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Opinion

SOCIAL MEDIA What Boards Need to Know

In her regular column on corporate governance issues, Holly Gregory highlights the importance for boards to understand the implications of social media and considers the board's role in overseeing the company's use of social media.

Increasing amounts of communications by and relating to companies are taking place through social media. Broadly defined, social media refers to forms of electronic communication through which users share information, ideas and other content (using text, audio, video and images). This includes not only platforms such as Facebook, Twitter and LinkedIn, but also various blogs, discussion forums and company websites.

As with any form of communication, social media presents both strategic opportunities and risks for companies. Social media also poses special challenges due to:

- The speed with which social media can disseminate a message.
- The tendency for social media to be treated as an informal means of communication.
- The difficulty in maintaining a distinct audience for a particular message, for example as between customers, suppliers, employees, shareholders, regulators and others.

This article explores what boards need to know about social media from the following perspectives:

- How social media relates to the company's strategy.
- What risks are associated with social media for the company and how those risks are being managed.

- How social media is being used to provide early warnings of risks facing the company.
- How social media is being used to engage with shareholders and other key constituents.
- Steps the board can take to understand the company's use of social media and provide effective strategic guidance and risk oversight.

>> For a Toolkit of resources to assist in identifying the legal risks and potential rewards presented by company, employee and third-party use of social media, search [Social Media Usage Toolkit](#) on our website.

STRATEGIC OPPORTUNITIES

Social media is a valuable tool that a company can use to:

- Gain insights into how the company, its products, services and competition are viewed by key constituents through almost instant feedback and the corresponding ability to respond quickly.
- Convey information about its:
 - products or services through marketing and brand promotion, including by targeting certain products and services or key features of a product or service to specific users;

SOCIAL MEDIA AND EFFECTIVE LEADERSHIP

Engagement in social media by corporate executives can help to instill confidence in a company's leadership team. According to a recent survey conducted by BRANDfog, respondents overwhelmingly indicated a belief that corporate executives who engage in social media are better equipped than their peers to lead a company. A significant majority of respondents also think that the use of social media by corporate executives can:

- Build better connections with customers, employees and investors.
- Improve communications and brand image.
- Promote greater trust and brand loyalty.

(See *2012 CEO, Social Media & Leadership Survey*, available at brandfog.com.)

- ethics, corporate social and environmental responsibility and philanthropy; and
- corporate governance practices.
- Create a network of interested constituents, such as customers or shareholders.
- Engage with specific constituents (listening and responding as appropriate), for example to foster customer or investor relations.
- Recruit employees.

By monitoring social media platforms, a company has access to a rich stream of data that can be used strategically. In addition, when used effectively, social media is a powerful, quick and inexpensive means of delivering a message. It enables a company to directly communicate information to a wide audience, with the potential for even broader distribution by third-party “word-of-mouth” advocacy. As a matter of strategy, the board needs to understand how the company and others in the industry are using social media, and where the likely areas for innovation are that could support the company in its competitive performance.

RISK MANAGEMENT

Boards also need to understand the risks associated with social media and how the company is managing those risks. Companies must take special care because one of the primary advantages of using social media, specifically the ability for a message to be instantly and broadly dispersed, can also create significant risks. For example, a negative or embarrassing fact, statement or rumor can quickly go viral. Adding to this risk is the informal nature of social media. This may cause people to let their guard down, resulting in inappropriate communications, both in form and content.

The types and degree of risks associated with social media may differ depending on how it is being used by the company, that is, whether it is being used for “listening” or “speaking.”

OBSERVING OR TRACKING VIEWPOINTS (LISTENING)

Social media can be a vital aid in listening to what customers, shareholders and others have to say about the company. In a world full of information and noise, social media can provide an efficient method to follow viewpoints about the company. Increasingly sophisticated means are being developed to help find and filter this information in useful ways.

Companies can control much of the risk related to listening by establishing clear policies about mining public information in legitimate and transparent ways. Companies should consider developing a process to review information about the company that is disseminated by third parties, and identify the individuals within the company who should be involved in this effort. It is especially important to be prepared to respond to a negative message that is broadly distributed. Since the context will drive the appropriate response, and the response will need to be determined in real time, the company should designate key members of a crisis communication team in advance.

INFLUENCING VIEWPOINTS (SPEAKING)

Social media can provide a powerful way to spread a message, but the effort to influence viewpoints can pose substantial risks. Companies should implement very clear policies about who can speak on behalf of the company through social media (and any other media). These policies must be accompanied by proper training for those who are restricted from speaking on the company's behalf, as well as for those who are empowered to speak. In addition, social media policies should address the company's expectations about how employees refer to the company in their personal use of social media.

>> For model guidelines on the use of social media for company marketing programs and other business purposes, search [Company Social Media Use Guidelines](#) on our website.

>> For a model employee policy on the appropriate use of social media and related rules and prohibitions, search [Social Media Policy \(US\)](#) on our website.

Much of the value of using social media involves the ability to communicate in real time and in a targeted manner. However, the company still needs to have a system for vetting its public communications. Particular attention must be paid to ensure that the use of social media does not lead to undue informality or carelessness in messages that have not been fully vetted by appropriate members of the management team. Internal controls are necessary to prevent ad hoc positions and inconsistent messages, as well as to ensure that confidential information, including material non-public information, is not inadvertently disclosed.

Similarly, directors should exercise care to ensure that their own participation in social media follows company policies. Individual directors should not speak through social media about the company or on behalf of the company unless they have been expressly asked to do so by the board or senior management, and then only if the message is carefully coordinated. They should follow the same rules for social media that they use for individual contact with shareholders and potential investors. Directors should avoid at all costs any ad hoc communication about the company.

EARLY WARNINGS

Information gathered through social media can potentially provide early warnings about key risk factors facing the company. According to recent research by the Stanford Graduate School of Business, there is evidence that monitoring social media can alert the board to risks in a way that is not otherwise available. These risks might include:

- **Operational risk.** How exposed the company is to disruptions in its operations.
- **Reputational risk.** How protected are the company's brands and corporate reputation.
- **Compliance risk.** How effectively the company complies with laws and regulations.

(See *Monitoring Risks Before They Go Viral: Is it Time for the Board to Embrace Social Media?*, available at gsb.stanford.edu.)

SHAREHOLDER ENGAGEMENT

Boards should consider the use of social media as a means for the company to engage in shareholder outreach. The heightened regulatory environment, together with trends in shareholder activism and the increasing influence of proxy advisors, have added pressure on boards and management to understand shareholder viewpoints and more actively seek shareholder support on a growing range of issues. Engaging in dialogue with shareholders is a critical corporate strategy. In addition, in an environment where trust in a company can be fleeting, social media is a valuable tool for tracking the viewpoints of key constituents.

Some companies are beginning to experiment in this regard by establishing secure, web-based shareholder forums that provide access only to validated shareholders. Given the link between the use of social media by corporate executives and the perception of trust in corporate leadership (see *Box, Social Media and Effective Leadership*), social media will become an increasingly important area for boards to consider in engagement efforts.

>> For information on potential securities and disclosure concerns related to social media, search [Corporate Communications Using Social Media](#) on our website.

BOARD RESPONSIBILITIES

Boards need to be proactive in learning about social media from a strategic and risk management perspective, so that they can provide effective guidance and risk oversight. They should understand the company's social media policies and internal controls, as well as the processes that management uses to monitor and manage social media risks. Boards should also understand the value of social media as a source of information, and should determine with management how best to mine and aggregate that information.

The following sets out steps the board should take, including important questions the board should ask, to understand and effectively oversee the company's use of, and policies on, social media:

- **Discuss corporate strategy.** The board should periodically discuss with management its strategic approach to social media. Questions the board should ask include:
 - How does social media relate to corporate strategy?
 - What opportunities does social media present?
 - How does the company use social media?
 - Which websites and technologies does the company use and for what purposes?
 - How does the company monitor and mine social media for key strategic data?
- **Ensure adequate risk management.** The board (or an appropriate committee) should also periodically discuss with management the risks associated with social media and ensure that the company is adequately managing those risks. Issues the board should focus on include:
 - How does the company monitor and mine social media from a risk perspective?
 - How does the company manage social media risks and who is responsible?
 - What are the chief risks (for example, reputational, privacy, technological, compliance and regulatory)?
 - Is there a specialized social media response team in place?

- **Identify relevant personnel.** The board should know who in the company is responsible for social media efforts. The board should ask:
 - How is responsibility for social media organized in the company?
 - Who are the key members of management with expertise on social media issues?
 - Who are the designated employees responsible for managing the company's social media accounts and online presence and what do their roles entail?
- **Review social media policies and internal controls.** The board (or an appropriate committee) should review company policies and internal controls related to social media from time to time. The board should make sure that the company has strict, straightforward and well-understood policies about who communicates for the company and in what circumstances. These policies should specifically address social media. Any company information that is posted online should first be approved by people who are knowledgeable about disclosure requirements under federal securities laws (such as Regulation FD, proxy solicitation rules, antifraud laws and prospectus requirements), advertising laws and other applicable laws. Key questions the board should consider include:
 - What are the company's social media policies?
 - Do the company's social media policies provide workable guidance for those who are officially designated to speak for the company, as well as for employees in their personal use of social media?
 - Are there provisions in place for the review of social media messages?
 - What kind of information will be posted online and who is responsible for approving these posts before they go out?
- **Evaluate shareholder relations programs.** The board should review shareholder relations and communications programs to evaluate whether the company is well-positioned to elicit information from key shareholders. The company should be able to determine what key shareholders care about so that the board and management can respond to legitimate concerns. In addition to trolling social media websites for information, the company should engage in regular outreach with significant shareholders. This can be done through the use of online surveys, shareholder hotlines, dedicated communication websites and targeted meetings with specific shareholders or groups of shareholders.
- **Assess investor communications policy.** The board should verify that the company's investor communications

PRACTICE
NOTES

DOCUMENTS

CLAUSES

CHECKLISTS

ARTICLES

The following related Checklists can be found on practicallaw.com

>>Simply search the title OR resource number

[Company Use of Social Media: Best Practices Checklist or 7-501-1472](#)

[Employees and Social Media: Company Best Practices Checklist or 1-501-1470](#)

[Monitoring and Responding to Third Party Use of Social Media: Best Practices Checklist or 3-501-1469](#)

[Social Media and the Securities Laws: Best Practices Checklist or 4-517-7812](#)

policy is up-to-date and well-understood by directors, senior management and investor relations personnel. Boards should ask:

- Are messages coordinated?
- Is boardroom confidentiality protected?
- Do communications comply with Regulation FD?
- **Emphasize employee compliance.** The board's attention to a culture of compliance at the company, beginning with the "tone at the top," emphasizes the need for employees to act with integrity. The board should make sure that there are protected channels for employees to voice concerns. This will help discourage employees from making negative comments about the company through social media. Also, the board should recognize that rogue employees who act out online are often symptomatic of a broader morale problem within the company.
- **Confirm auditor review.** The board's audit committee should ask the company's internal audit department whether auditors are reviewing compliance with social media and communications policies.
- **Stay up-to-date.** Directors should follow relevant blogs and other social media related to the company, but with a strict understanding that they should "listen" only (just as they are advised not to engage with shareholders directly unless asked to do so on an agreed topic and message). This is not only important to ensure that communications and engagement are coordinated around a clear message, but also to avoid legal problems, such as the selective disclosure of material non-public information. Directors should ask management (including the corporate secretary and the corporate communications professionals) what they read and follow to stay up-to-date on influential views about the company and key governance issues.

The views stated above are solely attributable to Ms. Gregory and do not reflect the views of Weil, Gotshal & Manges LLP or its clients.