



## Going Social: What Investment Firms Need to Know About Social Media Compliance



BIRCHAM DYSON BELL

# Agenda

- Social media landscape
- Regulators' view on social media
- Legal position and practical considerations
- Importance of a social media strategy
- Final thoughts

# Social Media Galore

Facebook



Twitter



LinkedIn



YouTube



Google+



Pinterest



FourSquare



Tumblr



## Social media landscape

- **80%** of internet users visit social networks and blogs
- **40%** of social media users access sites from their mobile phones
- In **2013**, mobile phones will overtake computers as the primary device to access the internet
- There are over **10 million** active Twitter users in the UK
- **340 million tweets** are sent per day
- In 2011, only **1%** of hedge funds were active on Twitter



## What are investment firms doing?

- Some firms block social media outright
  - But that's very few
  
- Internal social media policies:
  - Employee use for work
  - Employee use in private
  - Brand management and protection
  
- External regulation
  - FCA
  - Criminal and civil law

# The regulator's view of social media

- Promotion
  - How investment firms treat consumers
- Engagement
  - Consumers
  - Employees
  - Recruitment
- Policies
  - Data protection
  - Internal policies

## The regulator's view of social media

- Communication of financial promotion online are subject to the same rules as offline
- “Clear, fair and not misleading”
- The FCA:
  - “The test for whether the contents of a particular website may or may not involve a financial promotion is no different to any other medium. If a website or part of a website , operated or maintained in the course of business, invites or induces a person to engage in investment activity, it will be a financial promotion. The FCA takes the view that the person who caused the website to be created will be a communicator.”

## The regulator's view of social media

- The communication, not the device, is determinative
  - Same rules apply for social media content on smartphones
- Mobile makes recordkeeping more difficult
  - Make sure your social media compliance solution can capture social media content generated on:
    - Mobile devices: smartphones, tablets (BlackBerry, iPhone, iPad, Android etc.)
    - Home computers
    - Public computers (hotels, airport kiosks, etc.)





## Creating a social media policy

- Questions to frame your own approach:
  - Do you think it is appropriate/necessary for employees to visit social media sites during work hours?
  - Do you consider your employees to be representatives of the company when they are online?
  - Do you think it is the responsibility of the employer to limit or control what employees are able to view when they are at work?

## Creating a social media policy

### ■ Representation

- Employees should present their opinions as their own
- Online profile should be consistent with offline presentation of self
- Show good judgment/common sense

### ■ Defamation

- Refrain from defaming company, clients or stakeholders
- No postings that are harassing, discriminatory or abusive in nature



## Creating a social media policy

### ■ Confidentiality

- Do not relate to or reveal any confidential or proprietary information
- Employees must not discuss the business, customers or clients

### ■ Responsibility

- Users are responsible for their statements, posts and any liabilities that may arise from them
- Risk of vicarious liability
- Conduct in a virtual realm may result in the same legal penalties as in the real world



# Creating a social media policy

## ■ Time

- Time spent on social media should not reach level that distracts employees and inhibits rather than contributes to their performance

## ■ Recordkeeping

- Implement recordkeeping process and monitor for adherence
- Use technology for archiving social media activities; ensuring compliance



## Creating a social media policy

- Bullying and harassment
  - Internal employee relationships
  - Domestic problems
  - Discrimination
  - Zero tolerance policies
  - Vicarious liability
- Intellectual Property
  - Protecting your property
  - Protecting your brand
- Who does the information belong to?
  - LinkedIn profiles and connections



## The UK & the courts

- The courts are taking a reactionary approach
  - Status of employee within business/marketplace
  - Type of business
  - Effect or potential effect on business
  - Potential audience
- Mixed messages
- Understanding of issues
- Education
- Investigation

## Specific roles

- Communications Officers
- Marketing/Business development employees
- Social media specialists
- Third party contractors



## Specific roles

- Enhanced obligations to the organisation
  - Enhanced job description
  - Management, monitoring and review
  - Measuring productivity and success
  - Passwords and administration
  - Who does the account belong to?



## Advice for employers

- Don't rely on common sense
- Introduce policies if required
- Make employees aware of any policies in place
- Set the boundaries and enforce them consistently
- Understand social media – it won't go away

## Final thoughts

- Social media is a powerful tool
- Essential to understand regulatory landscape and have a working policy
  - Actively monitor and maintain policy
  - Changes are happening fast
- Keep sensitive information secured
  - Archive and file necessary communications



# Eze Castle Integration Overview

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1995

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