

BC Notice 2023/03

Administrative Penalties Imposed by Notice Section 162.01 of the *Securities Act*, RSBC 1996, c. 418

In March 2020, the BC government amended the *Securities Act*, and gave the Executive Director new authority to impose monetary penalties to enforce contraventions of certain securities laws. This notice highlights aspects of this new enforcement tool, and how the Executive Director will use it. For further details, see sections 162.01 through 162.06 of the Act.

Eligible contraventions

Under section 162.01 of the Act, the Executive Director may issue a written notice requiring a person to pay an administrative penalty if they consider the person contravened:

- a prescribed provision of the Act;
- a provision of the regulations; or
- a decision of the commission or the executive director.

To date, there are no prescribed provisions of the Act under this section. If the government prescribes certain provisions of the Act in the future, the Commission will issue a further notice.

For now, the Executive Director can only consider issuing a notice of administrative penalty for contraventions of regulations (including instruments and rules), or decisions of the commission or the executive director.

Amount of the penalty

The amount of any administrative penalty will depend on the specific facts and circumstances of each particular contravention. In determining the amount of a penalty under section 162.01 of the Act, the Executive Director must consider the following factors:

- the person's past conduct;
- the seriousness of the conduct;
- factors that mitigate the person's conduct;
- the need to demonstrate the consequences of inappropriate conduct to those who access the capital markets;
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct;
- orders made by the commission in similar circumstances in the past; and
- any other matters relevant to the public interest.

An administrative penalty under section 162.01 must not exceed \$100,000 per contravention for individuals or \$500,000 per contravention for a person that is not an individual.

Issuing a notice of administrative penalty

If staff detects an eligible contravention in the course of their work, they may submit a report to the Executive Director to establish the alleged contravention, and recommend the Executive Director issue a notice of administrative penalty.

If the Executive Director considers a person has contravened an eligible provision or decision, and it is in the public interest to impose an administrative penalty, the Executive Director will deliver written notice to the person specifying:

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

The Executive Director is not required to provide a person with an opportunity to be heard prior to issuing a notice under section 162.01.

Disputing a notice of administrative penalty

Within 30 days of receiving a notice to pay an administrative penalty under 162.01, the person may request an opportunity to be heard to dispute the Executive Director's findings of a contravention or the amount of a penalty.

After hearing the dispute, the Executive Director will issue an order. In the order, the Executive Director will:

- confirm whether the person committed each contravention; and
- if the contravention is confirmed, reduce, revoke, or confirm the administrative penalty set out in the notice.

If the Executive Director issues an order confirming a contravention and administrative penalty, the person may request that the Commission conduct a hearing and review of the Executive Director's decision under section 165 of the Act.

The Executive Director will publish any notice or order imposing a monetary penalty on the Commission website.

Using administrative penalties imposed by notice

Imposing an administrative penalty by notice is just one enforcement tool the Executive Director may use to encourage compliance with securities laws in BC. This tool sits on a spectrum of administrative enforcement that includes issuing a warning letter at one end, and Commission orders for market-related bans, disgorgement, and monetary penalties after a hearing, at the other end.

This tool will allow the Executive Director to efficiently and effectively respond to contraventions where it is not in the public interest to seek larger sanctions and bans, but something more than a warning is required to encourage future compliance.

Where misconduct requires more than a monetary penalty to protect the market and investors from ongoing and future harm – bans or restrictions on market participation, disgorgement of illicit proceeds, or required actions to effect compliance – the Executive Director will continue to seek orders from the Commission under section 161 after a hearing.

April 26, 2023

Peter J. Brady
Executive Director