ALBERTA SECURITIES COMMISSION

NOTICE OF COMMISSION RULE 15-501
RULES OF PRACTICE AND PROCEDURE FOR COMMISSION PROCEEDINGS

17 December 2008

Introduction
The Alberta Securities Commission (the **Commission**) has approved Commission Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings* (the **Rule**).

The Rule will apply to: (i) requests from staff of the Commission for enforcement sanction orders under sections 198 and 199 of the *Securities Act* (Alberta); (ii) applications brought before the Commission in relation to registration, take-over bids or issuer bids; and (iii) appeals brought before the Commission.

The Rule will come into force on April 1, 2009.

Substance and Purpose
The Rule is designed to foster efficient, cost-effective and timely proceedings before the Commission that provide fairness to each participant and further the public interest.

The Rule sets out procedures and procedural obligations. It combines certain new procedures with a codification of past practices and procedures. The two most significant elements of the Rule are: (i) a pre-hearing conference process through which parties address and resolve preliminary issues at an early stage; and (ii) the imposition of reciprocal disclosure obligations to allow all hearing participants to be fully prepared.

Background
The Commission published a version of the Rule for a 60-day comment period on May 26, 2008 (the **Proposed Rule**).

Summary of Written Comments Received by the Commission
The comment period for the Proposed Rule expired on July 25, 2008. The Commission received and considered written comments from two commenters. We thank the commenters for their comments. The names of the commenters are noted at the beginning of Appendix A to this notice, which contains a summary of their comments and the Commission's responses to those comments.

Summary of Changes to the Proposed Rule
After considering the comments received, we made revisions to the Proposed Rule that are now reflected in the Rule. See Appendix B of this notice for a summary of notable changes.

Questions
Please direct your questions to:

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APPENDIX A

List of Commenters

Commenter	Signatory	Date of Comment Letter
Borden Ladner Gervais LLP	John D. Blair Barrister & Solicitor	July 23, 2008
May Jensen Shawa Solomon LLP	Glenn Solomon Barrister & Solicitor	July 31, 2008

Copies of the comment letters are available for review at www.albertasecurities.com.

Summary of Comments on the Proposed Rule

	Summary of Comment	Commission Response
General Comment		
	A commenter indicated that there should be a provision indicating that words in the singular include the plural, and words in the plural include the singular.	We believe that such a provision is unnecessary because the *Interpretation Act*, which applies to all enactments, so stipulates.
Specific Comments		
	Summary of Comments	**Commission Responses**
Section 1.1 Definitions in these Rules	A commenter indicated that some of the defined terms in Commission Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings* (the "Rule") appear to be redundant as those terms are defined in the same manner in the *Securities Act* (Alberta) (the "Act").	The redundant definitions have been deleted.
	A commenter stated that terms that are defined in the Rule that have "ordinary meanings in common parlance" should be capitalized in the Rule to avoid ambiguity.	We believe that there is no need to capitalize such terms, as this would deviate from accepted legislative drafting practice.
	A commenter indicated that, where a defined term in the Rule is also a defined term in the Act, the word used in the Rule should differ from that used in the Act to avoid confusion.	Because it is necessary to use the terms "hearing" and "Rules" in the Rule, we have added section 1.2, which indicates that the terms defined in section 1 of the Act apply

		unless defined differently in the Rule.
	A commenter indicated that the definition of "business day" as a day on which the Commission is open for business would be more useful if the Commission website were to have a calendar indicating which days it is not open for business and if the Rule were to reference such a calendar.	We agree with the suggestion to post a calendar on the Commission website but do not believe it necessary to refer to such calendar in the Rule.
	A commenter noted that the definition of "party" includes staff of the Commission, and that the Rule treats staff and the Commission as separate when in fact the Commission is one entity at law.	The Act, the Rule and jurisprudence (*Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301) recognize the separation between the Commission members who sit as members of hearing panels and enforcement staff of the Commission and recognize the sufficiency of that separation in ensuring a fair hearing process.
Section 2.1 Prevalence of Act	A commenter expressed concern that it is unclear to what provisions the phrase "those provisions", which appears at the end of section 2.1, refers.	Section 2.1 has been amended as follows to address that concern: "Except for the definitions, if anything in these Rules is inconsistent with the provisions of the Act, the provisions of the Act prevail."
Section 2.2 Purpose and Application of Rules	A commenter expressed concern that the ability of a panel to exercise its powers on its	Panels must conduct hearings in accordance with the principles of natural justice.

	own initiative could lead to an apprehension of bias if not exercised with extreme caution.	Section 2.2 recognizes that.
Section 2.3 Waiver or Variation	A commenter indicated that section 2.3 should indicate that prejudice to the parties will also be considered in the determination to exercise (or not) the authority to waive or vary any other provision of the Rule as the parties have a more direct interest than the public.	We believe that no amendment is required. The Act is to be administered in the public interest, and section 2.2 of the Rule codifies the obligation to adhere to the principles of natural justice.
Section 3.3 Commencement of Appeal Proceeding (section 3.2 in the Proposed Rule)	A commenter stated that the notice of appeal should be separated from the record, the decision and transcripts, as those documents are often controlled by the Commission. In addition, the section as originally drafted would shift the burden of preparing the record, which typically lies with the tribunal who made the decision being appealed.	We agree that section 3.3(a) should refer only to the notice of appeal. Section 3.3 has been redrafted as follows: "(a) If authorized by the Act, a person or company may commence an appeal before the ASC by sending to the Secretary of the Commission, within the time prescribed by the Act, a written notice of appeal, which shall include a statement indicating the order sought, the statutory provisions relied upon, and the grounds for the order. "(b) The Registrar will provide notice to the parties of the date, time and place at which the appeal will be heard, and of any deadlines for the submission of other material."

	A commenter indicated that section 3.3(b) appears to delegate the determination of compliance with commencement requirements to the Registrar, without any provision for challenging the Registrar's position. The commenter indicated that this could create access to justice issues.	We believe that section 3.3(b) does not delegate to the Registrar the responsibility to ensure compliance with commencement requirements; it merely indicates that the Registrar will advise the parties of the hearing particulars after compliance with the section's requirements. However, for clarity, this section has been amended, as noted above, by deleting the words "Upon compliance with the above requirements,".
Section 3.4 Commencement of Proceeding in Relation to Part 5 or Part 14 of the Act (section 3.3 in the Proposed Rule)	A commenter stated that section 3.4(a)(ii) does not make allowance for the submission of affidavits, documents and case law in response.	Section 3.4(a)(ii) is not intended to be a comprehensive description of all the material that may be presented by any party during a proceeding. However, for clarity, section 3.4(b) has been amended to read as follows: "(b) The Registrar will provide notice to the parties of the date, time and place at which the application will be heard, and of any deadlines for the submission of other material."
	A commenter indicated that section 3.4(b) appears to delegate the determination of compliance with commencement requirements to the Registrar, without any	We believe that section 3.4(b) does not delegate to the Registrar the responsibility to ensure compliance with commencement requirements; it merely indicates that the

	provision for challenging the Registrar's position. The commenter indicated that this could create access to justice issues.	Registrar will advise the parties of the hearing particulars after compliance with the section's requirements. However, for clarity, this section has been amended, as noted above, by deleting the words "Upon compliance with the above requirements,".
Section 3.5 Motions (section 3.4 in the Proposed Rule)	A commenter indicated that section 3.5(a)(iv) should provide for the right to cross-examine affiants and should impose deadlines for the submission of response affidavits, documents and case law.	Nothing in section 3.5 suggests that cross-examination upon an affidavit is not permitted. If the parties cannot agree on the issue of cross-examination, they can apply by motion for a ruling or direction on the point. Section 3.5(a)(iv) is not intended to be a comprehensive description of all the material that may be presented by any party during a proceeding. However, for clarity, section 3.5(a) has been amended by replacing the concluding sentence with the following: "The Registrar will provide notice to the parties of the date, time and place at which the motion will be heard, and of any deadlines for the submission of other material."
	A commenter indicated that section 3.5(a) appears to delegate the determination of compliance with commencement	We believe that section 3.5(a) does not delegate to the Registrar the responsibility to ensure compliance with commencement

	requirements to the Registrar, without any provision for challenging the Registrar's position. The commenter indicated that this could create access to justice issues.	requirements; it merely indicates that the Registrar will advise the parties of the hearing particulars after compliance with the section's requirements. However, for clarity, this section has been amended, as noted above, by deleting the words "Upon compliance with the above requirements,".
	A commenter noted that section 3.5(b) would require the use of a notice of motion during a hearing, which would negatively affect the efficiency of the hearing process. In addition, the commenter indicated that often it would be impossible to issue a notice of motion in advance. The commenter used the example of an order, ruling or direction being sought in relation to an objection raised during the oral evidence of a witness.	Section 3.5(b) does not require the issuance and delivery of a notice of motion during a hearing. Rather, this section contemplates that, depending on the nature of the motion, the panel will determine if such a notice is required. Furthermore, this section does not require that a notice of motion be issued and delivered before an issue arises. To use the commenter's example, a routine objection to a question asked during oral evidence would not likely result in the panel requiring a notice of motion. Section 3.5(b) is designed to allow simple requests for an order, ruling or direction during a hearing to be dealt with immediately, while putting all participants on notice that more complex requests may result in the requirement that the moving party provide its position in writing in more detail, after the issue has arisen and been identified, to allow for a proper hearing and determination of the

		issue raised.
Section 4.1 Request by Party for a Summons	A commenter suggested that the parties should be entitled to issue summonses to appear without the necessity of Commission involvement, similar to Alberta Court of Queen's Bench procedures.	Section 4.1 is not burdensome. Any party requesting a summons can do so *ex parte*. Section 29 of the Act empowers the Commission to issue summonses. Section 4.1 of the Rule has been amended as follows to clarify that it is merely a permissive provision, its purpose being to assist respondents in obtaining summonses: "A party to a proceeding may, without notice to the other parties to the proceeding, send a written request to the Registrar for the issuance by a panel of a summons to a person to compel that person to attend a hearing to give evidence and to produce documents that are relevant."
Section 6.3 Withdrawal of Representation or Assistance	A commenter indicated that section 6.3(a) should require a withdrawing counsel to advise all other parties of the last known contact information of his or her former client. A commenter indicated that section 6.3(b) does not require that an agent seek leave to withdraw, which will result in counsel appearing as an agent to avoid the operation	We agree and have added section 6.3(c) to that end. Section 6.3(b) has been amended to require that an agent also seek leave to withdraw.

	of this section. A commenter also made the following remarks concerning section 6.3: The commenter indicated that, given the amount of time between the issuance of a notice of hearing and the setting of a hearing date, this section is problematic because it only allows counsel to withdraw without limitation prior to the setting of a hearing date, even though it is claimed that counsel are often unable to determine at that stage whether or not they can or should take the case. The commenter indicated that requiring counsel to obtain leave of the Commission to withdraw after a hearing date has been set will result in either fewer counsel willing to act as counsel for a respondent or enslaving counsel to a respondent. The commenter also noted that this section appears to give the Commission, characterized as "the opposing party", choice of counsel for a respondent. The commenter noted that the "lawyers' Code of Conduct" may require counsel to withdraw,	Given that counsel, or the agent, has indicated that he or she is representing, or assisting, a party to the proceeding, and that resources have been allocated and other parties and their counsel have proceeded with their affairs based on the scheduling agreed upon, we believe that section 6.3 represents a reasonable balancing of all the parties' interests and the public interest, and will not be onerous.

	while also usually requiring that the basis for the withdrawal not be disclosed to the Commission or opposing parties, other than in vague terms. The commenter indicated that it would be hard to fathom any circumstance in which the vaguely conveyed basis for withdrawal would outweigh the public interest. The commenter noted that, to its knowledge, there is no basis on which the Commission would have jurisdiction to order counsel to appear at a hearing. The commenter indicated that the test for granting leave is too vague and would tend to lead to arbitrary decisions. The commenter noted that this section does not deal with situations where a party seeks to change or discharge counsel. The commenter noted that there is no need for this section, as the same purposes could be achieved by indicating in the Rule that the withdrawal or discharge of counsel will not be a sufficient reason for an adjournment.	

Section 6.4 Failure to Appear (section 6.5 in the Proposed Rule)	A commenter appeared to indicate that the threshold requirement that a panel be satisfied that the party has received notice will likely always be satisfied as the Rule deems service if it is done pursuant to section 5.1 and, therefore, would not act as much of a threshold. A commenter noted that a "slip rule" (as there is in the *Alberta Rules of Court*) should be inserted in this section to deal with situations where a party fails to appear by inadvertence, accident or mistake or for reasonable cause. In addition, the commenter indicated that the ability to dispense with further notice in such circumstances may lead to "serious natural justice issues", as the right to notice cannot be obviated merely by a failure to attend on one occasion.	We believe that section 6.4 as drafted is fair and appropriate. The operation of Part 5 and this section fairly balances the need to provide notice to parties with the need to ensure that hearings are not stalled by a party's failure to attend. We consider such an addition unnecessary given the requirement to adhere to the principles of natural justice codified in section 2.2, and the ability of a party to bring a motion pursuant to section 3.5.
Section 7.1 Pre-Hearing Disclosure by Staff	A commenter opined that the obligation imposed by section 7.1(b) on a respondent to pay the costs of copying the material disclosed to the respondent by staff is an obstacle to the right to make full answer and defence, but that the panel should have residual authority to impose such an obligation with respect to copies of	We do not consider the proposed cost recovery contemplated by section 7.1(b) unfair or an impediment to natural justice. Commission panels are not courts and Commission proceedings are not criminal proceedings, and it is this context that informs disclosure by staff of the Commission.

	"marginally relevant" items. The commenter stated that, if a document is important enough to be disclosed, it is important enough to be provided.	
	A commenter noted that the disclosure of material under section 7.1(c) should be in addition to the requirements of section 7.1(b), and cited the disclosure of transcripts as an example of material that should be disclosed under section 7.1(b) instead of section 7.1(c) (i.e., earlier rather than later).	The bulk of the material that will be disclosed by staff will likely be disclosed under section 7.1(b). The disclosure under section 7.1(c) will relate to the specific evidence that staff anticipates calling or presenting at the hearing, most of which will already have been disclosed. Sections 7.1(b) and (c) are to be read as imposing conjunctive obligations on staff.
	A commenter indicated that the deadline of the disclosure required by section 7.1(c) should be adjusted to 60 days.	We believe that the proposed deadline will give respondents a reasonable opportunity to know the case against them.
	A commenter stated that any disclosure obligations imposed on staff that exceed staff's existing disclosure obligations under law could be eliminated. The commenter also indicated that respondents should be invited to comment on staff's proposed documentary evidence, including raising evidentiary objections and proposing the addition of other documents.	Other than the preset number of days by which the disclosure enumerated in section 7.1(c) must be provided, the disclosure required by this section is in accordance with the standard adopted in numerous decisions of the Commission. Nothing in the Rule prohibits staff from inviting comments from respondents, or prohibits respondents from providing comments to staff, about staff's

		proposed documentary evidence. We consider an amendment to this end unnecessary.
Section 7.2 Pre-Hearing Disclosure by Parties other than Staff	A commenter stated that the deadline of the disclosure required by section 7.2(b) should be adjusted to 30 days. A commenter proposed that section 7.2 be deleted. The commenter indicated that the reciprocal disclosure obligation imposed on respondents in an enforcement proceeding is not reasonable, as there is no legal or administrative basis for imposing such an obligation. A commenter noted that requiring a respondent to advise staff in advance of the identity of witnesses the respondent intends to call and what those witnesses will say is unfair as it amounts to having the respondent assist staff in presenting its case. A commenter stated that the imposition of a reciprocal disclosure obligation is unfair in light of the fact that one of the "consequences" of the failure to comply with the obligations imposed by this section, namely costs, can only be imposed against a	Again, Commission panels are not courts and Commission proceedings are not criminal proceedings, and it is this context that informs disclosure by parties other than staff of the Commission. We believe that section 7.2 promotes, consistent with the principles of natural justice, the efficiency of the hearing process and the sound administration of the Act in the public interest.

	respondent by virtue of section 202 of the Act. A commenter indicated that, in its experience, the disclosure contemplated by section 7.2(b) would likely not have expedited the hearing process, but rather would have assisted staff in conducting its case. The commenter stated that in many cases respondents do not know what evidence they will definitively call until staff has presented its case, oftentimes because it becomes unnecessary to call a witness or introduce documents after staff's witnesses have been cross-examined.	
Section 7.3 Expert Witness	A commenter indicated that the deadline for the delivery of information related to an expert witness should be increased from 90 days to 120 days, which would increase the difference between deadlines from an insufficient 45 days to 75 days. The commenter noted difficulties in retaining, instructing and receiving a rebuttal report in only 45 days. The commenter noted that in most instances staff will be the party seeking to call expert evidence, so imposing a 120-day deadline should not be unreasonable or prejudicial as staff will have had ample time	We agree with the commenter's point. The deadline by which the party must provide the material outlined in section 7.3(a) has been increased to 120 days.

	to arrange for an expert report.	
Section 7.5 Orders Regarding Particulars and Disclosure	A commenter noted that section 7.5 does not exclude privileged information, which may broaden the scope of section 7.2, thereby having a negative impact on the rules of natural justice.	Although the rules of evidence do not apply, section 2.2 codifies the obligation to adhere to the principles of natural justice.
Section 8.1 Pre-Hearing Conference Considerations	A commenter stated that section 8.1 should provide more specificity concerning pre-hearing conferences. A commenter indicated that the panel conducting the pre-hearing conference should be different from the panel conducting the hearing, as "admissions and hearing strategy" are to be discussed at the pre-hearing conference.	The concept of pre-hearing conferences is intended to provide, where useful and appropriate, a mechanism for efficient case management in a manner fair to the parties and consistent with the public interest. In many instances, this would involve a panel distinct from that charged with the principal hearing. However, with a view to providing necessary flexibility, Part 8 does not mandate particular timing or panel composition.
Section 8.2 Notice of Pre-Hearing Conference	A commenter noted that the scheduling of a pre-hearing conference should be done in consultation with counsel for the parties.	This is our intention.
Section 9.1 Adjournment Requests	A commenter noted that the scheduling of a hearing should be done in consultation with counsel for the parties.	This is our intention.
Section 10.1 Witnesses	A commenter stated that section 10.1 should	We believe that a redrafted section 10.1, as

	indicate that the party calling a witness will be entitled to question that witness and that the other parties will be entitled to cross-examine that witness. A commenter indicated that a panel should exercise some restraint in employing its ability to question a witness so that the adversarial process is not compromised.	follows, read in conjunction with section 2.2, addresses these comments: "(a) Each party to a proceeding may, with respect to all matters relevant to the issues in the proceeding: (i) call and examine witnesses; and (ii) cross-examine witnesses called by other parties. "(b) The panel may ask questions of witnesses. "(c) Each witness called to give evidence during a proceeding, including any party to that proceeding, shall be sworn or affirmed before that witness is permitted to testify before the panel."
Section 10.2 Location and Format of Hearing	A commenter noted that the ability to determine the manner in which a hearing will be held should be "limited by fair process and natural justice".	Section 2.2 addresses this comment.
Section 10.3 Use of Videoconferencing or Other Technology in Hearing	A commenter indicated that, while section 10.3(b) states that the cost of providing equipment requested by a party is to be borne by the requesting party, that cost	We believe that this is the effect of section 10.3(b).

	should be limited to the actual cost incurred by the Commission.	

APPENDIX B

Summary of Notable Changes Now Reflected in the Rule

Part 1

Section 1.1
The definition of "proceeding" has been amended to include an application that is brought before the ASC relating to "Part 5 – Registration" of the Act. Where necessary, reference to an application in relation to Part 5 of the Act has been added to other provisions of the Rule.

Section 1.2
We have added this section to make clear that the terms defined in section 1 of the Act apply unless defined differently in the Rule.

Part 3

Section 3.2 (section 3.1 in the Proposed Rule)
We have made express the requirement that staff must send a notice of hearing to every respondent in a proceeding where a hearing is required (see section 3.2(b)).

Section 3.3 (section 3.2 in the Proposed Rule)
This section no longer refers to the commencement of a review, as only the Commission would commence a review. All other references to "review" have also been deleted from the Rule.

In addition, this section has been amended such that the party commencing an appeal need only provide a written notice of appeal which indicates the order sought, the statutory provisions relied upon, and the grounds for the order.

Part 5

Section 5.3 (section 5.2 in the Proposed Rule)
Because an application brought before the ASC in relation to Part 5 of the Act is now a proceeding governed by the Rule, we have added the direction that any notice or document to be sent to staff of the Commission in respect of such an application shall be sent to the Commission's Director, Market Regulation.

Section 5.10 (section 5.9 in the Proposed Rule)
This section has been amended to indicate that where a notice or document cannot be successfully sent to a person or company by any means set out in the Rule or the Act, a party may request by way of an *ex parte* motion an order regarding

alternate means for sending a notice or document to that person or company. The references to requesting an order accepting alternate means already employed or an order that a notice or document need not be sent have been deleted.

Part 6

Section 6.3
Agents have been added to this section, which deals with the manner in which counsel or an agent withdraws as the representative or assistant of a party.

In addition, we have added the requirement that a withdrawing counsel or agent notify the Registrar and every other party to the proceeding of the latest contact information known for the party which that counsel or agent was representing or assisting.

Part 7

Section 7.1
This section has been amended to indicate that it does not apply to certain proceedings unless otherwise ordered by a panel, which mirrors wording in section 7.2.

Section 7.3
A party to a proceeding who intends to call an expert witness at the hearing is now required to provide the proposed expert's name, qualifications and written report (or the substance of the opinion and underlying basis) at least 120 days prior to the hearing. The provision of materials by a party intending to call an expert in reply will be required at least 45 days prior to the hearing, which is unchanged from the Proposed Rule.

Part 8

Section 8.2
Under section 8.2(d), the statement in a notice of a pre-hearing conference will now indicate that any orders, rulings, directions or agreements will be binding unless otherwise ordered or directed by a panel.

Part 10

Section 10.1
This section has been redrafted to indicate that the party calling a witness is entitled to examine that witness, other parties are entitled to cross-examine that witness, and the panel is entitled to ask questions of that witness.

Part 11

Section 11.2
This section has been amended to indicate that any document filed or referred to during, or prepared as a result of, a pre-hearing conference is not public unless otherwise ordered by a panel.

In addition, this section now includes among pre-hearing conference attendees such other persons and companies given notice of the pre-hearing conference under section 8.2.