

Can you settle a securities enforcement proceeding in Alberta without admitting misconduct

June 22, 2018

<>The Alberta Securities Commission ("ASC") announced that it had revised the Credit for Exemplary Cooperation in Enforcement Matters Policy (Policy 15-601) to allow respondents to enter into no-contest settlement agreements in certain and limited circumstances.

A no-contest settlement agreement permits the settlement of enforcement proceedings without requiring an admission by the respondent of misconduct. Until the introduction of no-contest settlement agreements, the ASC required an admission of guilt or culpability in order to settle an enforcement proceeding.

The ASC announced that no-contest settlement agreements may be considered when respondents have self-reported, have fully cooperated with the ASC and have taken **financial responsibility for their actions**. **The ASC stated that a "no-contest settlement agreement will not be considered if the ASC has reason to believe that a respondent has engaged in abusive or fraudulent misconduct, or if it is in the public interest to proceed with a quasicriminal or criminal investigation"** and "it will always be in the sole discretion of the ASC whether a no-contest settlement agreement will be available in the circumstances".

The introduction of no-contest settlement agreements brings Alberta in line with other jurisdictions, including the Ontario Securities Commission, had previously adopted no-contest settlements, and the U.S. Securities and Exchange Commission ("SEC"), which used no-contest settlement agreements to garner an impressive enforcement record.

The ASC released a notice (found here), in which the ASC stated in that the inclusion no-contest settlement agreements is part of an effort to expand the ASC enforcement toolbox. **However, there has been some criticism of no-contest settlement agreements** as they allow respondents to avoid the consequences that would follow an admission of guilt, such as civil proceedings by investors. It will be interesting to see in what circumstances the ASC allows no-contest settlement agreements.

by Andrew Pozzobon in Securities: Litigation Regulatory and Compliance

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