

23 January 2014

1. Introduction

The Alberta Securities Commission (**Commission** or **ASC**) is pleased to provide notice that Rule 15-503 *Production of Records* (**Rule 15-503** or the **Rule**) has received final Commission approval and is scheduled to take effect on March 1, 2014.

The Rule is attached to this Notice as Appendix A. To provide guidance in the interpretation and application of the Rule, we also are publishing Companion Policy 15-503CP *Production of Records* (**15-503CP** or the **Companion Policy**), a copy of which is attached to this Notice as Appendix B.

Rule 15-503 will implement specific requirements for how documents and other records must be produced to Commission staff in the course of investigative activities. The objectives of the Rule include ensuring that electronic records are produced in electronic form (rather than being printed and provided in paper format), providing consistency and clarity for both ASC staff and those who are required to produce records, and ensuring that the process of tracking potential evidence begins with the initial record identification and organization by those who produce records.

2. Public Comments and Resulting Improvements

This final version of the Rule incorporates a number of changes to reflect helpful feedback received in early 2013, after a proposed version of the Rule was published and comments were solicited. The changes are not so significant that a second comment period was warranted; indeed almost all of the changes allow for greater flexibility where the full rigor of the Rule's requirements might otherwise be onerous.

ASC staff have attached a comment summary to this Notice (as Appendix C). This summary provides details about which organizations provided formal comments, the essence of those comments, and the manner in which we have revised the Rule (or the reasons why we have not made revisions, if that is the case).

3. Background

Rule 15-503 has been developed in response to explosive growth in the use and retention of "electronic" forms of information, coupled with the increasing challenges faced by securities

commission investigators around obtaining, identifying and tracking records received in the course of an investigation.

Organizations such as the *Sedona Conference* have, since the late 1990s, dedicated enormous effort to identifying issues and establishing principles relating to electronic “discovery” and production of records. In the civil litigation context, the *Alberta Rules of Court* (and the corresponding rules in other jurisdictions) set out rules, practice notes, and recommendations on how parties and their lawyers should deal with procuring and producing electronic and physical records, including how records should be listed and identified. In the securities regulatory context, both the Securities and Exchange Commission (**SEC**) and the Commodity Futures Trading Commission (**CFTC**) in the United States issue multi-page “Data Delivery Standards” documents along with their record production orders or subpoenas, directing recipients in great detail as to how they are to provide the records in question. What these initiatives recognize is, first, that the information in electronic records is not accurately captured by simply printing those records, and second, that the proper management of records produced in investigative and litigation contexts requires standards for identification, description, and processing of such records.

The ASC also recognizes that, with the rapid growth in the quantity of records and data that we receive during investigations, we see a corresponding growth in complexity in addressing issues such as protecting confidentiality, legal privileges, and pre-hearing disclosure. Updated electronic systems and tools can only help staff to deal with these issues effectively if we receive records in an organized and documented manner, and in as “original” a format as possible.

Rule 15-503 is intended to address these issues in a manner that is results-oriented, flexible, and pragmatic.

4. Highlights of the Rule

Rule 15-503 is relatively short and intentionally aimed at prescribing desired results, while leaving some flexibility in terms of how those results may be achieved. Its application is limited to circumstances where a formal demand for records is made under section 40 or subsection 42(1) of the *Alberta Securities Act* (the **Act**).

It has five parts: interpretation, general provisions (applicable to the production of all records), provisions applicable to only “physical” records, provisions applicable to only “electronic” records, and exemptions.

Various terms are defined so as to ensure that the Rule is broad and flexible enough to apply to the wide range of records and circumstances that Enforcement staff encounter. For example, “record” is defined broadly, to encompass the “information, documents or records” language used in section 40, as well as the “documents, records, securities, exchange contracts, contracts or things” language found in subsection 42(1). Similarly, the Rule uses the term “respondent” (which is not defined in the Act), instead of “party” or “witness” as used in sections 40 and 42, respectively, to address both categories of potential recipients of an ASC demand to provide records.

Other definitions address the modern reality of electronic information. Terms like “metadata”, “load file”, and “remote electronic custodian” are included so that provisions in the Rule can expressly deal with how electronic information is to be produced. For specialized electronic file format terms, we have adopted the meanings contained in the *Local Digital Format Registry File Format Guidelines for Preservation and Long-term Access*, published electronically by Library and Archives Canada (available at <http://www.collectionscanada.gc.ca/obj/012018/f2/012018-2200-e.pdf>).

We have addressed some of the questions that were raised during the comment period with clarifying provisions. For example, we have included a provision expressly stating that solicitor-client privilege is not affected by this Rule. We also have included other wording in the Rule and Companion Policy to make clear that this Rule does not impose on respondents any obligations to upgrade electronic systems, acquire specific software, or adopt new processes in their day-to-day operations. Obligations under this Rule arise at the time a Production Order is received, and are based on a recipient’s then-existing systems and processes.

The Rule includes a basic “legal hold” requirement. Section 93.4 of the Act already sets out a generic prohibition on “destroying” or “withholding” any information, property or thing reasonably required for a hearing, review or investigation, but ASC staff believe that a more specific obligation is appropriate in circumstances where a formal demand for information has been made. The hold period is set at two years, unless a longer time is specified in a production order or other written notice.

Currently, there is little consistency in how respondents provide Commission staff with records. To address this, the Rule includes a requirement for respondents to deliver records along with a cover letter that clearly lists what has been provided, cross-referenced to the source records and the “custodians” from whom the records were obtained. A declaration by or on behalf of the respondent is also required in the cover letter, with the objective of ensuring that the record-production obligation is taken seriously and fulfilled reasonably and responsibly.

The Rule specifies that in general “true copies” of records are to be produced instead of originals, but that the original records must be retained for a period of at least two years (or longer if specified), and must be made available to ASC staff should the need arise.

Because the ASC’s internal handling of “physical” records is different than its handling of “electronic” records, Rule 15-503 imposes different obligations with respect to these different types of records. Records that exist in paper form may be photocopied and produced in paper form, or may be scanned to electronic images and produced as a database of images, identifying reference files, and corresponding “load” files that provide the context and organization present in the original paper records. Basic record or document numbering is expected for records produced in paper format, while more detailed page numbering is expected for records scanned to images.

Wherever possible, respondents are strongly encouraged to produce records electronically, as they are more efficiently and effectively reviewed or searched for relevant information; and they are easier to track, store, disclose (as appropriate), and use for hearing purposes

Recognizing that there are varying levels of sophistication amongst recipients of production orders, the Rule permits staff to give written authorization to deviate from the prescribed methods of producing paper records. ASC staff may, for instance, authorize an investor who is a prospective witness in a proceeding to simply initial the copy of the Offering Memorandum or sales brochure he or she provides to staff, without any numbering requirement. Staff's aim is of course not to make production of records onerous, but rather to maximize clarity, accuracy and the usefulness of the records, within reasonable parameters.

With respect to electronic records, the key requirements of the Rule are aimed at ensuring Commission staff receive "original" or "native format" records, and that staff have access to all of the electronic information associated with the electronic records in question.

5. Companion Policy 15-503CP

In support of the Rule, and with a view to providing market participants and other respondents with guidance regarding its application, ASC staff also are publishing the Companion Policy. The Companion Policy provides explanatory notes on the purposes behind various provisions in the Rule, includes examples of preferred or acceptable formats for certain steps, and gives guidance for the benefit of those in the position of having to respond to a production order.

6. Approval Process

Prior to coming into force, a proposed Alberta Securities Commission Rule must be published for a period of at least 30 days, receive final approval from the Commission, and be published in the Alberta Gazette.

The Proposed Rule was published and open for comment for over 60 days between January and March, 2013. It has now been approved by the Commission in its final form, which incorporates changes made to reflect many of the comments received during the comment period. The changes following publication in early 2013 are either for clarification purposes, or to qualify some of the obligations under the Rule with a "reasonableness" standard. As these do not constitute material changes to the Proposed Rule, re-publication for further comment is not required. After publication in the Alberta Gazette, the rule and Companion Policy will come into effect on March 1, 2014.

7. Questions and Contacts

Again, we thank all those who took the time to provide comments in response to the draft of the Rule that we published in January, 2013. For those who have further questions, please feel free to contact either of the following ASC staff members:

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Appendix A

**ALBERTA SECURITIES COMMISSION RULE 15-503
*PRODUCTION OF RECORDS***

PART 1 – INTERPRETATION

Definitions

1. In this Rule

“Act” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

“custodian” means an individual who has possession or control of a record during the time(s) referred to in a production order, or, if no time is specified in a production order, means an individual who has possession or control of a record either at the time a record was created or the time a production order is received, and includes, in the case of an electronic record, an individual responsible for creating the record or who accessed the record in its electronic format;

“electronic records” means data stored on any type of electronic media, including but not limited to computers, hard disk drives, removable disk drives, compact discs, DVD discs, Universal Serial Bus (USB) drives, mobile or smart phones, electronic tablets, Global Positioning System (GPS) devices, digital recorders, digital answering systems, and tape drives;

“load file” means an electronic file used to retrieve or import specific electronic data sets from an electronic database, or to define the relationships between data sets within the electronic database, based on unique criteria in the load file;

“metadata” means all the electronic data relating to electronic records, including but not limited to the descriptive, structural, administrative, and organizational data used to describe, format and manage a document electronically;

“native format” means the electronic file format in which an electronic record was created;

“original record” means a record in the form it exists at the time a production order is received by a respondent;

“production order” means an order made under section 40 of the Act or a summons or notice issued under subsection 42(1) of the Act;

“record” means any information, document, record, security, exchange contract, or thing, whether in physical or electronic form, required to be produced to the Commission pursuant to a production order;

“record number” means a unique number, or combination of letters and numbers, identifying each record produced by a respondent in response to a production order;

“remote electronic custodian” means an entity or person in possession or control of electronic records of a respondent, if the electronic records are at a location other than the respondent’s physical location but over which a respondent has access, control, or direction;

“respondent” means a person or company required to produce records pursuant to a production order;

“staff” means the staff of the Commission, including the Executive Director of the Commission, and any counsel representing staff, but does not include the members of the Commission;

“true copy” means an identical copy of a record, whether in electronic or physical format, where

- (a) colours are reproduced, where such colours affect the meaning of the record,
- (b) all text, notations, highlighting, marginal notes, date stamps, headers, footers, and similar markings are reproduced clearly and legibly, and
- (c) in the case of a physical record that includes removable notes, highlighting, flags, or other additional markings that obscure or conceal text or other information, copies of the record both with such markings in their original position and without such markings, so as to reveal any information obscured or concealed by such markings.

2. (1) In this Rule, references to specific electronic file formats have the meaning set out in the Library and Archives Canada *Local Digital Format Registry File Format Guidelines for Preservation and Long-term Access*.
- (2) Unless otherwise defined in this Rule, terms defined in section 1 of the Act apply.

PART 2 – GENERAL PROVISIONS

Solicitor-Client Privilege

3. Nothing in this Rule shall be interpreted so as to affect the privilege that exists between a solicitor and the solicitor's client.

Preservation of Records

4. (1) Upon receipt of a production order, a respondent must not destroy, delete, dispose of, or otherwise damage or alter records described in the production order, either by deliberate action or by failing to take reasonable steps to preserve records that are subject to scheduled or periodic deletion, overwriting, or replacement.
- (2) A respondent must take reasonable steps to promptly and clearly notify affected employees, agents or contractors not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order.
- (3) A respondent must take reasonable steps to promptly and clearly notify any remote electronic custodian not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order.
- (4) When notification is provided in accordance with subsections (2) or (3), any employee, agent, contractor or remote electronic custodian receiving such notification is subject to the obligations in subsection (1) with respect to the records described in the notification that are in its possession or control.
- (5) Unless otherwise specified in a production order or further notice in writing by staff, where a respondent routinely employs electronic methods of storing true copies of records in lieu of storing original paper or other physical records, such electronic storage constitutes adequate preservation for the purposes of this section.
- (6) Unless otherwise specified in a production order or further notice in writing by staff, the obligations in this section remain in effect for a period of two years from the date the production order is received by the respondent.

Multiple Copies

5. (1) If a respondent has multiple copies of a record and the copies differ from one another by having different notations, highlighting, edits, signatures, other intentional markings, or other material additions or alterations, each copy must be treated as a distinct record and, unless otherwise specified in a production order or otherwise in writing by staff, a respondent must make reasonable efforts to provide each copy.
- (2) Notwithstanding subsection (1), where the only difference between multiple copies of a record is that one copy is in physical form and one or more other copies are electronic records, a respondent is only required to provide the electronic records.
- (3) If a respondent has multiple copies of a record and the copies are identical to one another, the respondent is only required to provide one copy of the record but must identify, to the extent reasonably practicable, the custodians of all copies of the record.

Cover letter

6. (1) When producing true copies of records to the Commission, respondents must provide an electronic cover letter that includes, to the extent reasonably practicable
 - (a) a list of each piece of media or other storage device through which records are produced, identified by a unique identifier and labelled accordingly,
 - (b) a list of record numbers for the records produced, cross-referenced as appropriate to the unique media identifiers used for each piece of media or other storage device submitted,
 - (c) a list or table of the custodians or sources from which, or from whom, the records were obtained, cross-referenced to the particular records provided from each custodian or source, and
 - (d) a declaration made by the respondent, or by an individual on behalf of the respondent if the respondent is not an individual, certifying that, to the best of their knowledge the records described in and provided with the cover letter
 - (i) are all of the records in the respondent's custody and control that are specified in the production order,
 - (ii) are true copies of the said records, or, if any original records are provided, that the specified records are originals, and
 - (iii) have been provided and numbered in accordance with this Rule.

- (2) Notwithstanding subsection (1), if a respondent is producing records solely in paper format or if authorized in writing by staff, a respondent may provide the information set out in subsection (1) in paper format.

Delivery of Records

7. Unless otherwise authorized by staff in writing, a respondent providing records pursuant to a production order must deliver such records, including media containing electronic records, by personal delivery, mail, courier, or similar form of delivery.

Original Records

8. (1) Unless otherwise specified in this Rule or if a record cannot reasonably be copied, respondents must produce true copies of records rather than originals.
 - (2) Except when a respondent has provided staff with original records and such records have not yet been returned, a respondent must remain able and prepared to produce originals of the true copies of records provided to the Commission for a period of not less than two years after receipt of a production order, or such longer period as may be set out in a production order or notice in writing from staff.
 - (3) Notwithstanding any other provision of this Rule, staff may require a respondent to produce original records in accordance with the Act.

PART 3 – PHYSICAL RECORDS

Paper Only Records

9. (1) If a production order applies to records that a respondent holds or has access to only in paper or other printed format, the respondent must provide true copies of such records
 - (a) in paper or other printed format, or
 - (b) as true, accurate and complete electronic images of the paper or other printed records.
- (2) If a production order applies to records that a respondent holds or has access to only in paper or other printed format, the respondent must take reasonable steps to provide true copies of such records
 - (a) grouped according to the person or location from whom or from which they were obtained,

- (b) grouped in the same order as they were in their native format, and not re-organized or re-sorted,
 - (c) in a manner that ensures that
 - (i) the true copies are not less legible than the originals,
 - (ii) all marginal notes, footers, and similar features are not obliterated, masked or inadvertently lost in the copying process,
 - (iii) if a record includes information on both sides of one or more pages, both sides of such pages have been copied or imaged,
 - (iv) folded or partly folded paper (including “dog-eared” pages) is unfolded prior to copying or imaging, and
 - (v) paper (or image) size is appropriate to legibly reproduce all of the information on the original record, and
 - (d) in a manner that maintains the grouping and relationship of the records in their native format, and in particular by using paper or electronic slip sheets, staples, paper clips, or similar objects to keep related pages of records together where appropriate.
- (3)** If a respondent produces records to staff under paragraph (1)(a) in paper or other printed format, such records must each be marked with a sequentially numbered record number.
- (4)** If a respondent produces records to staff under paragraph 1(b) in the form of electronic images,
- (a) such electronic images must each contain a unique identifying number that is
 - (i) in a format specified in the production order, or if no format is specified or the respondent is unable readily to use the format specified, sequentially numbered in the order of the records produced, and
 - (ii) electronically affixed to each image, in a manner that does not obscure text or other existing information on the image,
 - (b) to the extent reasonably practicable, the media containing the images must be accompanied by such embedded information or additional electronic files that enable staff to

- (i) relate each electronic image file to the unique identifying number affixed to each image (for single-page image files), or to the range of unique identifying numbers affixed to multiple images (for multi-page image files),
 - (ii) relate each electronic image file to a specific source and custodian from which it was obtained, and
 - (iii) load the electronic image files, together with the corresponding unique identifying numbers and the source and custodian information relating to each electronic image file, into a database, and
- (c) to the extent reasonably practicable, the following formats must be used:
- (i) black and white images must be provided either
 - (A) in the form of Group IV single-page TIFF files with a resolution of at least 300 dpi, or
 - (B) in the form of PDF files, where each PDF file represents a distinct record and is not a compilation of multiple records, and
 - (ii) colour images must be provided in the form of JPEG files with a resolution of at least 150 dpi.
- (5) Any gaps in the sequence of unique number marks placed on records produced in accordance with this section must be identified, with a brief explanation, at the time of producing the records.
- (6) Upon request, and notwithstanding anything in this section, staff may authorize a respondent to produce records that a respondent holds or has access to only in paper or other printed format in a manner other than as prescribed in subsections (2), (3), and (4).

Other Physical Records

- 10. (1)** If a production order applies to physical records other than paper or printed records, a respondent must provide true copies of such records
- (a) in the same physical format as the original, or
 - (b) electronically, by copying the records in question in a manner that is accurate, complete, and that can be reviewed using commercially available systems or tools.

- (2) Notwithstanding subsection (1), if it is impractical to reproduce a true copy of a physical record other than paper or printed records either in physical or electronic format, a respondent must produce the original of such record.

PART 4 – ELECTRONIC RECORDS

Native Format

11. (1) Except as otherwise provided in this Rule, whenever reasonably practicable, electronic records must be provided in their native format.
- (2) Notwithstanding subsection (1), if electronic records in their native format can only be reviewed or interpreted by the use of non-commercially available, proprietary systems or software, a respondent must identify such records to staff and
 - (a) make available to staff the systems or software to enable review and interpretation of the records,
 - (b) provide copies of the records in an alternative electronic format that accurately and completely captures the content of, and available metadata relating to, the records in their native format, or
 - (c) provide a reasonable alternative electronic means of reviewing or interpreting the records or copies of the records, which does not compromise the accuracy or completeness of the records as they exist in their native format.

Access to Electronic Records

12. If access to review electronic records, including review of metadata, is restricted by means of passwords, encryption, archiving, or other forms of storage resulting in access limitations, the respondent providing the records must also provide the means through such restrictions so as to enable staff to review the records.

Electronic Messaging

13. (1) If a production order applies to records of any form of electronic messaging or text messaging, and if a respondent is unable to provide such records in their native format, the records must be provided in another electronic format that accurately and completely captures the content of, and available metadata relating to, the records in their native format.

- (2) Notwithstanding subsection (1), a respondent may provide records in another electronic format that is authorized in writing by staff.

Audio and Video Files

14. If a production order applies to audio or video files, the respondent must take reasonable steps to provide all metadata for audio and video files that are produced, including
 - (a) file names,
 - (b) the dates the files were created, and
 - (c) if an audio or video file is a recording of a telephone conversation (call), the identity, if known, of the party or parties calling (caller) and the party or parties called (recipient); the telephone numbers of the caller(s) and recipient(s); and the date and time of the call.

Records Stored With a Remote Electronic Custodian

15. If a production order applies to records in the possession or control of a remote electronic custodian, a respondent must take reasonable steps to provide
 - (a) all of the source records which were provided to the remote electronic custodian,
 - (b) the metadata, if available, relating to the records, and
 - (c) copies of the records as they were modified, presented, published, or retained by the remote electronic custodian.

PART 5 – EXEMPTIONS

16. Upon an application, the Commission or the Executive Director may grant an exemption from all or any part of this Rule, and any such exemption may be made subject to any terms and conditions.
17. This Rule comes into force on March 1, 2014.

Appendix B

ALBERTA SECURITIES COMMISSION COMPANION POLICY 15-503 *PRODUCTION OF RECORDS*

PART 1 – INTERPRETATION

Definitions in this Policy

1. Unless otherwise expressly defined, terms used in this Policy have the same meaning as in ASC Rule 15-503 *Production of Records* (**Rule 15-503**).

PART 2 – GENERAL PROVISIONS

Purposes of the Rule

2. (1) The purposes of Rule 15-503 are to assist staff in effectively and efficiently obtaining records in the course of functions carried out under Part 2 of the Act; to clarify that electronic records must be provided in their native format; to ensure that persons and companies required to provide records to the Commission identify the records they provide; and to provide affected persons and companies with clear direction regarding the requirements and the form of record production.
- (2) The core concepts in Rule 15-503 include ensuring accuracy, completeness, consistency, and the requirement to produce records in their native format whenever possible. Most records today can and should be provided to the Commission in electronic format, and ultimately doing so will prove to be more efficient and cost effective for both the Commission and those parties providing records.
- (3) For unique situations that are not expressly addressed by Rule 15-503 or by this Policy, the guiding principles are to ensure that records are produced in a form that provides all of the information contained in the originals, and to do so in a manner that is organized and documented. Respondents are encouraged to communicate openly with staff and, where necessary, to obtain clarification or written confirmation regarding unusual processes or formats.

Preservation of Records

3. (1) Section 4 of Rule 15-503 expands upon what is already implied by section 93.4 of the Act, by prohibiting the destruction of records that have been required in connection with a securities investigation. This codifies the concept of a “legal hold” (the most common term for a requirement to preserve relevant information when litigation or

regulatory investigation is initiated or anticipated), with the trigger in this case being receipt of the production order. The duration of this obligation is, by default, two years from the date of receipt of the production order, but staff may extend that timing where necessary.

- (2) Subsection 4(2) makes clear that a firm must take reasonable steps to communicate this “legal hold” obligation to necessary employees and contractors. With the growing use of remote “hosting” of information (particularly electronic records), subsection 4(3) of Rule 15-503 also extends the preservation obligation to those records saved in “cloud” storage, off-site databases, social networking providers, and other remote storage media or sites. The term “remote electronic custodian” is used to capture the broad range of host platforms available, including where the respondent only has shared or partial control over the records in question (e.g., website hosting services and social media providers).
- (3) Because of confidentiality obligations, including those in section 45 of the *Securities Act*, it is also imperative that specific information revealed in the production order not be shared with employees, contractors, and/or remote electronic custodians generally. In other words, the “legal hold” demand should be disseminated generically, without divulging that the demand originates in connection with an ASC investigation or any background information provided in the production order.

Multiple Copies

4. (1) Section 5 of Rule 15-503 specifies that upon receipt of a production order, respondents are required to produce all copies of records captured within a production order, except where
 - (a) the production order (or a separate written document from staff) expressly states that duplicates need not be produced with respect to one or more of the records required,
 - (b) such records are duplicates in all material respects, or
 - (b) the records are exact duplicates, with the exception that one version is electronic and another version is a printed or other “physical” version of the electronic record.
- (2) The reasoning for this rule is straightforward: staff must be in a position to look into and understand any changes or notations or other differences between copies of a

record in the possession or control of a respondent. On the other hand, they do *not* need multiple (exact) copies of a record just because a respondent happens to have multiple copies. Where appropriate, respondents should be spared the effort and expense of producing multiple copies of records, but where those different copies have different marginal notes, or highlighting, or signatures, or changes in text or format, then they must be treated as being different records. In some situations, it may not matter to staff whether there are multiple copies of a record, or a respondent may have an unusually large number of possible duplicates to review and assess to determine if they all need to be produced. In those cases, staff can specify in writing that the respondent need not produce all copies.

- (3) Where an electronic record has been printed but otherwise no changes or additions have been made to it from the electronic version, a respondent should produce only the electronic version (in its native format). It is not acceptable to produce a printed version instead of an electronic version of the same record.

Cover Letter

- 5. (1) Section 6 of Rule 15-503, requiring respondents to provide a cover letter along with their records, is intended to formalize what respondents identify and confirm when producing records to the Commission. Whenever reasonably possible, this letter would itself be provided in electronic format. The cover letter will provide a useful record of what information has been provided by a respondent, how it was provided, from whom (specifically) the records were sourced, and finally a certification requiring respondents to address their minds to completeness of the record production. Respondents are encouraged to contact staff if they need clarification or additional guidance.
- (2) There is no specific format required for the cover letter. In most cases the inclusion of one or more simple tables would be the simplest and most helpful way of describing what has been provided. For example:

Location/Media or delivery container	Record Numbers or Description	Custodian(s)
USB key	Native Files	John Doe (title)
Box of paper documents	Records Numbered 1 through 17	Jane Doe (title)
USB key	Native Files	Bill Smith (title) Jane Doe (title)
DVD containing scanned documents	MS1-0001235 to MS1-0001583	General Storage (no designated custodian)

The most important point is for the respondent to clearly identify what is being produced. As such, where a respondent is unable to or uncomfortable preparing a table, even a basic description or list included in the body of the cover letter will meet the requirement. For example, an investor who is providing promotional and related material that she has acquired in the context of investing in an “exempt security” could set out the following in her cover letter:

“I am providing you with the following records:

- A blue folder, titled “Landgrowth Capital”, containing all the material I received on June 13, 2011 from Tom Sgruggs. I have marked the first page of each of the documents in this folder with #1 through #7 in black ink.*
- A newspaper ad describing a Landgrowth Capital seminar (newspaper and date unknown) to be held on June 13, 2011, which I labelled #8.*
- Copies of quarterly statements I received from Landgrowth Capital, showing my supposed earnings between August 1, 2011 and February, 2012, which I labelled #9; and*
- CD Rom containing electronic copies of the email files of my email back and forth with Tom Scruggs between June, 2011 and June 2102. I labelled this CD Rom #10.”*

Original Records

6. Section 8 of Rule 15-503 requires respondents generally to produce true copies of the required records, while preserving the originals. This helps to ensure that respondents are not unnecessarily left without original records, and minimizes respondents’ concerns about loss or detention of original records in the possession of staff. At the same time, staff can proceed with investigative activity on the basis of the true copies, while respondents are required to preserve the originals for a period of at least two years. In the event that it

becomes necessary for staff to review originals or if originals are required as evidence, for example, in court proceedings, the Rule allows for an express demand in accordance with the Act.

PART 3 – PHYSICAL RECORDS

Paper Only Records

7. (1) Even where a respondent holds certain records only in paper format, Rule 15-503 permits such records to be produced in electronic format, in the form of scanned images of the paper records. Indeed, respondents are strongly encouraged to provide even “paper” records electronically whenever possible. as staff are of the view that this will be more efficient and effective from both respondents’ and staff’s perspective overall.
- (2) Subsection 9(2) of Rule 15-503 sets out specific requirements designed to help ensure that the copies (whether paper or electronic) of paper records provided to staff are true copies of the originals. Whether photocopying or scanning (imaging) paper records, respondents need to ensure that the copies of the paper records are clear, complete, and that they accurately reflect the grouping, pagination, and inter-relationship of the original paper records.
- (3) Subsection 9(3) addresses the situation where respondents choose to photocopy paper records and produce them in “hard copy” format. In this case, the Rule merely requires numbering of each record, with no specified format and no obligation to number each page of each record. The numbering can be as simple as a handwritten “1, 2, 3...” on the first page of a document, a binder cover, a folder, a brochure, etc. A respondent may choose to add identifying initials (e.g., to specifically label that the respondent was the source of the records), but is not required to do so. If a respondent has any questions about the numbering requirement, he or she should feel free to contact the staff member who sent the production order.
- (4) This basic numbering process is valuable to both the respondent and to staff, as it helps establish from the very beginning of an investigation what records were produced by whom, minimizing the chance of confusion and disputes at later stages.
- (5) Where respondents scan or “image” their paper records and produce them as electronic documents, subsection 9(4) provides more detailed requirements for the record numbering process and the formatting of the image files and accompanying

data. The objective is the same as for records produced in paper format, but because the scanning or imaging process makes it comparatively easy to “affix” digital record numbers to each scanned image, a greater level of detail is possible. Where appropriate, staff may therefore specify a particular numbering format for the respondent to use. Otherwise, the general requirement is that a clear, sequential numbering system must be used on each electronic image.

- (6) Subsection 9(4) of Rule 15-503 also requires electronic images to be accompanied by electronic files that enable staff to relate the image files to the record numbers provided by that respondent, and to load the image files into a database, matching images, record numbers, sources, and custodians. These are sometimes described as “delimited” and “load” files, and are typically generated when the original paper records are scanned into electronic image form. These provisions are intended to prescribe *what* must be provided in order to make the data usable for staff, but at the same time to allow some flexibility in terms of *how* it is provided. For each image file, the information provided should enable staff to cross-reference information as in the example shown below:

BegNumber	EndNumber	Location	Custodian
BB01_0000001	BB01_0000003	Binder entitled “xxx”	John Doe
BB01_0000004	BB01_0000011	Binder entitled “xxx”	John Doe
BB01_0000012	BB01_0000023	Binder entitled “xxx”	John Doe
...			
BB01_0000349	BB01_0000351	File folder entitled “aaa”	Mary Smith
BB01_0000351	BB0101_0000353	File folder entitled “aaa”	Mary Smith

- (7) Unless colour scanning is necessary to make a true copy of a record (that is, where colours affect the meaning of the record in question), respondents are encouraged to use black-and-white scanning formats as they generally require less digital memory than colour formats.
- (8) Respondents may use third party services to image the paper records if they do not have the equipment, resources or know-how to do so on their own. They are also encouraged to contact staff if they have questions about how to best comply.
- (9) Importantly, staff are authorized to give written permission for respondents to produce “paper” records (including electronic images of paper) in a manner different than that specified in subsections (2), (3), and (4) of section 9 of the Rule. Such authorization must be in writing, but the request process can be informal and no formal exemption application or fee is required. This ensures that respondents, where

necessary, can quickly and easily work out with staff on alternative ways of producing documents – so that the ultimate objectives of the Rule are met. Respondents also have the option of seeking an exemption, of course, from any provision in the Rule in accordance with section 16, the applicable fee schedule under the *Securities Regulation*, and ASC Policy 12-601 *Applications to the ASC*.

PART 4 – ELECTRONIC RECORDS

8. (1) Providing electronic records in accordance with Rule 15-503 requires respondents to ensure that the records are complete, unaltered from the format in which they existed at the time of the production order, and fully reviewable by staff. It is essential that electronic records not be stripped of their associated metadata, and staff view this as no different than erasing or otherwise obscuring relevant information from a paper document.
- (2) Where electronic records have been stored in an “archived” format (typically to save electronic storage space), this generally results in restricted or no access to certain metadata and to attached or embedded records. They must therefore be un-archived before producing to staff.
- (3) In the majority of situations where commercially available software is used to create, edit, and view electronic records, producing records in their native format will typically mean copying files to portable media such as CDs, DVDs, or USB drives, and providing them whole to the Commission. Email records, for example, will generally be produced through one or more “.pst” or “.nsf” files; word processing records through the native word processor software format; and spreadsheets (ensuring all “sheets” or levels of data are included) in “.xls” or similar format.
- (4) Electronic records should be organized on the portable media used to provide them, according to the custodian or location of the records in question at the time of receipt of the production order. For example, file folders on a DVD-Rom used to provide records may be organized as follows:

```
...\John Doe\Email\  
...\John Doe\Personal Computer\  
...\John Doe\Company Server\  
...\John Doe\iPad\  
...\Mary Smith\Email\  
...\Mary Smith\Company Server\  

```

...\iCloud Host name\
...\WebSite Name\VersionDate1\
...\WebSite Name\VersionDate2\
...\Google Ad\VersionDate1\

- (5) Where records that are subject to a production order can be reviewed only through the use of proprietary or very unique software, a respondent should contact staff to clarify how best to produce the records.

PART 5 – EXEMPTIONS

Exemptions

9. Section 16 of Rule 15-503 provides that an exemption may be granted by either the Executive Director or the Commission, on application. This is similar to most Commission rules and National or Multilateral Instruments.

Appendix C

Summary of Comments – ASC Rule 15-503
Production of Records

Following publication of the proposed Rule 15-503 and a request for comments in early 2013, ASC staff received responses from four entities or groups: the Canadian Bankers Association (**CBA**), the Investment Funds Institute of Canada (**IFIC**), members of the RBC group of entities (specifically RBC Dominion Securities Inc., RBC Direct Investing Inc.; Royal Mutual Funds Inc.; RBC Global Asset Management Inc.; RBC Phillips, Hager & North Investment Counsel Inc.; and Phillips, Hager & North Investment Funds Ltd.) (collectively, **RBC**), and 1to1REAL Connected Technologies, Ltd. (**1to1 Real**). We appreciate the input of all commenters, and in the table below we summarize their comments and explain our responses.

Section (in Published Proposed Rule)/Subject Area	Summary of Comments	ASC Staff Response and Action
General comments	<p>The commenters generally appreciated the ASC’s objectives underlying Rule 15-503, and recognized the need for enhanced clarity, consistency, and streamlining in how records are produced in investigations – especially given the current age of digital data.</p> <p>Some also expressed reservations, suggesting that various provisions may be too specific or detailed in their prescriptive requirements, and fearing that these would be difficult, practically, to implement. They suggested that a “reasonable efforts” standard apply to many of the requirements, or that provisions be drafted with a “principles based” approach.</p> <p>One commenter made some general suggestions focusing on the advantages of electronic document storage and record management, proposing additional rules to increase consistency and efficiency even before production orders are issued.</p> <p>One commenter also used the “patchwork” cliché to caution against Alberta adopting its own rules.</p>	<p><i>ASC staff sincerely thank all commenters for their feedback. We have made some adjustments to the proposed rule based on many of those comments and are of the view that the final product is better because of this input.</i></p> <p><i>Overall, we continue to believe this is an important initiative that will improve efficiency and consistency in the investigative record-production process.</i></p> <p><i>With respect to some of the general themes evident in the comment letters, we have qualified some obligations with “reasonable steps” or “where reasonably practicable” language, but beyond this do not agree that broad principles-based language can achieve the desired results. To help increase consistency, for the sake of both efficiency and fairness to those affected by investigations, the rule requires a certain amount of precision and specificity.</i></p> <p><i>We also emphasise that even where Rule 15-503 provisions are specific and “prescriptive”, exceptional situations may be addressed in many cases by simply discussing the issue with staff and obtaining written permission to follow a particular process, or where necessary seeking exemptive relief.</i></p> <p><i>This Rule is not intended to impose new general record-keeping or document storage obligations on any parties, nor to require market</i></p>

		<p>participants to use electronic, “cloud”, or other service providers to address document management challenges.</p> <p>With respect to the “patchwork” concern, staff do not consider innovation and enhanced clarity to be negatives. Feedback received by ASC staff suggests that other securities regulators in Canada and even in the US consider Rule 15-503 to be a very positive and timely rule, suitable as a model for their emulation.</p>
<p>Definition of “custodian”</p>	<p>The CBA and IFIC commented that the definition of “custodian” is too broad because it captures all individuals who have accessed a record, even if their involvement is (apparently) immaterial.</p> <p>The CBA recommended a modified definition including a reasonableness element with respect to identifying who accessed an electronic record.</p>	<p>We acknowledge that the definition of “custodian” is broad, particularly in including those who “access” electronic records. This breadth is necessary, however, to ensure that our investigations are able to uncover the full story told by metadata. For example, a corporate “insider” who denies having seen a particular document may face conflicting evidence, where metadata reveals that the person “accessed” the document electronically.</p> <p>That said, we acknowledge the concerns that respondents may not necessarily be able to identify all custodians, and accordingly have modified the production rules concerning “custodians”, along the lines recommended by the CBA.</p>
<p>Definition of “native format”</p>	<p>RBC noted that some information in its “native format” may be unreadable, unless and until exported through appropriate software (which may be structured or proprietary).</p> <p>IFIC similarly expressed concern that proprietary information in its native format may be difficult to produce.</p>	<p>The definition of native format is broad, but appropriately so (and does indeed capture even data that is unreadable to commercial software).</p> <p>To the extent that the obligations in the Rule regarding records in their “native format” are potentially problematic, we have addressed the corresponding comments below (in general, by incorporating a “reasonableness” standard).</p>
<p>Definition of “true copy”</p>	<p>RBC proposed that the definition of “true copy” allow for record retention policies to scan documents in black and white.</p>	<p>Rule 15-503 does not impose any obligations on parties as to how they may retain documents, and so does not affect whether a person or entity stores electronic versions of documents in colour or black and white. If at the time of receipt of a production order, a respondent has a colour document in paper and a black and white copy of that document electronically, the electronic version would not be a “true copy” unless the colouring on the original did not affect the meaning of the document.</p> <p>If an original paper colour document had been discarded in the ordinary course of business before receipt of a production order, but preserved in a black and white electronic version, the black and white electronic version would be an “original” as defined by the Rule.</p>

<p>Proposed definition of “original records”</p>	<p>RBC noted that “original records” is not defined and suggested a definition of this term which includes electronic records that have been converted from physical records, pursuant to a firm’s record retention policies. 1to1Real made similar recommendations.</p>	<p><i>We have added a definition of “original record”. This rule does not impose any obligation on a party as to how it must maintain or preserve its records (although other rules may way do so), unless and until such records are required under an ASC production order. Thus, “original” in the context of Rule 15-503 means the existing format as at the time of the production order.</i></p>
<p>Definition of “remote electronic custodian”</p>	<p>RBC asked for confirmation that “remote electronic custodian” only includes service providers with a contractual agreement with the respondent and does not capture records that belong to agents or contractors, or the personal records of employees.</p> <p>IFIC extended its concerns regarding the breadth of “custodian” to apply as well to “remote electronic custodian”.</p>	<p><i>ASC staff confirm that “remote electronic custodian” only addresses those in possession or control of records <u>belonging to the respondent</u>, where the respondent maintains some right of access, control or direction over the records. Personal records of an employee stored remotely (such as an online profile) would not be included (although <i>personnel</i> records stored in “the cloud” may well be).</i></p>
<p>Absence of provisions addressing privilege</p>	<p>The CBA and IFIC commented that the proposed Rules are silent on the issue of solicitor-client privilege and requested that the rules specifically confirm that solicitor-client privilege applies.</p>	<p><i>Although subsection 57(1) of the Alberta <u>Securities Act</u> already expressly preserves solicitor-client privilege, we have added a parallel provision to Rule 15-503.</i></p>
<p>Section 4 (Preservation of Records)</p>	<p>The CBA and RBC stated that identifying and contacting affected employees could be challenging and impractical for large respondent firms, particularly for routine inquiries. Further, the obligation to identify and preserve records “reasonably identifiable as being related to” specified records was seen as subjective and problematic.</p> <p>The CBA and RBC made several recommendations: that a reasonableness standard, based on information available to the respondent, apply to the notification obligation; that respondents only be responsible for making reasonable efforts to secure the compliance of remote electronic custodians; that ASC only impose legal holds in situations where original documents may be required, not “routine” inquiries; and that a shorter expiration period be specified for retaining records not produced.</p>	<p><i>ASC staff consider that the basic obligation not to destroy records included in a production order flows from the <u>Securities Act</u>, and therefore does (and should) apply even to “routine” demands. And, particularly because respondents will generally retain originals and provide ASC staff with only copies of records, it is important that the originals be preserved.</i></p> <p><i>However, we accept that the language of these provisions can be improved to ensure we do not inadvertently impose new record-keeping requirements or duties that are truly onerous or impossible to fulfil. We have, accordingly:</i></p> <p><i>Removed the requirement relating to “records reasonably identifiable as being related to [specified] records”;</i></p> <p><i>Added “reasonable steps” language to subsections (2) and (3);</i></p> <p><i>Clarified that where a respondent’s record-keeping systems and policies provide for electronic storage rather than storage of (paper) “originals”, such storage is satisfactory unless otherwise specified in a production order or other written notice;</i></p> <p><i>Limited the duration of the legal “hold” to a period of two years, unless otherwise specified.</i></p>

<p>Section 5 (Multiple Copies)</p>	<p>The CBA and RBC expressed concern that the production of near-identical copies of records is inefficient and noted the challenges of identifying and contacting all of the custodians of a record and its potentially numerous copies.</p> <p>The CBA and RBC recommended that section 5(1) only require respondents to produce copies of records that differ in material ways and that section 5(3) incorporate a reasonableness standard.</p> <p>IFIC recommended a principles-based approach to producing multiple copies of a document relevant to a production order.</p> <p>1to1Real commented that version control is an ideal means to control copies of electronic documents.</p>	<p><i>It is generally important for ASC staff to be able to review different versions of similar records, even if differences may be quite minor. We therefore maintain our requirement that multiple copies each be produced, though we have clarified that this only applies where differences between copies are material.</i></p> <p><i>Recognizing, though, that this need for multiple copies does not apply in every situation or to every person from whom we require document production, we have included an exemption. Staff will be able to specify, either in the production order itself or in follow up written communication, that we only require a single copy or version of certain records for our investigative purposes.</i></p> <p><i>We have also tempered the obligations to provide multiple copies and identify custodians with a “reasonable efforts and “reasonably possible” standard.</i></p>
<p>Section 6 (Cover letter)</p>	<p>The CBA expressed concern with the number of requirements in section 6(1) and the requirement to cross-reference records with their custodians in particular. The CBA recommended introducing a reasonableness standard based on the information available to the respondent.</p> <p>RBC recommended that section 6 allow paper cover letters when only physical records are being produced.</p> <p>1to1Real recommended that cover letters should be standardized and include links to electronic records.</p>	<p><i>In Staff’s view, the draft Companion Policy that was published with Rule 15-503 made clear that the obligations under Section 6 (now Section 7) were implicitly subject to “reasonableness”. If it cannot reasonably be said who was the custodian of certain records, for example, it is acceptable to describe the physical source (or location) from which they were gathered.</i></p> <p><i>To avoid any doubt, however, we have added qualifying “reasonableness” language to s.7, and also expressly permitted paper cover letters for paper-only record productions.</i></p>
<p>Section 7 (Delivery of Records)</p>	<p>The CBA and 1to1Real recommended that respondents be allowed to deliver records to the ASC electronically.</p>	<p><i>Certainly the “spirit” of this Rule is consistent with electronic document delivery, both for data completeness and to minimize unnecessary paper use. It may seem odd that we therefore propose physical delivery instead of electronic methods.</i></p> <p><i>Physical delivery of records is, nevertheless, the better default at this time, because of data risks and problems with typical “email” delivery.</i></p> <p><i>For respondents who wish to deliver records electronically (by email, FTP site or otherwise), the process of contacting staff and asking for authorization is simple and efficient, and ensures that staff can confirm secure delivery protocols.</i></p>

<p>Section 8 (Original Records)</p>	<p>The CBA and RBC expressed concern that section 8(2) would require respondents to retain records for up to 6 years beyond the 7 years already required by NI 31-103. RBC further noted that self-regulatory organizations (SRO) have record retention requirements as well.</p> <p>The CBA and RBC recommended a shorter period possibly subject to scheduled destruction pursuant to respondents' existing record retention policies and NI 31-103. RBC recommended ASC harmonize this rule with comparable SRO requirements.</p>	<p><i>The purpose of this retention provision is to ensure that originals are available for hearings or similar purposes, in the event that originals are for any reason necessary. It is only triggered by a record production order, and relates specifically to the originals as distinct from copies. This purpose is not conducive to harmonization with registrant SRO requirements, which have different purposes.</i></p> <p><i>Nevertheless, we recognize that in many cases a six-year preservation obligation is unnecessary. We have amended the time to two years, subject to renewal by Notice in writing from ASC staff.</i></p>
<p>Section 9 (Paper Only Records)</p>	<p>The CBA, IFIC, and RBC suggested that there was insufficient flexibility in section 9, which could make compliance difficult for some respondents.</p> <p>Concerns included the organization and pagination requirements, as well as the requirement that black and white files be formatted as TIFF files.</p> <p>The CBA and RBC recommended introducing a reasonableness standard for greater flexibility and allowing electronic records to be numbered in the same manner as physical records in section 9(3). IFIC more broadly recommended a principles-based approach.</p> <p>The CBA and 1to1Real requested that section 9(4) be changed to allow respondents to provide records in PDF format.</p>	<p><i>As recommended, we have modified subsection (2) to require a respondent to "take reasonable steps" to provide records in the defined manner. Respondents who do not follow the defined format for record production, however, should expect to have to explain why this was not reasonably possible. Respondents are better off contacting staff to pre-approve any variations, than to simply send records in a form other than that prescribed in the Rule.</i></p> <p><i>We also changed to record numbering requirements, so that the format specified in a Production Order must be followed, unless this is not reasonably possible. This allows more case-by-case flexibility.</i></p> <p><i>We have modified paragraph (4)(c) to allow respondents to provide scanned images in "pdf" format, as requested. However, in order to make this workable, respondents <u>must</u> ensure that each pdf file represents a single, distinct record. Multiple records must not be combined into one pdf file, even with embedded hyperlinks or other delineators.</i></p> <p><i>A provision (subsection 9(5)) has been added, requiring any gaps in numbering to be identified and explained.</i></p>
<p>Section 11 (Electronic Records - Native Format)</p>	<p>The CBA and IFIC expressed concern that it may, in some cases, be difficult to provide records from structured, proprietary, and legacy databases in their native format, and accordingly suggested a "reasonableness" and/or "materiality" qualification.</p> <p>The CBA also recommended that the provision be revised to allow for production of alternate electronic formats that accurately and completely capture the content and metadata of the original records.</p>	<p><i>We have inserted the "reasonably" qualifier to the phrase "wherever possible", and also provided an alternative means to provide copies of native records, where providing native electronic records is impractical and if the copies can provide all necessary content and metadata (as per the suggestions of the CBA).</i></p> <p><i>Again, we also emphasize that the rule encourages respondents to contact staff and discuss any practical or technical concerns.</i></p>

Section 13 (Electronic Messaging)	<p>The CBA noted that it is not always possible to extract all metadata relating to electronic or text messages and recommended that only available metadata be required.</p> <p>Further, the CBA expressed concern that some records contain an “unwieldy” amount of metadata, much of which may be irrelevant, and recommended a value assessment of metadata to be included.</p>	<p><i>In recognition of the comments, we have limited the obligation to “available” metadata, and have included a second alternative of obtaining written staff authorization for unique situations.</i></p>
Section 14 (Audio and Video Files)	<p>The CBA expressed concern with the time and effort that would be required to manually gather metadata for audio or video files, if the information could be found at all, and recommended that this requirement be deleted from the proposed rules.</p>	<p><i>We have qualified the obligation with a “reasonable steps” standard.</i></p>
Section 15 (Records Stored with a Remote Electronic Custodian)	<p>The CBA noted that records in the possession or control of a remote electronic custodian may be near-identical to those in the possession or control of the respondent. The CBA recommended adding a qualification to the proposed rule to avoid duplicate production of non-materially different records from both the respondent and the remote electronic custodian.</p>	<p><i>Our modifications to section 5 (Multiple Copies) address this concern as well. In some situations, it will be necessary and appropriate to obtain near duplicates that are in the possession of different custodians.</i></p>