

BC Notice 15-702

**Prohibitions against Misrepresentations and
False or Misleading Statements**

This staff notice provides guidance about the prohibitions in [sections 50\(2\) and 50\(3\)](#) of the British Columbia *Securities Act* (the Act) against misrepresentations and against false or misleading statements or information while engaged in a promotional activity, respectively. These provisions were enacted or amended effective March 27, 2020.

Misrepresentations – section 50(2)

Section 50(2) replaced a previous misrepresentation provision of the Act, section 50(1)(d). Section 50(2) prohibits a person from making a statement that the person knows, or reasonably should know, is a misrepresentation. For there to be a contravention, the statement must be about a material fact, which is defined in the Act as a fact that would reasonably be expected to have a significant effect on the market price or value of a security or on the market price or value of, or obligations under, a derivative.

However, unlike former section 50(1)(d), there is no requirement in section 50(2) that the statement be made while engaged in investor relations activities or with intention to effect a trade in a security. As a result, section 50(2) is broader than section 50(1)(d).

False or misleading statements or information during promotional activity – section 50(3)

Section 50(3) prohibits a person engaged in a promotional activity from making a statement or providing information that is false or misleading or that omits a fact necessary to make the statement or information not false or misleading in circumstances where a reasonable investor would consider that statement or omission important when deciding to buy or trade a security or derivative or in deciding not to buy or trade.

Unlike the misrepresentation provisions in section 50(2) of the Act, section 50(3) does not require that the statement, information or omission concern a material fact. This means that, in enforcement proceedings in relation to a security or derivative under this section, staff do not need to prove that the false, misleading or omitted fact was either:

- a fact that would reasonably be expected to have a significant effect on the market price or value of the security, or
- a fact that would reasonably be expected to have a significant effect on the market price or value of, or obligations under, the derivative.

Application of section 50(3) to an issuer's disclosure

“Promotional activity” under the Act means any activity, including any oral or written communication, that by itself or together with another activity encourages or reasonably could be expected to encourage a person to purchase, not purchase, trade or not trade a security or derivative. This definition includes not only disclosure in connection with offerings and

continuous disclosure documents but also online securities promotions or marketing, such as promotions on social media, in chat rooms, videos, emails and newsletters.

Guidance about promotional activity

In 2018, the CSA issued [CSA Staff Notice 51-356 *Problematic promotional activities by issuers*](#) (SN 51-356). Those engaged in promotional activity are encouraged to review the notice. It provides useful examples of circumstances in which statements or information are false or misleading or omit information necessary to make the statements or information not false or misleading. In staff's view, although the SN was issued before section 50(3) came into force, staff still consider the examples outlined in SN 51-356 to be circumstances where the prohibitions in section 50(3) would apply.

Any person engaged in promotional activity, or engaging others for promotional activity on their behalf, must comply with section 50(3). Listed issuers should also consider all applicable exchange requirements regarding promotional activity.

Implications for issuers, investor relations professionals and other market participants

Any BC market participants making statements, whether oral or written, about securities or derivatives must comply with sections 50(2) and 50(3) of the Act. These prohibitions may be broader than in some other Canadian provinces and territories. The BC Securities Commission's Corporate Finance staff will be applying these standards in disclosure reviews and Enforcement staff will be taking action for violations of these provisions where it is in the public interest to do so. Market participants should consult their professional advisors as appropriate.

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