

INVESTOR RELATIONS ACTIVITIES REQUIRE CLEAR AND CONSPICUOUS DISCLOSURE

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The British Columbia Securities Commission (the “**BCSC**”) recently published BC Notice 51-703^[1] (the “**Staff Notice**”). In the Staff Notice, BCSC staff: (i) emphasized that investor relations activities must be “clearly and conspicuously” disclosed pursuant to Section 52(2) of the *Securities Act* (BC)^[2] (the “**Act**”) and (ii) reiterated the key points from the BCSC’s 2023 decision in *Re Stock Social*^[3] (“**Stock Social**”).

Background

The Act defines investor relations (“**IR**”) activities as “**any activities or oral or written communications**, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be **expected to promote the purchase or sale of securities of the issuer...**” [emphasis added]. As such, and as outlined in *Stock Social*, advertorials disseminated on behalf of a reporting issuer could constitute IR activities and if they do, will be subject to the Section 52(2) disclosure requirements.

Clear and Conspicuous Disclosure

Section 52(2) of the Act requires that “*A person engaged in investor relations activities, and an issuer or security holder on whose behalf investor relations activities are undertaken, must ensure that every record disseminated, as part of the investor relations activities, by the person engaged in those activities **clearly and conspicuously discloses** that the record is issued by or on behalf of the issuer or security holder*” [emphasis added]. The *Stock Social* decision provides key insights with respect to “clear and conspicuous” disclosure under Section 52(2) of the Act and the decision was the first time the BCSC interpreted such requirement.

In the Staff Notice, BCSC staff also provided key insights on the meaning of “clear and conspicuous” disclosure and reiterated the *Stock Social* findings. This guidance is a helpful roadmap for reporting issuers (referred to in this bulletin as “issuers”) and IR providers to follow, as it helps ensure that prospective investors have the information they need to make informed investment decisions. According to the BCSC, disclosure of IR activities must contain the following key characteristics to be considered “clear and conspicuous”: written in plain language, displayed prominently and not hidden in large blocks of text, and presented in a way that draws attention to the information. We have unpacked each requirement below.

Plain Language

Stock Social establishes that the disclosure of IR activities must be in “plain language”. While there is no prescribed wording that must be used to satisfy the plain language requirement, the BCSC panel noted that disclosure in plain language could include something like “disseminated on behalf of [issuer name]” or “paid advertisement on behalf of [issuer name]” [4].

Prominent Place and Not Hidden

Stock Social establishes that the disclosure of IR activities must be “displayed in a prominent place” and that such disclosure needs to be displayed “at or very close to the beginning of a Record or at least close to the substantive portion of the Record” [5].

In the Staff Notice, BCSC staff noted that that it is “not enough” [6] to include the Section 52(2) disclosure at the end of a document or embedded within a larger disclaimer, because that would not meet the standard outlined in *Stock Social* that the disclosure “be conspicuously disclosed given that many readers might not read to the end of a document in order to find that disclosure” [7].

Designed to Catch the Reader’s Attention

BCSC’s staff view is a record that only includes a hyperlink to another website that contains the disclosure required by Section 52(2) is insufficient. The panel in *Stock Social* notes that “many readers would have had to take an extra step to click on the link, especially if the link does not appear near the substantive content.” [8] Investors would also need to be informed that the hyperlink would lead them to information about the relationship between the disseminating party and the issuer. A link labeled simply “disclaimer” or “legal notice” is likely not clear and conspicuous.

Importance for Investors

In the Staff Notice, the BCSC Staff highlights that Section 52(2) was created to allow investors to evaluate the credibility and objectivity of information they get from IR providers. When imposing sanctions for breaches of Section 52(2), the BCSC panel in *Stock Social* noted that clear and obvious disclosure is even more important for investors when the investor relations activity is “singularly positive” and do not reveal any risks or other negative factors. [9]

Key Takeaways

The scope of IR activities is broad and therefore the engagement of third-parties to disseminate advertorials, social media posts, newsletters, or other forms of communication to the investing public could be considered IR activities and must be properly disclosed per Section 52(2) of the Act. As such, every record disseminated on

behalf of an issuer (or on behalf of a security holder of the issuer) must “clearly and conspicuously” disclose that it was disseminated on behalf of the particular issuer in plain language, in a prominent place, and in a manner designed to catch the reader’s attention, or else it will fall short of the “clear and conspicuous” standard.

The BCSC continues to underscore the importance for both issuers and to those providing IR activities on behalf of issuers to ensure compliance with the Section 52(2) disclosure of IR activity requirements to ensure that prospective investors are able to evaluate the objectivity of information they receive from IR providers.^[10]

After finding breaches of Section 52(2), the BCSC staff reminds issuers and IR providers that the BCSC has ordered administrative penalties against a corporation and individuals personally for disseminating records without the required Section 52(2) disclosure and against reporting issuers and their management for failing to ensure that records disseminated on its behalf were Section 52(2) compliant.^[11] Additionally, the BCSC Staff notes that the BCSC’s Executive Director has entered into settlement agreements with issuers and individuals responsible for Section 52(2) violations.^[12]

To discuss the BCSC’s Staff Notice 51-703 and the implications for IR activities, please contact James Munro, Kyle Smith, or any member of our Capital Markets & Securities group.

by [James Munro](#) and [Kyle Smith](#)

[1] [BC Notice 51-703 “Clear and Conspicuous” Disclosure of Investor Relations Activities under Section 52\(2\) of the Securities Act, RSBC 1996, c. 418.](#)

[2] [Securities Act, RSBC 1996, c. 418, s 52\(2\).](#)

[3] [Re Stock Social Inc, 2023 BCSECCOM 52.](#)

[4] *Ibid* at para 65.

[5] *Ibid* at para 66.

[6] *Supra* note 1 at 2.

[7] *Supra* note 3 at para 67.

[8] *Ibid* at para 69.

[9] *Supra* note 1 at 2.

[10] In addition to requirements imposed on IR activities by the Act, IR activities are also subject to additional stock exchange regulations and filing requirements.

[11] *Supra* note 3 at 64.

[12] See [2022 BCSECCOM 258](#), [2022 BCSECCOM 293](#), [2022 BCSECCOM 367](#), [2022 BCSECCOM 373](#), and [2022 BCSECCOM 374](#).

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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