

## ALBERTA SECURITIES COMMISSION POLICY 15-602

### WHISTLEBLOWER PROGRAM

#### Interpretation

1. In this Policy

“Act” means the *Securities Act* (Alberta);

“Office of the Whistleblower” means staff of the Commission who are designated from time to time to oversee and execute functions relating to the Program;

“Program” means the whistleblower program set out in this Policy;

“Reprisal Reporting Form” means the form prescribed by the Office of the Whistleblower from time to time for reporting a potential reprisal, available on the Commission website;

“Tip” means all information or things provided to the Commission under the Program regarding a potential breach of Alberta securities laws that has occurred, is ongoing, or is reasonably believed to be about to occur;

“Whistleblower Form” means a form prescribed by the Office of the Whistleblower from time to time for initiating a Tip, available on the Commission website.

2. Terms that are defined in the Act have the same meaning in this Policy. The terms “company”, “employee”, “person”, “relative”, “reprisal”, “whistleblower”, and “wrongdoing”, which are defined in the Act, are reproduced in Schedule A to this Policy for convenience.

#### Purpose

3. The Commission is committed to fostering a fair and efficient capital market in Alberta and to protecting investors. It can best fulfil this mandate when employees in Alberta feel safe in reporting, and have an easily accessible means to report, potential securities wrongdoing.

4. This Policy establishes the Program to protect employees in reporting, and encourage them to report, potential securities wrongdoing in Alberta.

5. This Policy

(a) provides guidance on the process of submitting a Tip to the Commission,

- (b) outlines what happens after a Tip is submitted to the Commission, and
- (c) provides summary information about the protections available to whistleblowers, which are set out in detail in Parts 2.1 and 17.02 of the Act.

### **What to include in a Tip**

6. A whistleblower should provide relevant information to allow the Commission to investigate a potential breach of Alberta securities laws. A Tip should include each of the following:
  - (a) a description of the potential breach;
  - (b) date(s) the potential breach occurred;
  - (c) the name of person(s) and/or company/companies involved in the potential breach;
  - (d) whether the whistleblower previously reported the Tip to anyone else (for example, to an employer), and any resulting actions;
  - (e) any additional information or supporting evidence (where available);
  - (f) the whistleblower's name and contact information (unless a Tip is provided anonymously);
  - (g) confirmation that the information in the Tip is true and accurate to the best of the whistleblower's knowledge and belief.

### **How to submit a Tip**

7. A whistleblower can provide a Tip directly to the Office of the Whistleblower by submitting a Whistleblower Form in accordance with section 9, including a detailed description of the potential breach. Alternatively, a Tip can be submitted by a lawyer on behalf of a client. The completeness of the Whistleblower Form and the information contained in it will affect any action taken by the Commission as a result of the Tip.
8. A whistleblower can contact the Office of the Whistleblower through a dedicated toll free number (**1-833-295-4387**) to ask questions about the whistleblower process. The line will be staffed during local business hours (Monday to Friday 8 a.m. - 5 p.m. MST/MDT) and voicemail will be available when the Office of the Whistleblower is unavailable or the call is made outside of business hours.

9. A Whistleblower Form can be submitted to the Office of the Whistleblower in one of the following ways:

(a) Download the form from the Commission website ([www.albertasecurities.com/whistleblower/Form A](http://www.albertasecurities.com/whistleblower/Form_A) or, for lawyers submitting on behalf of their clients, [www.albertasecurities.com/whistleblower/Form B](http://www.albertasecurities.com/whistleblower/Form_B)), as a PDF document. Complete and submit the form via email ([owb@asc.ca](mailto:owb@asc.ca));

(b) Print, complete and submit the form via mail to the following address:

OWB Confidential  
Alberta Securities Commission  
Suite 600, 250 – 5<sup>th</sup> Street SW  
Calgary, Alberta, T2P 0R4;

(c) Print, complete and courier or hand deliver the form to the Commission's office at:

OWB Confidential  
Alberta Securities Commission  
Suite 600, 250 – 5<sup>th</sup> Street SW  
Calgary, Alberta, T2P 0R4

### **Anonymous Tips**

10. Anonymous Tips will be accepted by the Office of the Whistleblower. However, Tips submitted anonymously can limit the ability of Commission staff to thoroughly investigate a matter if insufficient information is provided, or if follow up information from the whistleblower is required but the identity of the whistleblower is unknown.

### **Internal reporting**

11. Whistleblowers are strongly encouraged to use processes for internal reporting through employers or otherwise. However, Tips are not required to be submitted elsewhere before being submitted to the Office of the Whistleblower.

### **Acknowledging Tips**

12. If requested by the whistleblower, the Office of the Whistleblower will provide acknowledgement of receipt of a Tip via email, mail or phone (depending on the whistleblower's stated preference), generally within two business days of receiving the Tip.

13. The Office of the Whistleblower may not be able to acknowledge anonymous Tips.

### **Use of Tips**

14. A Tip submitted to the Office of the Whistleblower will be collected and managed in accordance with Alberta securities laws and the procedures of the Office of the Whistleblower.
15. The Office of the Whistleblower will review all Tips, although not all Tips will result in investigations or other action.
16. The Commission may use a Tip for any purpose in carrying out its mandate. However, the Commission has no obligation to use any Tip submitted by a whistleblower.
17. Any documents or items provided to the Office of the Whistleblower as part of a Tip will not be returned.

### **Additional information**

18. Upon review of a Tip, the Office of the Whistleblower may request that a whistleblower provide additional information including, but not limited to, a description and the location of documents and things that may help with an investigation.
19. During the course of an investigation, a whistleblower may be compelled to provide documents or to answer questions under oath, in the same manner as another witness.

### **Providing updates**

20. The Office of the Whistleblower is generally unable to update a whistleblower regarding any action taken as a result of a Tip. However, the Office of the Whistleblower may, following receipt of a Tip, and at its discretion, do any of the following:
  - (a) advise the whistleblower that no further action is to be taken by the Commission;
  - (b) request additional information from the whistleblower;
  - (c) advise the whistleblower of the issuance of a notice of hearing or order, or the execution of a settlement agreement and undertaking.

### **General**

21. The Commission is committed to providing protection to whistleblowers who submit Tips in accordance with the Program.
22. Some protections listed below may not be available to whistleblowers who submit anonymous Tips.

23. Some or all of the protections listed below may not be available where a whistleblower provides false or misleading information to the Commission, there are reasonable grounds to believe the whistleblower has committed an offence under the Act or the Criminal Code related to the information disclosed by the whistleblower, or the whistleblower did not reasonably believe the information provided to the Commission. Providing misleading information to the Commission is expressly prohibited under Section 57.7 of the Act.

### **Confidentiality**

24. Section 57.2 of the Act provides that a whistleblower's identity, and any information that reasonably could be expected to reveal a whistleblower's identity, is confidential, and section 46.1(1) of the Act provides that all such information cannot be compelled from the Commission under the *Freedom of Information and Protection of Privacy Act* (Alberta).
25. Commission staff will not disclose a whistleblower's identity or information that could be reasonably expected to reveal a whistleblower's identity to other regulatory or law enforcement authorities without the consent of the whistleblower and the Executive Director.
26. Commission staff will manage their communications, activities, and reporting in such a way as to promote confidentiality of a whistleblower's identity.

### **Reprisals prohibited**

27. Section 57.4 of the Act prohibits reprisals against an employee in response to actual or anticipated whistleblowing activity by the employee or a relative, or in response to cooperating, testifying or otherwise assisting in Commission investigations or proceedings.
28. The Commission has the power to investigate potential reprisals and take appropriate proceedings against employers or colleagues who commit or direct a reprisal against a whistleblower who submitted a Tip in good faith. Sanctions may include any of those listed in Sections 194, 198 or 199 of the Act.
29. A person may report a potential reprisal by completing the Reprisal Reporting Form ([www.albertasecurities.com/whistleblower/reprisalform](http://www.albertasecurities.com/whistleblower/reprisalform)) and submitting it to the Office of the Whistleblower using a method described in section 9 above.
30. For Commission staff to investigate a potential reprisal, a Reprisal Reporting Form must generally be received within one year of the date the reprisal allegedly occurred.

### **Civil claim for reprisals**

31. Section 211.0961 of the Act creates a statutory right for a whistleblower to claim certain damages for a reprisal. Investigative information from the ASC, including information from the Office of the Whistleblower, will generally not be available to the parties in any such legal action.

### **Anti-whistleblowing provisions unenforceable**

32. Section 57.5 of the Act renders unenforceable any contractual provisions and policies that attempt to prohibit an employee from acting as a whistleblower, seeking or providing advice about acting as a whistleblower, or assisting in investigations or proceedings of the Commission.

### **Obstruction prohibited**

33. Section 57.6 of the Act prohibits obstructing an employee from doing any of the following: acting as a whistleblower; seeking or providing advice about acting as a whistleblower; or assisting in investigations or proceedings of the Commission.

### **Limited immunity**

34. Section 57.8 of the Act provides limited immunity to an employee against liability for acting as a whistleblower or for seeking or providing advice about acting as a whistleblower.

## **PART 5 - CREDIT FOR COOPERATION**

35. Whistleblowers who are themselves involved in securities misconduct may in certain circumstances be entitled to receive credit in enforcement proceedings, for prompt cooperation during an ASC investigation, in accordance with ASC Policy 15-601 *Credit for Exemplary Cooperation in Enforcement Matters*.

### **Contact us**

For more information about the Program, please contact the Office of the Whistleblower at:

Phone: **1-833-295-4387**

Email: [owb@asc.ca](mailto:owb@asc.ca)

Or visit our website at [www.albertasecurities.com](http://www.albertasecurities.com).

## SCHEDULE A

The following terms defined in the *Securities Act* (Alberta) relate specifically to this Alberta Securities Commission Policy 15-602 *Whistleblower Program*, and will assist in the interpretation of the Policy.

### **Definitions**

1 In this Act,

...

(i) “company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

...

(mm) “person” means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative;

...

57.1 In this Part [Part 2.1 Whistleblowing],

...

(b) “employee” means, in respect of a person or company, an individual who is or was at the relevant time

(i) a full-time employee, a part-time employee or a director of that person or company,

(ii) an independent contractor for that person or company, or a full-time employee, part-time employee or director of that independent contractor, or

(iii) a full-time employee, part-time employee or director of an affiliate of that person or company;

(c) “relative” means, in respect of an employee, the parents, spouse, adult interdependent partner, siblings and children of the employee;

...

(e) “reprisal” means, in respect of an employee, any measure or conduct that adversely and materially affects employment or working conditions, including but not limited to dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a position, termination of a contract, change of workplace, reduction in remuneration, change in hours of work, reprimand,

harassment, denial of a benefit and any threat of any measure or conduct that would adversely and materially affect employment or working conditions;

- (f) “whistleblower” means an employee of a person or company who voluntarily discloses to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company, or an employee of the person or company, but does not include an employee
- (i) who only disclosed, or has already disclosed, the information in response to an order or a summons issued under a law of Canada, or
  - (ii) who is required to report or otherwise provide the information to the Commission as a result of a pre-existing legal duty.
- (g) “wrongdoing” means a contravention of Alberta securities laws.

...

211.096 In this Part [Part 17.02 Civil Liability for Reprisals Against Whistleblowers],

...

- (e) “whistleblower” means an employee of a person or company who has, or is believed to have,
- (i) voluntarily disclosed to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company or an employee of the person or company,
  - (ii) sought or provided advice about voluntarily disclosing, or expressed an intention to voluntarily disclose, to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company or an employee of the person or company;
  - (iii) in respect of any information described in subclause (i) or (ii), voluntarily co-operated, testified or otherwise assisted in , or expressed an intention to voluntarily co-operate, testify or otherwise assist in,
    - (A) an investigation by a Commission staff member, or
    - (B) a proceeding under this Act,

but does not include an individual who only disclosed, or has already disclosed, the information in response to an order or a summons issued under a law of Canada or who is required to report or otherwise provide the information to the Commission as a result of a pre-existing legal duty.