VIA E-MAIL - vsteeves@bcsc.bc.ca July 26, 2021

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P. O. Box 10142, Pacific Centre
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Re: Notice and Request for Comment – Proposed British Columbia Instrument 51-519 *Promotional Activity Disclosure Requirements*

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to respond to Notice and Request for Comment – Proposed British Columbia Instrument 51-519 *Promotional Activity Disclosure Requirements* (**Consultation**).

PMAC represents over 300 investment management firms registered to do business with the various members of the CSA as portfolio managers (**PM**s). Approximately 65% of our members are also registered as investment fund managers (**IFM**s). PMAC's membership is comprised of firms of varying sizes and models, ranging from one-person firms to international and bank-owned firms. In total, our members manage assets in excess of $2.9 trillion for institutional and private client portfolios. Our members also range from the more traditional models to online advisers.

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection and benefit our capital markets as a whole. We are also cognizant of the global market in which many of our mid-size and large members operate and are sensitive to any regulatory changes being misaligned with other international capital market jurisdictions.

Overview

PMAC agrees that any form of market manipulation or investor deception must be deterred and appropriately punished. We are generally of the view that regulation should be focused on specific behaviours and desired outcomes. We believe that the Consultation would better achieve its objectives through further tailoring and

clarification, as discussed in detail below. As drafted, we are concerned that the proposed rules are ambiguous and overly broad. As a result, they risk being less effective and open to challenge on constitutional or other grounds.

PMAC generally favours principles-based regulation that recognizes differences in business models, sizes, and client types. We support the British Columbia Securities Commission's (**BCSC**) decision to consult with stakeholders on the important issues raised in the Consultation. Given the fast pace of change in the industry, it is understandably difficult for regulation to predict or keep up with developments in the market and investor behaviour. For this reason, we believe it is important for regulatory bodies to hear from market participants in deciding whether regulatory intervention is required and if so, what form it should take.

KEY RECOMMENDATIONS

In order to address problematic promotional activity in a more targeted fashion, without risking confusion and overly broad rules, we urge the BCSC to tailor the proposals in the following way:

1. Clarify and consider narrowing to whom the proposals apply, and the types of communications and media to which the proposals would apply;
2. Expand the exemptions to include similar entities in other jurisdictions;
3. Continue to monitor and conduct research on investor behaviour and educate investors about legitimate sources of information; and,
4. Harmonize requirements across Canada.

Discussion

We support the BCSC's work to address issues related to problematic promotional activity. However, we are concerned that the instrument, as drafted, is ambiguous and overly broad. We question the practicality and enforceability of these measures. This is in part due to the very broad definition of "promotional activity" in the *Securities Act* (BC).[1]

The Consultation notes that the BCSC has specifically found problematic promotional activity among venture issuers. We therefore understand the rationale for requiring

[1] "promotional activity" means any activity, including, for greater certainty, any oral or written communication, that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person

a) to purchase, not purchase, trade or not trade a security, or
b) to trade or not trade a derivative,

but does not include an activity prescribed for the purpose of this definition

venture issuers to disclose that they have arranged for a person or company to conduct promotional activity on their behalf, as proposed in section 3. We also agree that promotional expenditures over a certain threshold of operating expenses should be disclosed in the Management Discussion & Analysis (**MD&A**), as proposed in section 8.

We agree with the proposed exclusions in section 2 of registrants, certain persons exempt from registration, including international dealers and international advisers, and investment funds, from the instrument. However, similar entities in foreign jurisdictions (that do not have operations in Canada, do not fall under the definition of international dealers or advisers under the provincial *Securities Act* and/or do not have any registration obligations in Canada) may be captured by the requirements, although they should probably also be excluded.

The drafting of proposed section 6 suggests that it is intended to apply to any promotional activity by any person or company (issuers, shareholders or third parties) via any medium. While we understand and support the public policy reasons for requiring additional transparency from various commentators that are engaged by an issuer, as drafted, proposed section 6 seems over-reaching by regulating parties that are unrelated to the issuer. For example, an independent (and properly unregistered) investment research firm that publicly releases its own investment research on an issuer would appear to be caught by section 6. A (non-exempted) shareholder, that publicly encourages other shareholders to follow its lead and tender to a take-over bid, would also be caught by section 6, by virtue of recommending a trading decision. More broadly, a member of the general public, such as a coffee shop employee who is not a shareholder and with no connection to the issuer, posting an opinion about the merits of investing in an issuer on an online investment forum, would also appear to be caught by section 6. In fact, it is particularly unclear how the disclosure requirements would apply or be enforceable with respect to statements made on social media; for example, against anonymous or foreign commentators. We are concerned that the breadth and lack of clarity with respect to this portion of the rule may deter legitimate commentary and discussion and impede beneficial information-sharing among investors and other stakeholders. Furthermore, they may impinge on individual rights to privacy and/or to freedom of expression.

We also find the scope of the disclosure required in proposed section 6 to be very broad. It does not seem practical to require a person to disclose their ownership of the issuer, their intentions with respect to trading, and all the other information required (and to make the disclosure "prominently" for a written representation) on a Twitter or blog post, for example. Some of the information is anticipatory (refers to what the person may do in the future), and this may not be available or may change. In some cases, we question how significant this additional information would be to potential investors and would welcome additional research and data on this point. There is always a risk of "information fatigue" among investors.

The proposed section 5 (disclosure on inquiry) is also very broadly worded. It is not clear whether it is the issuer who is intended to provide the disclosure, or any other person. It is not clear to whom or by what means the disclosure is to be provided. It would be helpful if some examples could be given, including an example of who might make such an inquiry, by what means, and how and by whom the response is to be provided.

Harmonization

Finally, we encourage the Canadian Securities Administrators (**CSA**) to work together to harmonize legislation across Canada, which will improve investor protection and reduce regulatory burden for registrants. We urge the BCSC and the CSA to continue to work to improve transparency and protections for Canadian investors. We believe that investor education is an important component of this effort.

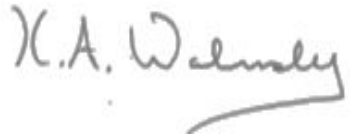
Conclusion

We encourage the BCSC and the CSA to continue provide investor education regarding legitimate sources for information about the capital markets and potential risks of inappropriate promotional activity. Investor education and regulatory action should be based on relevant research into the influence, effectiveness and impact of promotional activity on investor behaviour. As drafted, we are concerned that the proposed rules are ambiguous and overly broad. As a result, they risk being less effective and open to challenge on constitutional or other grounds.

We encourage the BCSC and the CSA to continue to enhance their investor education efforts and to actively monitor social media platforms for potential market manipulation and distortion campaigns. These activities, often aimed at unsophisticated investors, have the potential to cause serious harm to Canada's capital markets and to individual and institutional investors. New and changing threats will no doubt continue to emerge and tools must be carefully designed and narrowly focused on addressing them.

Thank you for the opportunity to respond to the Consultation. If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 504-1118.

Yours truly,
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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