Grilling of disclosure – Is it clear and conspicuous enough?

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The type and use of promotions for securities has long been scrutinized and regulated. For example, in 2021, the British Columbia Securities Commission (BCSC) released for comment Proposed BCI 51-519 *Promotional Activity Disclosure Requirements*, which set out a framework for required disclosure in relation to promotional activities. However, according to regulators, some issuers and registrants continue to engage in problematic promotional activities.

On April 25, 2024, the BCSC released BC Notice 51-703 "Clear and Conspicuous" *Disclosure of Investor Relations Activities under Section 52(2) of the Securities Act, RSBC 1996, c. 418*, detailing expectations for "clear and conspicuous" disclosure regarding the relationship between an issuer and those that engage in investor relations activities for the issuer. For context, "Investor Relations Activities**"** are defined 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."

Except for a few narrow exceptions, all disclosure relating to Investor Relations Activities must be:

a. In plain language;
b. In a prominent spot and in prominent font; and
c. Designed to catch the attention of the reader.

Although the notice does not prescribe specific language, it states that including disclosure at the end of a document is not enough. To be "clear and conspicuous", the disclosure must be displayed at or very close to the beginning or substantive portion of the material and cannot be buried in disclaimers. In addition, hyperlinking the disclosure is insufficient to meet this expectation, especially if the hyperlink is entitled "disclaimer" or "legal notice". The concern noted was that these hyperlinks do not inform the reader that it would direct them to information about the relationship between the disseminating party and the issuer.

The notice indicates that the "clear and conspicuous" expectation is in line with the objective of section 52(2) of the *Securities Act* (British Columbia), which is to "assist

investors in assessing the objectivity of the information received from a person engaging in investor relations activities."

Through fines recently imposed, we can see the continued concern for the integrity of the capital markets that can result from unbalanced promotional activities. Coupled with the client focused reforms in recent years, those involved in investor relations activities should continue to mind the position and appearance of required disclosures in all such promotional activities.

By

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