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BC Securities Commission Expands its Tool Chest - Creates New Method for Issuing Administrative Penalties Imposed by Notice for Minor Contraventions

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On April 27, 2023, the BC Securities Commission (the BCSC) announced details concerning its new powers. The new powers permit the BCSC to impose administrative penalties for certain infractions of investment market rules without holding a panel hearing. This new enforcement tool is grounded in the Administrative Penalty Imposed by Notice (APIN) provisions at sections 162.01 to 162.06 of the *BC Securities Act* that came into effect in March 2020.

These new powers are significant in that the BCSC is the first securities regulator in Canada to impose penalties for less serious violations of investment market rules without the requirement to hold a hearing. The penalties APIN can impose are steep, including a maximum penalty of $100,000 per violation for individuals, and $500,000 per violation for entities such as companies.

Issuing a Notice

If the BCSC considers that a party violated a regulation or decision, the Executive Director of the BCSC will deliver written notice to that party setting out:

- each contravention;
- the amount of the administrative penalty assessed for each contravention; and,
- the date by which the person must either pay the penalty or dispute it.

The Executive Director is not required to provide a party the opportunity to be heard before issuing the notice.

The amount of the APIN penalty will be based on the specific facts and circumstances of each contravention. The Executive Director will consider all relevant factors, including the party's past conduct, the seriousness of the conduct, mitigating factors, and the need to deter those who participate in the capital markets from engaging in similar inappropriate conduct.

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Disputing a Notice

A party in receipt of an APIN notice must pay the penalty by the stated deadline set forth on the face of the notice.

A party may dispute a notice to pay an administrative penalty within 30 days of receipt by giving written notice to the Executive Director requesting an opportunity to be heard.

Pursuant to section 165 of the *Securities Act*, a party maintains the right to seek a hearing and review by the BCSC of the Executive Director's decision to issue a notice.

After a hearing, the Executive Director must issue an order:

- confirming whether the party committed the contraventions as set out in the notice; and,
- if the contraventions are confirmed, reducing, revoking or confirming the penalty set out in the notice.

In the event a notice or penalty goes undisputed after a hearing, it will be made public and published on the BCSC website.

BCSC Director of Enforcement Doug Muir stated that he is hopeful the BCSC's new enforcement tool will allow the BCSC to apply a "lighter touch" for less serious violations and reduce the need for lengthy investigations and hearings.

APIN is a new weapon in the BCSC's arsenal to maintain authoritative oversight over parties subject to the *Securities Act*, and provides the BCSC with a fast-moving enforcement mechanism against individuals and companies. The constitutionality of the APIN provisions has not been tested. At the very least, defence counsel will have to carefully calibrate strategies when, for example, an overzealous BCSC investigator threatens an APIN against a client for allegations of failing to cooperate fully with an investigation.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.