

CSA Staff Notice 51-356

Problematic Promotional Activities by Issuers

November 29, 2018

I. Background

We are seeing promotional activities by certain issuers that are either untrue or unbalanced to such an extent that they may mislead investors. In particular, these activities include disclosure and promotional campaigns that provide unbalanced or unsubstantiated material claims about the issuer's business and the corresponding opportunity for profit by investing in the issuer, which appear to be undertaken for the specific purpose of artificially promoting interest in the issuer's securities¹.

We are concerned that such activity may artificially increase the issuer's share price and trading volume, which undermines the integrity of the capital markets and puts investors at risk of harm from making misinformed investment decisions.

II. Purpose

We are issuing this notice to illustrate some of the specific problems we are seeing and reinforcing our commitment to ensuring that promotional activity by, or on behalf of, issuers remains balanced and not misleading. Although our examples specifically relate to activity we are seeing in the venture issuer marketplace, our expectations regarding disclosure and promotional activities apply to all issuers.

III. Activities of concern

The following are examples of promotional activities that may potentially be misleading:

- disseminating presentations, marketing materials, social media posts, or other information that describe early-stage plans with unwarranted certainty, or make unsupported assertions about growth of markets or demand for a product;
- issuing numerous news releases that disclose no new material facts;
- compensating third parties, who use social media and general investing blogs to promote issuers, but do not disclose their agency, compensation and/or financial interest;

¹ We will also be undertaking a separate project to analyze the impact of activist short sellers on the Canadian capital markets.

- announcing an issuer name and/or business change to reference an emerging industry or technology such as block chain, cannabis, battery minerals, or cryptocurrency without a supporting business plan or comprehensive risk disclosure;
- announcing a positive event such as a large acquisition then subsequently changing or cancelling the transaction with no announcement. In addition, the initial announcement sometimes fails to disclose material conditions necessary to complete the transaction such as financing or due diligence, and the issuer sometimes fails to file corresponding material contracts or material change reports; and
- disclosing details about mineral projects that:
 - suggest without direct evidence from sampling or exploration, that a property holds high potential for development including production. For example, including photos of assayed core beside new core, to imply mineralization prior to third party verification;
 - rely on projected peak versus long-term commodity prices; or
 - imply that a property holds a specific fair market value without a feasibility report.

The above list is not exhaustive. Other behaviour that appears to be misleading will raise similar concerns and may result in a regulatory response.

IV. Relevant requirements and guidance

When engaging in promotional activities, we expect issuers to comply with all relevant securities laws applicable in the jurisdiction and follow guidance², including:

- general prohibitions against false or misleading statements that would be expected to have a significant effect on the price or value of an issuer's securities;
- general prohibitions against acts, practices or conduct relating to securities that result in or contribute to a misleading appearance of trading activity or an artificial price for a security;
- requirements that every investor relations record disseminated by or on behalf of an issuer or security holder must clearly and conspicuously disclose that the record is being issued by or on behalf of that issuer or security holder;
- requirements that an issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the information and requirements that any such disclosure must:
 - identify forward-looking information as such;
 - caution users that actual results may vary from the forward-looking information and identify material risk factors that could cause actual results to differ materially from the forward-looking information;
 - state the material factors or assumptions used to develop forward-looking information;

² See National Policy 51-201 *Disclosure Standards*, CSA Multilateral Staff Notice 51-336 *Issuers Using Mass Advertising*, and CSA Staff Notice 51-348 *Staff's Review of Social Media Used by Reporting Issuers*.

- requirements to update previously disclosed forward-looking information when events and circumstances occur that are reasonably likely to cause actual results to differ materially;
- guidance on general disclosure including:
 - the types of events or information that may be material;
 - avoiding exaggerated reports and potentially misleading promotional commentary;
 - establishing appropriate board and senior officer oversight over oral, written, and electronic disclosures;
 - issuers not participating in, hosting, or linking to chat rooms or bulletin boards;
 - reinforcing the need to also comply with exchange disclosure policies; and
- guidance reminding issuers to have rigorous social media disclosure controls and reiterating our expectations that issuers ensure that all disclosures regardless of venue are balanced and not misleading, including by/through:
 - not making misleading statements;
 - not excluding facts needed to avoid misleading readers;
 - announcing material changes in a factual and balanced way;
 - disclosing unfavorable news as promptly and completely as favorable news;
 - avoiding exaggerated reports or potentially misleading promotional commentary;
 - appropriately disclosing and using forward looking information;
 - not cherry-picking analyst reports; and
 - prominently disclosing when reports and articles are paid for by the issuer.

V. Regulatory responses

Problematic promotional activities may result in enforcement action or other regulatory responses such as requiring an issuer to:

- issue a clarifying news release;
- retract or remove overly promotional language from their disclosure record including their website and/or social media; and
- re-file continuous disclosure documents.

We will continue to monitor promotional activity and we will consider whether the scope and extent of problematic promotional activities require compliance or enforcement regulatory action to protect investors and the integrity of our capital markets.

VI. Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

Mike Moretto

Chief of Corporate Disclosure, Corporate Finance

604-899-6767

mmoretto@bcsc.bc.ca

Andrew Richardson
Chief of Compliance, Corporate Finance
604-899-6730
arichardson@bcsc.bc.ca

Alberta Securities Commission

Tom Graham
Director, Corporate Finance
403-297-5355
tom.graham@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik
Deputy Director, Corporate Finance
306-787-5849
tony.herdzik@gov.sk.ca

Manitoba Securities Commission

Wayne Bridgeman
Deputy Director, Corporate Finance
204-945-4905
wayne.bridgeman@gov.mb.ca

Ontario Securities Commission

Jo-Anne Matear
Manager, Corporate Finance
416-593-2323
jmatear@osc.gov.on.ca

Stephanie Tjon
Senior Legal Counsel, Corporate Finance
416-593-3655
stjon@osc.gov.on.ca

Jessie Gill
Legal Counsel, Corporate Finance
416-593-8114
jessiegill@osc.gov.on.ca

Autorité des marchés financiers

Martin Latulippe
Directeur de l'information continue
Surintendance des marchés de valeurs
514-395-0337, ext. 4331
Martin.Latulippe@lautorite.qc.ca

Financial and Consumer Services Commission (New Brunswick)

Susan Powell
Deputy Director
506-643-7697
spowell@fcnbc.ca

Nova Scotia Securities Commission

Abel Lazarus
Director, Corporate Finance
902-424-6859
abel.lazarus@novascotia.ca