

## B.C. Securities Commission Provides Guidance About Investor Relations Disclosure in Social Media

### Background

On January 30, 2023, the British Columbia Securities Commission (BCSC) released its decision<sup>1</sup> on the liability portion of the hearing against Stock Social Inc. and its president, CEO, and sole director, Kyle Alexander Johnston, and Imagine AR Inc.<sup>2</sup>

This decision is significant because it provides, for the first time, guidance about what “clear and conspicuous” disclosure looks like and what information is sufficient to satisfy the requirement to disclose that a publication is on behalf of an issuer.<sup>3</sup>

In the Stock Social Decision, the BCSC discusses the interpretation of section 52(2) of the British Columbia Securities Act<sup>4</sup> (the Act), which states 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].

### Findings

#### What “On Behalf Of” Means

Stock Social conducted investor relations (IR) activities in which they disseminated records, including advertorials and dozens of social media posts, on behalf of several issuers.<sup>5</sup> None of the records disclosed that the records were *on behalf of issuers*.<sup>6</sup> Considering this, the BCSC found that Stock Social did not meet the requirements of s. 52(2).<sup>7</sup>

Although some records contained some kind of disclosure, it was not the right kind. Records that stated there were no guarantees of accuracy, the information was not investment advice, or that a fee was paid for the dissemination do not inform a reader that an advertorial was issued on behalf of a particular issuer.<sup>8</sup>

Even when a record stated that it had been paid for by an issuer, that was not sufficient to meet the requirement to disclose that the record was issued on behalf of the issuer.<sup>9</sup> Additionally, the BCSC noted that even if an issuer is named as the source of the information disseminated, this, too, was not enough to meet the requirements of s. 52(2).<sup>10</sup> Ultimately, the BCSC outlined that even though Stock Social stated that an issuer was the source of the information being disseminated, it is not the same as Stock Social indicating that the advertorial was being issued *on behalf of* an issuer. In both examples, the disclosure simply was not enough.<sup>11</sup>

#### What “Clear and Conspicuous” Means

Going forward, records issued on behalf of an issuer will have to disclose, in plain language, in a prominent spot, and in prominent font (to catch the reader’s attention) that it was disseminated on behalf of the issuer. Examples of plain language include: “Disseminated on behalf of [Issuer name]” or “Paid advertisement on behalf of [Issuer name].”<sup>12</sup>

A prominent spot means “it would have to be displayed at or very close to the beginning of a [dissemination] or at least close to the substantive portion of the [dissemination].”<sup>13</sup> Finally, the



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#### Related Practice Areas

- Securities Litigation & SEC Enforcement
- White Collar Defense & Investigations

disclosure should not be hidden in legalese or standard forms which the public may skip reading.<sup>14</sup> They should not be in links or disclaimers and legal notices.<sup>15</sup> In other words, putting a disclaimer at the end would not meet the requirements.

The responsibility to comply with s. 52(2) applies to investor relations firms issuers and employees, officers, directors, or agents of the companies who can be found vicariously liable for a breach of s. 52(2).<sup>16</sup> Notably, Johnston was found to be personally liable for Stock Social's breach of s. 52(2).<sup>17</sup>

## Takeaways

- When conducting investor relations activities, firms must state who they are disseminating the information on behalf of in plain language.
  - This cannot be replaced by stating the issuer is paying for the distribution or the issuer is the source of information.
- The information must be in a prominent font in a prominent spot on the dissemination.
  - Examples include placing "Disseminated on behalf of [Issuer name]" or "Paid advertisement on behalf of [Issuer name]" at or near the beginning of the dissemination or somewhere close to the key information.
  - It should not be hidden in links, disclaimers, legal notices, or placed at the end of the dissemination.

Any breach would place both the investor relations firm and issuer in violation of the Securities Act.

If you have any questions about any of the foregoing or need assistance navigating the regulatory requirements related to promotional or IR activities, please do not hesitate to contact any member of our team.

<sup>1</sup> *Re Stock Social Inc.*, 2023 BCSECCOM 52 [*Re Stock Social*]

<sup>2</sup> On October 4, 2022, we published an [article](#) relating to a series of settlement agreements that were entered into relating to this matter.

<sup>3</sup> *Supra* note 1 at para 49.

<sup>4</sup> [RSBC 1996] Chapter 418

<sup>5</sup> *Supra* note 1 at paras 57 and 59.

<sup>6</sup> *Ibid* at para 59.

<sup>7</sup> *Ibid* at para 58.

<sup>8</sup> *Ibid* at para 60.

<sup>9</sup> *Ibid* at para 61.

<sup>10</sup> *Ibid* at para 62.

<sup>11</sup> *Ibid* at para 62.

<sup>12</sup> *Ibid* at para 65.

<sup>13</sup> *Ibid* at para 66.

<sup>14</sup> *Ibid* at para 66.

<sup>15</sup> *Ibid* at para 69.

<sup>16</sup> See s. 168.2 of the Act.

<sup>17</sup> *Supra* note 1 at paras 75-76.

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