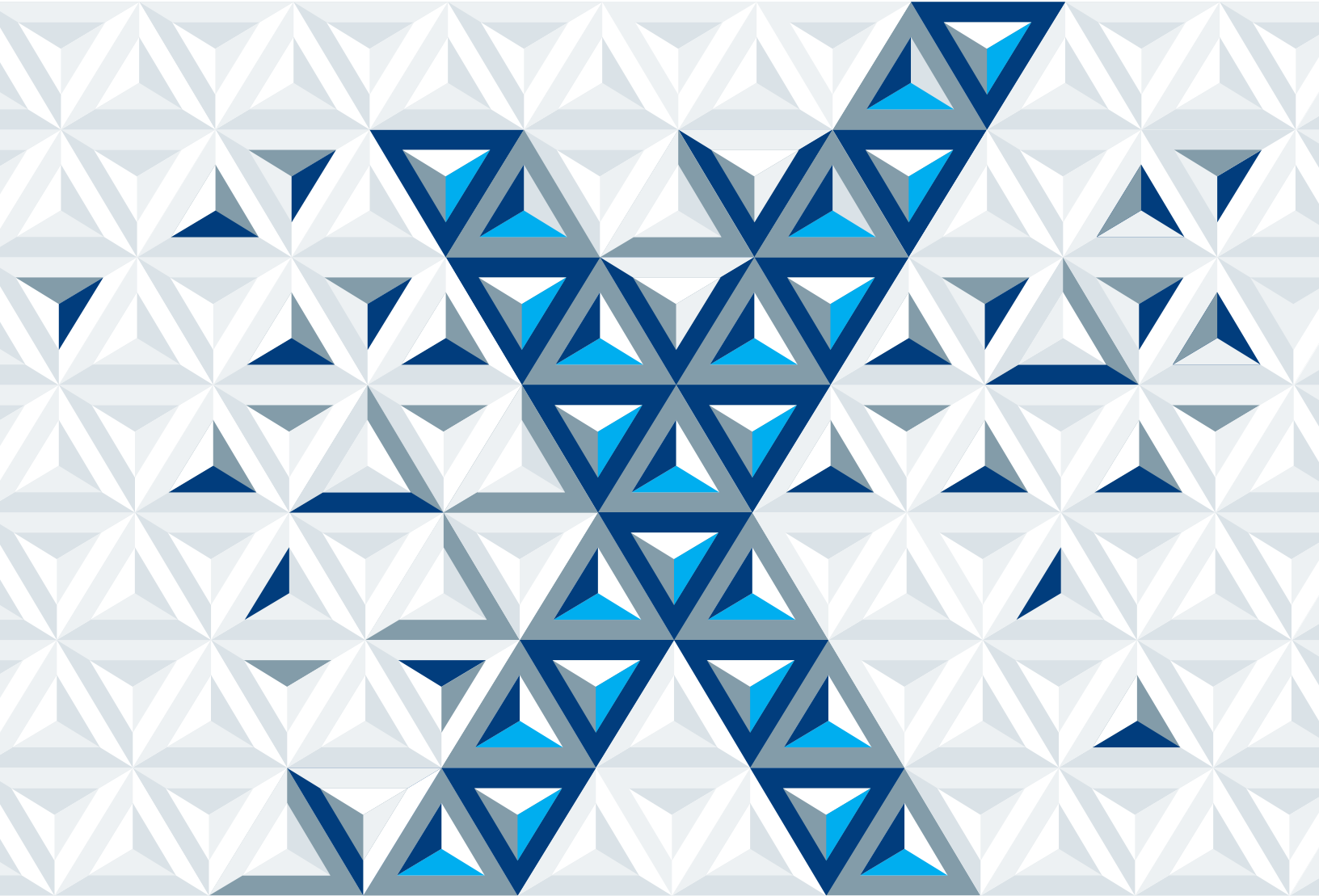


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The Internet allows for relevant information to be instantaneously and simultaneously available to an investor. But the Internet also poses regulatory challenges. In a world in which information is more readily available than ever, it is more important than ever that it be accurate, timely and up-to-date. With this in mind, Toronto Stock Exchange (TSX) has developed these electronic communications guidelines to assist listed issuers to meet their investors' informational needs.

Section 423.11 (Applicable Disclosure Guidelines) reminds issuers that applicable disclosure rules apply to all corporate disclosure through electronic communications and must be followed by each issuer. Disclosure of information by an issuer through its web site or e-mail will not satisfy the issuer's disclosure obligations. The issuer must continue to use traditional means of dissemination. Section 423.12 (Electronic Communications Guidelines) sets out the guidelines that apply directly to the Internet and other electronic media. The overall objective of the guidelines is to encourage the use of electronic media to make investor information accessible, accurate and timely. The challenge of regulating electronic media is to ensure that regulatory concerns are addressed without impeding innovation.

These guidelines should be read with TSX's Timely Disclosure requirements and related guidelines ("TSX Timely Disclosure Policy").

Introduction

Web sites, electronic mail ("e-mail") and other channels available on the Internet are media of communication available to listed issuers for corporate disclosure. Each of these media provides opportunities for an issuer to broadly disseminate investor relations information. There are, however, a number of issues that an issuer must consider when it goes online. Investor relations information that is disclosed electronically using these new media should be viewed by the issuer as an extension of its formal corporate disclosure record. As such, these electronic communications are subject to securities laws and TSX standards and should not be viewed merely as a promotional tool.

TSX strongly recommends that all listed issuers make investor relations information available on their web site.

Current securities filings of listed issuers such as financial statements, Annual Information Forms, annual reports and prospectuses are maintained on SEDAR. In addition, TSX maintains a profile page on each listed issuer on its web site ("tsx.com"). Further, many news wire services post listed issuer news releases on their web sites. Since these various sites are not all connected, it may be difficult and time consuming for an investor to search the Internet and obtain all relevant investor relations information about a particular issuer. If an issuer creates its own web site, it can ensure that all of its investor relations information is available through one site and can provide more information than is currently available online. For example, SEDAR contains only mandatory corporate filings, while an issuer's site may carry a wealth of supplemental information, such as fact sheets, fact books, slides of investor presentations, transcripts of investor relations conferences and webcasts.

Disclosure by the Internet alone will not meet an issuer's disclosure requirements and an issuer must continue to use traditional means of dissemination.

Electronic communications do not reach all investors. Investors who have access to the Internet will be unaware that new information is available unless the issuer notifies them of an update.

Applicable Disclosure Standards

Distribution of information via a web site, e-mail or otherwise via the Internet is subject to the same laws as traditional forms of dissemination such as news releases. In establishing electronic communications, an issuer should have special regard to disclosure requirements under all applicable securities laws. Issuers should refer to *TSX Timely Disclosure Policy*, National Policy 51-201 *Disclosure Standards*, National Policy 11-201 *Electronic Delivery of Documents*, and National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*. Issuers should be aware of disclosure requirements in all jurisdictions in which they are reporting issuers. Also, there are constant developments regarding electronic disclosure of material information by issuers and issuers must be aware of the impact of all such developments on their disclosure practices.

These standards apply to all corporate disclosure through electronic communications and must be followed by each issuer.

1. ELECTRONIC COMMUNICATIONS CANNOT BE MISLEADING

An issuer must ensure that material information posted on its web site is not misleading. Material information is misleading if it is incomplete, incorrect or omits a fact so as to make another statement misleading. Information may also be misleading if it is out of date.

A) DUTY TO CORRECT AND UPDATE

A web site should be a complete repository of current and accurate investor relations information. Viewers visiting a web site expect that they are viewing all the relevant information about an issuer and that the information provided to them by the issuer is accurate in all material respects. An issuer has the duty to include on its web site all material information and to correct any material information available on its web site that is misleading. It is not sufficient that the information has been corrected or updated elsewhere.

It is possible for information to become inaccurate over time. An issuer must regularly review and update or correct the information on the site.

B) INCOMPLETE INFORMATION OR MATERIAL OMISSIONS

Providing incomplete information or omitting a material fact is also misleading. An issuer must include all material disclosed information. It must include all news releases, not just favourable ones. Similarly, documents should be posted in their entirety. If this is impractical for a particular document, such as a technical report with graphs, charts or maps, care must be taken to ensure that an excerpt is not misleading when read on its own. In such circumstances, it may be sufficient to post the executive summary.

C) INFORMATION MUST BE PRESENTED IN A CONSISTENT MANNER

Investor relations information that is disclosed electronically should be presented in the same manner online as it is offline. Important information should be displayed with the same prominence and a single document should not be divided into shorter, linked documents that could obscure or “bury” unfavourable information. While issuers may divide a lengthy document into sections for ease of access and downloading, issuers must ensure that the full document appears on the site, that each segment is easily accessible and that the division of the document has not altered the import of the document or any information contained in it.

2. ELECTRONIC COMMUNICATIONS CANNOT BE USED TO “TIP” OR LEAK MATERIAL INFORMATION

An issuer’s internal employee trading and confidentiality policies should cover the use of electronic forms of communication. Employees must not use the Internet to tip or discuss in any form undisclosed material information about the issuer.

An issuer must not post a material news release on a web site or distribute it by e-mail or otherwise on the Internet before it has been disseminated on a news wire service in accordance with *TSX Timely Disclosure Policy*.

3. ELECTRONIC COMMUNICATIONS MUST COMPLY WITH SECURITIES LAWS

An issuer should have special regard to securities laws and, in particular, registration and filing requirements, which may be triggered if it posts any document offering securities to the general public on its web site. If a listed issuer is considering a distribution of securities, it should carefully review its web site in consultation with the issuer’s legal counsel in advance of and during the offering. The Internet is increasingly becoming an important tool to communicate information about public offerings to shareholders and investors. Nevertheless, the release of information and promotional materials relating to a public offering before or during the offering is subject to restrictions under securities laws. Documents related to a distribution of securities should only be posted on a web site if they are filed with and receipted by the appropriate securities regulator in the applicable jurisdictions. All promotional materials related to a distribution of securities should be reviewed with the issuer’s legal advisors before they are posted on a web site to ensure that such materials are consistent with the disclosure made in the offering documents and that the posting of such materials to a web site is permitted under applicable securities laws.

Anyone, anywhere in the world can access a web site. Special regard should be made to foreign securities laws, some of which may be stricter than Ontario laws. Foreign securities regulators may take the view that posting offering documents on a web site that can be accessed by someone in their jurisdiction constitutes an offering in that jurisdiction unless appropriate disclaimers are included on the document or other measures are taken to restrict access. Reference should be made to the guidelines issued by other jurisdictions such as those issued by the U.S. Securities and Exchange Commission for issuers who use Internet web sites to solicit offshore securities transactions and clients without registering the securities in the United States.

Electronic Communications Guidelines

TSX recommends that listed issuers follow these guidelines when designing a web site, establishing an internal e-mail policy or disseminating information over the Internet.

Unlike the disclosure rules which are applicable to all electronic communications, these guidelines are not hard and fast rules which must be followed. Aspects of these guidelines may not be appropriate for every issuer. An issuer should tailor these guidelines to create an internal policy that is suitable to its particular needs and resources.

Each listed issuer should establish a clear written policy on electronic communications as part of its existing policies governing corporate disclosure, confidentiality and employee trading. Please refer to *TSX Timely Disclosure Policy*.

TSX suggests that the policy describe how its electronic communications are to be structured, supervised and maintained. The policy should be reviewed regularly and updated as necessary. To ensure that the policy is followed, it should be communicated to all individuals of the issuer to whom it will apply.

1. WHO SHOULD MONITOR ELECTRONIC COMMUNICATIONS?

TSX recommends that one or more of the officers appointed under the issuer's disclosure policy be made responsible for maintaining, updating and implementing the issuer's policies on electronic communications. Reference should be made to *TSX Timely Disclosure Policy*. These officers should ensure that all investor relations information made available by the issuer on the web site, broadcast via e-mail or otherwise on the Internet complies with applicable securities laws and internal policies. This responsibility includes ensuring the issuer web site is properly reviewed and updated.

2. WHAT SHOULD BE ON THE WEB SITE?

A) ALL CORPORATE "TIMELY DISCLOSURE" DOCUMENTS AND OTHER INVESTOR RELATIONS INFORMATION

TSX recommends that issuers take advantage of Internet technologies and make available through an issuer web site all corporate "timely disclosure" documents and other investor relations information that it deems appropriate. As stated, however, the posting of such documents and information on the web site does not fulfill the issuer's obligation to disseminate such information through a timely news release.

An issuer may either post its own investor relations information or establish links to other web sites that also maintain publicly disclosed documents on behalf of the issuer such as news wire services, SEDAR and stock quote services. "Investor relations information" includes all material public documents such as: the annual report; annual and interim financial statements; the Annual Information Form; news releases; material change reports; information regarding DRIPs; declarations of dividends; redemption notices; management proxy circulars; and any other communications to shareholders.

TSX recommends that an issuer post its investor relations information, particularly its news releases, as soon as possible following dissemination. Documents that an issuer files on SEDAR should be posted concurrently on its web site, as suggested in National Policy 51-201 *Disclosure Standards* or the issuer could create a hyper-link to the SEDAR web site. If an issuer chooses to link to SEDAR or to a news wire web site, a link can be provided directly to the issuer's page on that site, provided that the terms and conditions of the site to which the link is provided do not place restrictions on "deep-linking", or object to "framing"¹. An issuer providing deep-linking from its web site to a third party web site should consult its legal advisors to assess the legal issues surrounding deep-linking and to ensure the proposed link is effected properly. The practice of deep-linking has given rise to a number of legal issues, including whether permission from the third party must be sought in order to access a web site other than through the homepage and whether the issuer may incur liability in sending a user to a third party site bypassing any disclaimers posted on the homepage of the third party site.

Links to other web sites should be checked regularly to ensure they still work, are up-to-date and accurate. In addition, a disclaimer should be included on the issuer's web site, preferably via a pop-up window, clearly stating that the viewer is leaving the issuer web site and that the issuer is not responsible for the content, accuracy or timeliness of the other site.

¹ Displaying the content or page(s) of a third party web site within the overall design of an issuer's web site, which gives the impression that the third party content is part of the issuer's site.

B) ALL SUPPLEMENTAL INFORMATION PROVIDED TO ANALYSTS AND OTHER MARKET OBSERVERS BUT NOT OTHERWISE DISTRIBUTED PUBLICLY

TSX recommends that an issuer that distributes non-material investor relations information to analysts and institutional clients make such supplemental information available to all investors. Supplemental information includes such materials as fact sheets, fact books, slides of investor presentations and transcripts of management investor relations speeches and other materials distributed at investor presentations. Posting supplemental information on a web site is a very useful means of making it generally available.

Keeping in mind that an issuer should design its web site to meet its business needs, TSX recommends that an issuer post all supplemental information on its web site, unless the volume or format makes it impractical. If this is the case, the issuer should describe the information on the web site and provide a contact for the information so that an investor may contact the issuer directly either to obtain a copy of the information or to view the information at the issuer's offices.

In addition to any supplemental information provided by the issuer to analysts, TSX recommends that whenever an issuer is making a planned disclosure of material corporate information in compliance with TSX Timely Disclosure Policy and related guidelines, it should also consider providing dial-in and/or web replay or make transcripts of the related conference call available for a reasonable period of time after the call.

C) INVESTOR RELATIONS CONTACT INFORMATION

TSX suggests that an issuer provide an e-mail link on its web site for investors to communicate directly with an investor relations representative of the issuer. The issuer policy should specify who may respond to investor inquiries and should provide guidance as to the type of information that may be transmitted electronically. When distributing information electronically the issuer must adhere to TSX and legislative disclosure requirements in order to minimize the potential of selective disclosure of information.

To assure rapid distribution of material information to Internet users who follow the issuer, an issuer may consider establishing an e-mail distribution list, permitting users who access its web site to subscribe to receive electronic delivery of news directly from the issuer. Alternatively, an issuer may consider using software that notifies subscribers automatically when the issuer's web site is updated. The issuer must note, however, that any electronic distribution of material information must be made after the information has been disseminated on a news wire service.

D) ONLINE CONFERENCES

TSX recommends that issuers hold analyst conference calls and industry conferences in a manner that enables any interested party to listen either by telephone and/ or through a web cast, in accordance with s. 6.7(1) of National Policy 51-201 *Disclosure Standards*.

If an issuer chooses to participate in an online news or investor conference, TSX suggests that participation by the issuer in such online conferences should be governed by the same policy that the issuer has established in respect of its participation in other conferences such as analyst conference calls.

3. WHAT SHOULD NOT BE DISTRIBUTED VIA ELECTRONIC COMMUNICATIONS

A) EMPLOYEE MISUSE OF ELECTRONIC COMMUNICATIONS

Access to e-mail and the Internet can be valuable tools for employees to perform their jobs, however, TSX recommends that clear guidelines should be established as to how employees may use these media. These guidelines should be incorporated into the issuer's disclosure, confidentiality and employee trading policy. Employees should be reminded that their corporate e-mail address is an issuer address and that all correspondence received and sent via e-mail is to be considered corporate correspondence.

Appropriate guidelines should be established about the type of information that may be circulated by e-mail. An issuer should prohibit its employees from participating in Internet chat rooms², newsgroups^{3A} or social media^{3B} in discussions relating to the issuer or its securities. As stated in s. 6.13 of National Policy 51-201 *Disclosure Standards*, an issuer should also consider requiring employees to report to a designated issuer official any discussion pertaining to the issuer which they find on the Internet. Moreover, communications over the Internet via e-mail may not be secure unless the issuer has appropriate encryption technology. Employees should be warned of the danger of transmitting confidential information externally via unencrypted e-mail.

² A chat room is a live electronic forum for discussion among Internet participants.

^{3A} A newsgroup is an electronic bulletin board on which Internet participants may post information.

^{3B} Social media includes electronic communication through which users create or participate in online communities to share information, ideas and other content, or to participate in social networking.

B) ANALYST REPORTS AND THIRD PARTY INFORMATION

As a general practice, TSX recommends that an issuer not post any investor relations information on its web site that is authored by a third party, unless the information was prepared on behalf of the issuer, or is general in nature and not specific to the issuer. For example, if an issuer posts an analyst report or consensus report on its web site, it may be seen to be endorsing the views and conclusions of the report. By posting such information on its site, an issuer may become “entangled” with the report and be legally responsible for the content even though it did not author it. This could also give rise to an obligation to correct the report if the issuer becomes aware that the content is or has become misleading (for example, if the earnings projection is too optimistic).

While TSX recommends that issuers refrain from posting analyst and consensus reports on their web sites, it recognizes that some issuers take a different view. If an issuer chooses to post any third party reports on its web site, TSX recommends that extreme caution be exercised. An issuer’s policy on posting analyst reports should address the following concerns:

- permission to reprint a report should be obtained in advance from the third party, since reports are subject to copyright protection;
- the information should clearly be identified as representing the views of the third party and not necessarily those of the issuer;
- the entire report should be reproduced so that it is not misleading;
- any updates, including changes in recommendations, should also be posted so the issuer’s web site will not contain out-of-date and possibly misleading information;
- all third party reports should be posted.

Instead of posting third party reports on its web site, an alternative approach is for an issuer to provide a list of all analysts who follow the issuer or all consensus reports issued regarding the issuer together with contact information so that investors may contact the third party directly. If an issuer chooses to provide its investors with a list of analysts and other third party authors, the list should be complete and include all analysts and other third party authors that the issuer knows to follow it, regardless of the content of their reports. Since issuers are not obligated to keep track of every third party that follows them or develops a consensus report regarding the issuer, it may be onerous to compile an accurate and complete list that is not misleading to investors.

Concerns also exist regarding the posting of media articles, including radio, television and online news reports, about an issuer on the issuer’s web site. TSX recommends that issuers refrain from posting media articles on their web sites as it is very difficult for an issuer to ensure that it is posting all relevant articles to its web site. If an issuer chooses to do so, it must make every effort to ensure that all significant articles concerning the issuer are posted to the web site and that negative and positive articles are given similar prominence. Also, given the frequency with which media articles may appear, the issuer will have to regularly update the articles posted on its web site.

C) THIRD PARTY LINKS

As stated above, an issuer may establish hyperlinks between its web site and third party sites. If an issuer creates a hyperlink to a third party site, there is a risk that a viewer will not realize that he or she has left the issuer’s web site. TSX recommends that the issuer include a disclaimer stating clearly that the viewer is leaving the issuer web site and that the issuer is not responsible for the content, accuracy or timeliness of the other site.

D) THE BLURRED LINE BETWEEN INVESTOR AND PROMOTIONAL INFORMATION

TSX recommends that an issuer clearly identify and separate its investor information from other information on its web site. In particular, promotional, sales and marketing information should not be included on the same web pages as investor relations information. An issuer’s web site should clearly distinguish sections containing investor relations information from sections containing other information.

4. WHEN SHOULD INFORMATION BE REMOVED FROM A WEB SITE?

Care should be taken to make sure that information that is inaccurate or out-of-date no longer appears on the web site. The currency of information on a web site will vary depending on the nature of the information. An issuer may retain on its web site its annual financial statements for a full year while removing other information such as frequent product releases more quickly. An issuer should review the types of information it posts on its web site and develop a consistent policy for the posting and removal of such different types of information. Issuers may delete or remove inaccurate information from the web site, as long as a correction has been posted. In addition, TSX recommends that issuers establish an archiving system to store and provide access to information that is no longer current. An electronic archive is a repository of information which has been removed from the web site but which can still be accessed from the web site through a link. To assist investors in determining the currency of the information on the site, TSX recommends that an issuer date the first page of each document as it is posted on the web site.

TSX recommends that the issuer's policy establish a minimum retention period for material corporate information that it posts on its web site. Different types of information may be retained for a different period of time. For example, the issuer may decide to retain all news releases on the site for a period of one year from the date of issue. In contrast, the issuer may decide that investors would want to access its financials for a longer period (e.g., two years for quarterlies and five years for annuals).

Issuers should also maintain a log of the date and content of all material information that it has posted and removed from the web site. Issuers should also try to ensure that the information posted on their web site is made available in a manner that makes it accessible by others so that it can be used for subsequent reference and is capable of being retained (e.g., printer friendly versions and save/download buttons).

5. RUMOURS ON THE INTERNET

Rumours about the issuer may appear in chat rooms, newsgroups, and on social media. Rumours may spread more quickly and more widely on the Internet than by other media. Market Surveillance monitors chat rooms, newsgroups, and social media to identify rumours about TSX listed issuers that may influence the trading activity of their stocks. *TSX Timely Disclosure Policy* addresses how an issuer should respond to rumours. An issuer is not expected to monitor chat rooms, newsgroups or social media for rumours about itself. Nevertheless, TSX recommends that the issuer's standard policy for addressing rumours apply to those on the Internet.

Whether an issuer should respond to a rumour depends on the circumstances. TSX suggests that the issuer should consider the market impact of the rumour and the degree of accuracy and significance to the issuer. In general, TSX recommends against an issuer participating in a chat room, newsgroup or social media to dispel or clarify a rumour as such action may give rise to selective disclosure concerns and may create the expectation that the issuer will always respond. Instead, the issuer should issue a news release to ensure widespread dissemination of its statement.

If an issuer becomes aware of a rumour in a chat room, newsgroup or on social media or any other source that may have a material impact on the price of its stock, it should immediately contact Market Surveillance. If the information is false and is materially influencing the trading activity of the issuer's securities, it may consider issuing a clarifying news release. The issuer should contact Market Surveillance so that they can monitor trading in the issuer's securities. If Market Surveillance determines that trading is being affected by the rumour, it may require the issuer to issue a news release stating that there are no corporate developments to explain the market activity.

6. LEGAL DISCLAIMERS

Corporate disclosure by electronic communications gives rise to many legal issues. The use of legal disclaimers on corporate web sites is commonplace. It is in the best interests of an issuer to consult with its legal advisors to discuss the appropriateness and effectiveness of including legal disclaimers about the accuracy, timeliness and completeness of the information posted on its web site. Issuers should also review with their legal advisors the placement and wording of legal disclaimers on web sites. It is critical that disclaimers be easily visible to all users of the web site and that they be written in plain language such that the content of the disclaimer is easily and quickly read and understood.

Maintaining Site Integrity

Electronic communications on the Internet are not always secure. TSX recommends that an issuer establish procedures to assure maximum security of its web site and e-mail. As electronic technologies evolve, security measures also evolve. To ensure the security of its electronic communications, TSX suggests that an issuer:

- review and update its security systems regularly;
- be aware that it might be possible for unauthorized persons to alter the content of the site;
- monitor the integrity of its web site address to make sure that the site is accessible and has not been altered.

Toronto Stock Exchange Monitoring of the Internet

TSX regularly monitors listed issuer web sites as well as chat rooms, newsgroups, and social media on the Internet. TSX has the capability to review alterations to listed issuer web sites and to perform random searches of the Internet to identify active discussions relating to listed issuers. However, such monitoring can never be exhaustive. Issuers are responsible for maintaining their web site and should continue to make Market Surveillance aware of significant rumours or problems relating to Internet discussions.



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