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BC Notice 51-703

"Clear and Conspicuous" Disclosure of Investor Relations Activities under Section 52(2) of the *Securities Act*, RSBC 1996, c. 418

Summary
A person engaging in investor relations activities for an issuer, and the issuer itself, must disclose their relationship.[1] In particular, under section 52(2) of the Act, any records disseminated as part of such activities must disclose the relationship between those parties, and must do so "clearly and conspicuously".

In a decision named *Re Stock Social Inc.* (the Findings)[2], the British Columbia Securities Commission (the Commission) has explained that, to be "clear and conspicuous" as required, the records must disclose that they were issued on behalf of the issuer and must be:

- in plain language
- in a prominent spot and in prominent font
- designed to catch the attention of the reader.

Anyone engaged in investor relations activities, or engaging others for investor relations activities on their behalf, should review the Findings to ensure that they comply with section 52(2).

Listed issuers must also comply with any applicable Exchange requirements.[3]

Investor Relations Activities
"Investor relations activities" are defined in section 1(1) to include: "any activities or oral or written communications, by or on behalf of an issuer …, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer".

There are limited exceptions in the definition[4]. For example if the records:

- cannot reasonably be considered to promote the purchase or sale of securities of the issuer, and
- they are disseminated in the issuer's ordinary course of the business to:
  - promote the sale of its products or its services, or
  - raise public awareness of the issuer,

the records may not be investor relations activities.

Given this narrow exception, activities that promote the purchase or sale of securities are "investor relations activities" under the Act. Exchange and BCSC staff (Staff) commonly see this occurring in activity market participants instead call "business promotion"[5], "marketing", or "market awareness" but include the promotion of securities. This can include activity on social media or through influencers.

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[1] There is a similar requirement when a person is engaged in investor relations activities for a security holder of an issuer. An issuer or security holder are also required to disclose such a relationship to anyone who inquires – see section 52(1).
[2] 2023 BCSECCOM 52.
[3] In this Notice, "Exchange" includes the TSX Venture Exchange and Canadian Securities Exchange.
[4] See section 1(1), "investor relations activities", subparagraphs (a) through (d).
[5] Note that the definition for "promotional activity" in section 1(1) includes what are also "investor relations activities".

Disclosing the Relationship Clearly and Conspicuously

Plain Language

While securities legislation does not prescribe specific words that must be used to comply with section 52(2), the Findings note that: "the plain language could have said something like 'Disseminated on behalf of [Issuer name]' or 'Paid advertisement on behalf of [Issuer name]'."[6]

Prominent Place

The Findings further explain that:

> "[T]o be displayed in a prominent place, [the disclosure] would have to be displayed at or very close to the beginning of a Record or at least close to the substantive portion of the Record. That disclosure should not be buried in legalistic standard terms and conditions that readers often skip."[7]

In particular, it is not enough to include the disclosure at the end of a document or disclaimer, because that would not have met "the requirement to be conspicuously disclosed given that many readers might not read to the end of a document in order to find that disclosure", especially if they access the records "on their smartphones or similar small electronic devices, [so] they would have had to scroll at length to reach the disclaimer further reducing the likelihood it would be read." [8]

Catch the Reader's Attention

In Staff's view, it is insufficient for a record to include a hyperlink to another website that contains the disclosure required by section 52(2). The Findings observe that "many readers would have had to take an extra step to click on the link, particularly if the link does not appear in proximity to the substantive content." Investors would also need to know that the hyperlink would direct them to information about the relationship between the disseminating party and the issuer. A link that is merely entitled "disclaimer" or "legal notice" is likely not sufficient.[9]

Importance for Investors

The Findings emphasise that section 52(2) was enacted to: "assist investors in assessing the objectivity of information received from a person engaged in investor relations activities."[10]

When imposing sanctions for breaches of section 52(2), the Commission noted that clear and conspicuous disclosure is even more important for investors when the investor relations activity is "singularly positive" and fails to disclose risks or other negative factors.[11]

In short:

> The integrity of the capital markets relies on those who disseminate promotional information to be candid. Therefore, disseminating paid promotional advertisements in the form of advertorials about issuers without clearly and conspicuously disclosing that they were done on behalf of those issuers not only deprives investors of an important safeguard but also jeopardizes public confidence in the integrity of the capital markets. For those reasons, a breach of section 52(2) is inherently serious.[12]

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[6] Findings, paragraph 65.
[7] Findings, paragraph 66.
[8] Findings, paragraph 67.
[9] Findings, paragraph 69.
[10] Findings, paragraph 51.
[11] *Re Stock Social*, 2023 BCSECCOM 372 (Decision), paragraph 21.
[12] Decision, paragraph 20.

Enforcing section 52(2)

Canadian Securities Administrators (CSA) Guidance about Promotional Activity
The BCSC, other members of the CSA, and Exchange staff are concerned about promotional activity, including investor relations activities, that is untrue or unbalanced and that may mislead investors. That kind of activity can undermine the integrity of the capital markets and puts investors at risk of harm by making misinformed investment decisions.

In 2018, the CSA issued guidance in CSA Staff Notice 51-356 *Problematic promotional activities by issuers* to provide guidance about these concerns and staff's views on actions a person can take to avoid this problematic activity. Staff encourage those engaged in these activities to review that guidance.

Penalties and Settlements
After finding breaches of section 52(2), the Commission ordered administrative penalties against:

- a corporation and individuals personally for disseminating records for issuers without the required disclosure, and
- issuers and their management that failed to ensure that records disseminated on the issuer's behalf were compliant.[13]

The Commission's Executive Director has also entered into multiple settlement agreements with issuers and individuals responsible for breaches of section 52(2), including a contractor for an issuer.[14]

April 25, 2024

Brenda M. Leong
Chair

[13] See Decision, paragraph 64.
[14] See, for example, the Settlement Agreements with the following citations: 2022 BCSECCOM 258, 2022 BCSECCOM 293, 2022 BCSECCOM 367, 2022 BCSECCOM 373, and 2022 BCSECCOM 374.