

The British Columbia Securities Commission Will Impose Monetary Penalties without a Hearing

On April 26, with BC Notice 2023/03, the British Columbia Securities Commission (BCSC) launched its Administrative Penalties Imposed by Notice (APIN) program. This program, relying on legislative changes introduced in 2020, will permit the executive director to impose monetary penalties for less serious contraventions of securities regulations and decisions without a hearing. It is the first program of its kind in Canada.

The APIN program will cover contraventions of securities laws that the BCSC considers not sufficiently serious to merit a full investigation and hearing.

These orders and penalties, however, will have consequences, and there is a process in place to challenge them.

What Is the APIN Program?

An Administrative Penalty Imposed by Notice is like a traffic ticket of securities enforcement.

Under the current version of the program, the executive director may issue a written notice requiring an individual or company to pay a financial sanction if the executive director considers that the individual or company has contravened a provision of the regulations or a previous decision of the BCSC or executive director. In the future, the British Columbia government may prescribe eligible provisions of the British Columbia Securities Act, but none are currently in place.

We expect the executive director to issue APINs for less serious contraventions of the regulations like investment suitability contraventions or issuers not filing their required disclosure documents.

Maximum penalties are \$100,000 per contravention for an individual and \$500,000 per contravention for a company. We expect that, in most circumstances, penalties will be significantly lower than the maximum amounts. Multiple contraventions, however, could mean that these numbers add up quickly.

The APIN Review Process

A person subject to an APIN must either pay the penalty or request an opportunity to be heard within 30 days of receiving the notice. We expect that the opportunity to be heard will proceed in writing.

If the executive director confirms the contravention and penalty after the opportunity to be heard, the person who is subject to the APIN can apply to a panel of the BCSC for a review of the executive director's decision. Similarly, any decision of a panel can then proceed to the British Columbia Court of Appeal, with leave.

Takeaways

Market participants should be aware that the BCSC will be proceeding with enforcement action in relation to some contraventions that may not have merited enforcement action in the past. Although the APIN program cannot result in market conduct orders, the financial sanctions can be significant.

Market participants should also be aware that there is a process for challenging an Administrative Penalty Imposed by Notice, but they must act within 30 days of receiving the notice.



Jeremy Gellis

Member

jgellis@cozen.com
Phone: (236) 317-6215
Fax: (236) 317-6702

Related Practice Areas

- White Collar Defense & Investigations

If you have any questions about any of the APIN program or need assistance navigating the process, please do not hesitate to contact any member of our team.