



PROSPECTORS &  
DEVELOPERS  
ASSOCIATION  
OF CANADA

July 29<sup>th</sup>, 2021

Victoria Steeves  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
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**Re: BCN2021/03 - Notice and Request for Comment Proposed British Columbia Instrument 51-519 Promotional Activity Disclosure Requirements [BCN]**

As the voice of Canada's mineral exploration and development community, representing more than 4,400 corporate and individual members, the Prospectors and Developers Association of Canada (PDAC) takes an active interest in regulatory and policy initiatives that shape the landscape within which our industry operates. The mineral industry represents the largest cohort of public issuers in Canada, accounting for nearly 60%<sup>1</sup> of the companies listed on the TSXV exchange and many are headquartered in British Columbia.

PDAC recognizes the importance of regulating promotional activities in order to maintain market integrity, and supports the efforts of the British Columbia Securities Commission (BCSC) to introduce relevant regulation. However, we have identified several areas of concern regarding the proposal, including where the proposed regulations may cause unintended consequences for mineral industry issuers, which we outline below.

**1. Potential consequences for issuers adhering to National Instrument 43-101**

Background on public disclosure for mineral industry issuers

In addition to compliance with general rules of disclosure (e.g. as per NI 51-102), mineral exploration and mining companies must adhere to National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101) that *"governs disclosure, including oral statements, written documents and websites. The disclosure must be based on information provided by a "qualified person" (as defined in NI 43-101)."*<sup>2</sup>

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<sup>1</sup> MIG Report, TMX Group, June 30 2021: <https://www.tsx.com/resource/en/2688>

<sup>2</sup> Retrieved from BCSC Website: <https://www.bcsc.bc.ca/industry/issuer-regulation/guidance-by-sector/mining>



According to NI 43-101<sup>3</sup>, the term disclosure refers to “any oral statement or written disclosure made by or on behalf of an issuer and intended to be, or reasonably likely to be, made available to the public in a jurisdiction of Canada...” In addition, subsection 2.1 states that:

*2.1 All disclosure of scientific or technical information made by an issuer, including disclosure of a mineral resource or mineral reserve, concerning a mineral project on a property material to the issuer must be*

*(a) based upon information prepared by or under the supervision of a qualified person; or*

*(b) approved by a qualified person.*

### Potential implications

PDAC is concerned about the way BC Instrument 51-519, as currently drafted, may interact with NI 43-101 and if their interaction may cause third-party individuals or organizations engaged by a mineral industry issuer to be considered as an agent of the company in accordance with NI 43-101. In such a circumstance, any statement made by a third party in reference to an issuer could be considered as disclosure and would be subject to NI 43-101 disclosure rules, including approval of a qualified person for any technical information provided, as stated in subsection 2.1 above.

Such a requirement would create an additional burden for mineral industry issuers that does not exist for other sectors, and could significantly constrain the ability of companies to promote their securities compared to other market participants that are not required to adhere to NI 43-101. This situation would create an inherent disadvantage for mineral issuers regulated listed in BC given the capital intensive nature of mineral exploration and mining and the importance of having an array of options to deploy to access capital markets and retail investors.

Therefore, two questions PDAC would like BCSC to consider:

- I. If BC Instrument 51-519 is implemented as currently drafted, would groups or individuals receiving compensation by an issuer for promotional activities be determined either as agents of the issuer, or making disclosure on behalf of the issuer?
- II. If yes, following the definition of “disclosure” under NI 43-101, would such promotional groups or individuals need to comply with all relevant rules of this instrument, when promoting issuers that adhere to the instrument?

## **2. Equal application of the proposed Instrument for both negative and positive promotional activities**

As noted above, PDAC supports BCSC’s efforts to improve regulation around disclosure of promotional activities to maintain integrity in Canada’s capital markets. In order to maintain a leveled playing field,

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<sup>3</sup> BCSC – Unofficial consolidation of all amendments to National Instrument 43-101 Standards of Disclosure for Mineral Projects, effective as of May 9, 2016: [https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities\\_Law/Policies/Policy4/43101-NI-May-9-2016.pdf](https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy4/43101-NI-May-9-2016.pdf)



the proposed disclosure regime should address not only activities that are meant to positively promote an issuer, but also activities meant to promote negative views of a particular issuer.

Negative promotion is a tactic primarily used by activist short sellers and recent concerns regarding such activity in Canadian markets has caused the Canadian Securities Administrators (CSA) to initiate public consultation<sup>4</sup> on the matter in December 2020. PDAC's submission<sup>5</sup> to CSA emphasized the importance of a robust regulatory framework and disclosure standards. Activist short sellers, even if they are not paid third-party promoters, have inherent conflicts of interests, of which investor may be unaware.

Canadian markets currently have limited rules that govern the way short selling campaigns are conducted, what information is disclosed and what assurances are provided to market participants. This dynamic provides activist short sellers with a wider degree of freedom to publish information, or interpretations that may be inaccurate or misleading, with little possibility of any regulatory repercussions.

Social media and other unofficial platforms for promotional activities can be used for negative promotion in the same way that they are used for positive promotion. Therefore, while the mechanisms could differ, there should equal application of disclosure practices and regulations for promotional activities of any nature.

In this context, we recommend that BCSC enhance the scope of the proposed Instrument to ensure it can also address negative promotional activities.

PDAC greatly values the opportunity to provide input on this consultation and has given careful consideration to the questions and recommendations above. We welcome engagement with BCSC as this consultation progresses, and please contact Jeff Killeen, PDAC's Director, Policy & Programs, at [jkilleen@pdac.ca](mailto:jkilleen@pdac.ca) if there are any questions or clarifications sought from the content provided in this letter.

Sincerely,

Lisa McDonald  
Executive Director  
Prospectors & Developers Association of Canada

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<sup>4</sup> CSA Consultation paper 25-403 Activist Short Selling, Dec. 2020: [https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-403/csa-consultation-paper-25-403-activist-short-selling#N\\_6\\_1\\_1\\_10](https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-403/csa-consultation-paper-25-403-activist-short-selling#N_6_1_1_10)

<sup>5</sup> PDAC Response letter to CSA Consultation Paper 25-403, Activist Short Selling, March 2021: [https://www.pdac.ca/docs/default-source/priorities/access-to-capital/pdac-submission---csa-consultation-paper-25-403.pdf?sfvrsn=f2bc659f\\_0](https://www.pdac.ca/docs/default-source/priorities/access-to-capital/pdac-submission---csa-consultation-paper-25-403.pdf?sfvrsn=f2bc659f_0)