

*Note: [01 Apr 2009] – The following is ASC Rule 15-501 as it was initially implemented. This version of ASC Rule 15-501 is no longer current.*

**ALBERTA SECURITIES COMMISSION RULE 15-501  
 RULES OF PRACTICE AND PROCEDURE FOR COMMISSION PROCEEDINGS**

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**ALBERTA SECURITIES COMMISSION RULE 15-501**  
***RULES OF PRACTICE AND PROCEDURE FOR COMMISSION PROCEEDINGS***

**PART 1      DEFINITIONS**

**1.1      Definitions in these Rules**

In these Rules:

- (a)      "**Act**" means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;
- (b)      "**ASC**" means the Alberta Securities Commission, and includes any members of the Commission who have been designated as a panel and directed to conduct a hearing under the Act;
- (c)      "**business day**" means a day on which the Commission is open for business;
- (d)      "**document**" means a record of information in any form, including printing or writing, photographs, charts, graphs, maps, surveys and audio recordings, on any medium, including paper, recordable disc, videotape and film;
- (e)      "**hearing**" means an opportunity for all parties to present evidence, argument or a position to a panel during a proceeding;
- (f)      "**notice**" means a written notification of a specific event or action, including an application or hearing;
- (g)      "**notice of application**" means a notice issued by staff which describes an order staff is seeking from the ASC against a respondent, or respondents, without a hearing;
- (h)      "**notice of hearing**" means a notice issued by staff which describes an order staff is seeking from the ASC against a respondent, or respondents, after a hearing;
- (i)      "**panel**" means two or more members of the Commission designated and directed under section 23 of the Act to conduct any proceeding commenced before the Commission, or a single member of the Commission authorized under section 22 of the Act to do anything the Commission is required or permitted to do in relation to a proceeding;
- (j)      "**party**" means the person or company who commenced the proceeding, a respondent in the proceeding, staff, any person or company against which an order from the ASC is sought during the proceeding, and any person or company designated or identified as a party by a panel;

- (k) **"proceeding"** means an appeal requested under the Act, an application brought before the ASC in relation to Part 5 or Part 14 of the Act, or a request by staff for an order from the ASC under Part 16 of the Act;
- (l) **"respondent"** means a person or company identified in a notice of hearing or notice of application as the person or company against which staff is seeking an order from the ASC;
- (m) **"Registrar"** means the person who is designated by the Commission as its Registrar;
- (n) **"Rules"** means these Rules of Practice and Procedure;
- (o) **"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.

## 1.2 Definitions in the Act

Unless defined in these Rules, terms defined in section 1 of the Act apply.

## PART 2 GENERAL PROVISIONS

### 2.1 Prevalence of Act

Except for the definitions, if anything in these Rules is inconsistent with the provisions of the Act, the provisions of the Act prevail.

### 2.2 Purpose and Application of Rules

The purpose of these Rules is to assist a panel in securing an efficient, cost-effective and timely determination of the issues raised in a proceeding. These Rules apply to any proceeding before a panel and shall be interpreted in accordance with the requirements of natural justice. A panel may exercise any of its powers on its own initiative or at the request of a party to a proceeding.

### 2.3 Waiver or Variation

At any time, a panel may waive or vary any notice period, time limitation or requirement established under these Rules on such conditions as it considers appropriate if it determines that such waiver or variation would not be prejudicial to the public interest.

### 2.4 Failure to Comply with Rules

If a party to a proceeding fails to comply with any provision of these Rules that was not waived or varied, or with any order, ruling or direction made by a panel under these Rules, the panel may consider that party's conduct:

- (a) when ruling upon any request for an adjournment;
- (b) in assessing costs; and
- (c) in determining whether to make any other order, ruling or direction the panel considers appropriate.

## **2.5 Calculation of Time**

When the calculation of time is required under these Rules, the following shall apply:

- (a) if there is reference to a number of days between two events that includes the word "clear" or the phrase "at least" or "not less than", the number shall be reckoned by excluding the days on which the events happen;
- (b) if there is any other reference to a number of days between two events, the number shall be reckoned by excluding the day on which the first event happens and including the day on which the second event happens;
- (c) if the time for doing an act under these Rules expires on a day that is not a business day, the act may be done on the next business day; and
- (d) if a notice or document is received after 4:30 p.m. (Mountain Time), or on a day that is not a business day, the notice or document shall be deemed to have been received on the next business day.

## **PART 3 COMMENCING PROCEEDINGS**

### **3.1 Parties Entitled to Notice**

Except when the Act allows the granting of an order without a hearing, all parties to a proceeding are entitled to notice of any hearing, application, motion or pre-hearing conference within that proceeding. In addition, a panel may, on its own motion or on the motion of any person or company, hold that any other persons or companies are entitled to notice of any proceeding or step within a proceeding. Notice is sufficient for the purposes of these Rules if it is in writing and provided to a person or company in accordance with Part 5 of these Rules.

### **3.2 Commencement of Proceeding by Staff for an Order under Part 16 of the Act**

- (a) If staff seeks an order from the ASC under Part 16 of the Act, staff shall commence the proceeding by issuing and sending to the Registrar either a notice of hearing or notice of application, which shall include:
  - (i) the date, time and place of the first appearance before a panel in the proceeding; and

- (ii) a statement indicating the nature of the allegations, the order sought, and the statutory provisions relied upon.
- (b) If a hearing is required under the Act, staff shall send the notice of hearing to every respondent in the proceeding, and the notice of hearing shall contain a statement indicating that if the respondent fails to participate at any point in the proceeding, the proceeding may continue in the respondent's absence and an order may be granted without further notice to the respondent.

### **3.3 Commencement of Appeal Proceeding**

- (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.

### **3.4 Commencement of Proceeding in Relation to Part 5 or Part 14 of the Act**

- (a) If authorized by the Act, a person or company may bring an application before the ASC in relation to Part 5 or Part 14 of the Act by sending to the Registrar a written request for a hearing, which shall include:
  - (i) a statement indicating the order sought, the statutory provisions relied upon, and the grounds for the order;
  - (ii) any affidavits, documents and case law intended to be relied upon; and
  - (iii) if applicable, the name of and contact information for any person or company in respect of which the order is being sought.
- (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.

### **3.5 Motions**

- (a) If a party to a proceeding seeks an order, ruling or direction from a panel before a hearing, that party shall send a written notice of motion to the Registrar and every other party to the proceeding at least two business days before the hearing is scheduled to commence. The written notice of motion shall include:
  - (i) a statement of the order, ruling or direction sought;

- (ii) the grounds for the motion;
- (iii) a summary of the evidence intended to be relied upon; and
- (iv) copies of any affidavits, documents and case law intended to be relied upon.

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.

- (b) If a party to a proceeding seeks an order, ruling or direction from the panel during a hearing, unless the panel determines that a written notice of motion is unnecessary, that party shall send to the Registrar, and every other party to the proceeding, a written notice of motion, as described above. The panel will determine the date, time and place at which the motion will be heard, and any deadlines for the submission of other material.

## **PART 4 SUMMONS AND PRODUCTION**

### **4.1 Request by Party for a Summons**

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.

## **PART 5 SENDING AND DELIVERY OF DOCUMENTS**

### **5.1 Sending of Documents**

Any notice or document to be sent to a person or company in relation to a proceeding may be sent to that person or that company by personally delivering it to that person or that company or in the following manner:

- (a) if sent by prepaid post or courier, to the latest address known for that person or that company or to the registered office of that company;
- (b) if sent by electronic mail, to the latest electronic mail address known for that person or that company; or
- (c) if sent by facsimile, to the latest facsimile number known for that person or that company or to the latest facsimile number known for the registered office of that company.

## **5.2 Sending Documents to Counsel or Agent**

Any notice or document to be sent to a person or company in relation to a proceeding may be sent to that person's or that company's counsel or agent authorized to receive documents.

## **5.3 Sending Documents to Staff**

During a proceeding, a notice or document to be sent to staff shall be sent by prepaid post, courier, electronic mail or facsimile to:

- (a) the Commission's Director, Market Regulation, if it relates to an application brought before the ASC in relation to Part 5 of the Act;
- (b) the Commission's Director, Corporate Finance, if it relates to an application brought before the ASC in relation to Part 14 of the Act; or
- (c) the Commission's Director, Enforcement, or the counsel representing staff, if it relates to any other proceeding.

## **5.4 Advising of Changes**

During a proceeding, if the contact information of a party or that party's counsel or agent changes, that party or that party's counsel or agent shall provide the new contact information to all other parties to the proceeding and the Registrar as soon as practicable.

## **5.5 Date of Receipt**

Subject to section 2.5 of these Rules and unless the contrary is proved or the sender has reason to believe to the contrary, the date on which a notice or document was received shall be:

- (a) if personally delivered, the day on which it was delivered;
- (b) if sent by prepaid post, the earlier of the day on which it was received and the 7th day after the day on which it was mailed;
- (c) if sent by courier, the day on which it was delivered; or
- (d) if sent by electronic mail or facsimile, the day on which it was sent.

## **5.6 Alternative Contact Information for the Sending of Documents**

If a person or company has provided an address, electronic mail address or facsimile number for the sending of documents other than that referred to in section 5.1 of these Rules or section 217 of the Act, any notice or document to be sent to that person or company in relation to a proceeding may be sent to that alternative address, electronic



mail address or facsimile number by the applicable method set out in section 5.1 of these Rules or section 217 of the Act.

## **5.7 Proving the Sending or Delivery of Documents**

- (a) If a person or company, or that person's or that company's counsel, acknowledges the receipt of a notice or document, neither an affidavit nor testimony is required to prove that the notice or document was sent in accordance with this Part or the Act.
- (b) If a party to a proceeding is required to provide notice or a document to a person or company during the proceeding, that party may establish by affidavit or testimony that the notice or document was sent to the person or company. Unless the contrary is proved, the affidavit or testimony may be relied upon by a panel in determining the date of receipt in accordance with section 5.5 of these Rules. The affidavit or testimony must include:
  - (i) the name of the person or company to which the notice or document was sent;
  - (ii) the name of the person who sent the notice or document;
  - (iii) the time and date on which the notice or document was sent;
  - (iv) where the notice or document was sent and, except if personally delivered, the basis for sending it to that address, electronic mail address or facsimile number;
  - (v) how the notice or document was sent;
  - (vi) a copy of each notice or document that was sent; and
  - (vii) any record that indicates whether or not the notice or document was successfully delivered to the address, electronic mail address or facsimile number.

## **5.8 Sending Documents to the Registrar**

Unless otherwise directed by a panel, if a notice or document is sent to the Registrar by any means other than electronic mail or facsimile, four copies shall be sent.

## **5.9 Identifying Information**

A party to a proceeding who sends a notice or document shall identify the proceeding to which it pertains, the name and contact information of the sender, and the name and contact information of the intended recipient.

## **5.10 Orders Regarding Sending of Documents**

If any notice or document cannot be sent successfully to a person or company in accordance with this Part or the Act, a party to a proceeding may, without notice to any other party, bring a motion before a panel for an order for an alternative means of sending a notice or document to that person or company.

## **PART 6 APPEARANCE AND REPRESENTATION BEFORE A PANEL**

### **6.1 Non-Parties Seeking to Appear before a Panel**

When a non-party requests to be designated as a party to a proceeding or to be heard by a panel during a proceeding, the panel may consider the following in determining whether or not to grant the request:

- (a) the nature of, and the issues raised in, the proceeding;
- (b) the extent to which the non-party will be affected by the proceeding;
- (c) the likelihood that the non-party will make a useful contribution to the proceeding;
- (d) any delay or prejudice to the parties; and
- (e) any other factor the panel considers relevant.

### **6.2 Representation or Assistance in Proceedings**

During a proceeding, a party may be represented by counsel, be accompanied and assisted by an agent, or participate without any representation or assistance. In this regard, each party to a proceeding has the following obligations:

- (a) if a party chooses to participate at any point in a proceeding without any representation or assistance, that party shall send to the Registrar and every other party to the proceeding, as soon as practicable, that party's contact information;
- (b) if a party is represented by counsel or is accompanied and assisted by an agent at any point in a proceeding, that party's counsel or agent shall send to the Registrar and every other party to the proceeding, as soon as practicable, a written notice of the counsel's or agent's name and contact information; and
- (c) a party who changes their counsel or agent at any point in a proceeding shall send to the Registrar and every other party to the proceeding, as soon as practicable, a written notice of the change including the new counsel's or agent's name and contact information.

### **6.3 Withdrawal of Representation or Assistance**

- (a) Before a date for a hearing has been set, counsel or an agent for a party to a proceeding may withdraw as counsel or the agent for that party by sending a written notice of withdrawal to every party to the proceeding and the Registrar as soon as practicable.
- (b) After a date for a hearing has been set, counsel or an agent for a party to a proceeding may withdraw as counsel or the agent for that party only after the panel has granted leave to do so. Counsel or an agent seeking leave to withdraw shall send, as soon as practicable, a written notice of the proposed withdrawal to the Registrar and every party to the proceeding. The written notice of the proposed withdrawal shall state, without disclosing any information that is subject to solicitor-client privilege that has not been waived, the reasons in support of the request for withdrawal. The panel may grant leave if it considers that such withdrawal would not be prejudicial to the public interest.
- (c) Any counsel or agent who withdraws as the representative for, or assistant of, a party to a proceeding shall send to the Registrar and every other party to the proceeding the latest contact information known for the party which that counsel or agent was representing or assisting.

### **6.4 Failure to Appear**

Unless the panel is not satisfied that the party to the proceeding has received notice in accordance with Part 5 of these Rules or as otherwise ordered by a panel, if a party to a proceeding does not attend the proceeding, or fails to attend part of the proceeding without first advising the panel of the intended absence, the panel may direct that:

- (a) the proceeding continue in that party's absence; and
- (b) the party is not entitled to any further notice of any step in the proceeding.

## **PART 7 DISCLOSURE**

### **7.1 Pre-Hearing Disclosure by Staff**

- (a) Unless otherwise ordered by a panel, this section does not apply to an appeal under the Act, an application in relation to Part 5 or Part 14 of the Act, or an application brought by staff for an order under Part 16 of the Act pursuant to section 33 of the Act.
- (b) As soon as practicable after the issuance of the notice of hearing, staff shall provide to all respondents an opportunity to inspect all material in its possession or control that is relevant to the proceeding and that is not privileged or excepted from disclosure pursuant to any applicable law. A respondent who wishes to make copies of any such material is responsible for paying the copying costs.

- (c) At least 30 days prior to the commencement of the hearing or as otherwise directed by a panel, staff shall provide to all respondents:
  - (i) a witness list containing the names of all proposed witnesses;
  - (ii) a summary of the anticipated evidence from each such witness or, if available, a transcript of any interview with that witness which generally discloses the anticipated evidence; and
  - (iii) copies of all documents that staff intends to enter as evidence during the proceeding.

## **7.2 Pre-Hearing Disclosure by Parties other than Staff**

- (a) Unless otherwise ordered by a panel, this section does not apply to an appeal under the Act, an application in relation to Part 5 or Part 14 of the Act, or an application brought by staff for an order under Part 16 of the Act pursuant to section 33 of the Act.
- (b) At least 15 days prior to the commencement of the hearing or as otherwise directed by a panel, each party to a proceeding shall provide to every other party to the proceeding:
  - (i) a witness list containing the names of all proposed witnesses;
  - (ii) a summary of the anticipated evidence from each such witness or, if available, a transcript of any interview with that witness which generally discloses the anticipated evidence; and
  - (iii) copies of all documents that the party intends to enter as evidence during the proceeding.

## **7.3 Expert Witness**

- (a) If a party to a proceeding intends to call a person to provide an expert opinion during the proceeding, that party shall send to the Registrar and every other party to the proceeding at least 120 days before the hearing, or as otherwise directed by the panel, the following:
  - (i) the proposed expert's name and qualifications; and
  - (ii) the proposed expert's written report or, if a report was not prepared, the substance of the proposed expert's evidence and a list of the materials and facts considered, and assumptions made by the proposed expert.
- (b) If any other party to that proceeding wishes to call a person to provide an expert opinion in reply, that party shall send to the Registrar and every other party to the

proceeding at least 45 days before the hearing, or as otherwise directed by the panel, the following:

- (i) the proposed expert's name and qualifications; and
- (ii) the proposed expert's written report or, if a report was not prepared, the substance of the proposed expert's evidence and a list of the materials and facts considered, and assumptions made by the proposed expert.

#### **7.4 Ongoing Disclosure Obligations**

If at any point in a proceeding a party obtains or determines that the party has material relevant to the proceeding that has not already been disclosed in compliance with the preceding sections in this Part, that party shall disclose that material to every other party to the proceeding immediately.

#### **7.5 Orders Regarding Particulars and Disclosure**

A panel may order or direct at any time after a proceeding has been commenced that:

- (a) a party to the proceeding provide such information as the panel considers appropriate; and
- (b) any other disclosure be made by a party to a proceeding, within such time and on such conditions as considered appropriate by the panel.

### **PART 8 PRE-HEARING CONFERENCE**

#### **8.1 Pre-Hearing Conference Considerations**

A panel may direct the parties to a proceeding to participate in a pre-hearing conference with a panel to:

- (a) identify the issues that will be raised in the hearing and the prospect of narrowing those issues;
- (b) address the admission of any facts;
- (c) address the admissibility of documents intended to be entered as evidence during the hearing;
- (d) determine if any party intends to call expert evidence;
- (e) address any issues relating to the disclosure obligations of any of the parties to the proceeding;
- (f) address preliminary objections or motions;

- (g) determine the date by which any step must be completed or any obligation must be fulfilled;
- (h) address the manner in which the hearing will be conducted, including the use of videoconferencing or any other electronic means of transmitting or presenting evidence or argument;
- (i) determine the readiness of the parties to proceed with the hearing;
- (j) discuss scheduling, including the appearance of witnesses; and
- (k) discuss any other issue the panel conducting the pre-hearing conference considers appropriate to address prior to the hearing.

## **8.2 Notice of Pre-Hearing Conference**

If a panel directs that a pre-hearing conference be held, the Registrar shall give notice of the pre-hearing conference to the parties to the proceeding and to such other persons and companies as the panel considers appropriate. The notice shall include:

- (a) the date, time, place and purpose of the pre-hearing conference;
- (b) a statement that each party to the proceeding must attend the pre-hearing conference either in person or through counsel or an agent who has the authority to make agreements on that party's behalf respecting the matters to be addressed at the pre-hearing conference;
- (c) a statement that if a party does not participate in person, or by counsel or an agent, in the pre-hearing conference, the proceeding may continue in the absence of that party; and
- (d) a statement that any orders, rulings or directions made by the panel, or agreements reached between the parties, at the pre-hearing conference will be binding on all parties to the proceeding, unless otherwise ordered or directed by a panel.

## **8.3 Orders and Agreements Governing the Conduct of Hearings**

Agreements between the parties to a proceeding and orders, rulings or directions made at a pre-hearing conference by the panel conducting the pre-hearing conference shall govern the conduct of the hearing and are binding upon the parties to that proceeding unless otherwise ordered or directed by a panel.

## **PART 9      ADJOURNMENTS**

### **9.1      Adjournment Requests**

Hearings will be conducted as and when scheduled in order to achieve the purpose of these Rules. If a party to a proceeding seeks an adjournment, that party may bring a motion as described in these Rules. Adjournments will not be granted as a matter of course or only for the purpose of convenience. Upon receipt of a motion for an adjournment, the panel may consider the following in determining whether or not to grant the request:

- (a) the public interest;
- (b) the prejudice to the other parties to that proceeding;
- (c) the effect on the cost, efficiency and timely completion of the proceeding;
- (d) the avoidance of unnecessary delay;
- (e) the need for a fair and understandable process;
- (f) each party's conduct in the proceeding to date; and
- (g) any other factor the panel considers relevant.

## **PART 10      HEARING PROCEDURE**

### **10.1      Witnesses**

- (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.

### **10.2      Location and Format of Hearing**

The panel will determine the location of and manner in which all or part of a hearing will be held. When making that determination, the panel may take into account the following factors:

- (a) the subject matter of the proceeding;
- (b) the nature of the evidence to be presented and the extent to which facts are in dispute;
- (c) the convenience of the parties and witnesses;
- (d) the effect on the cost, efficiency and timely completion of the proceeding;
- (e) the avoidance of unnecessary delay;
- (f) the need to ensure a fair and understandable process;
- (g) the desirability or necessity of public participation or public access to the Commission's process; and
- (h) any other factor the panel considers relevant.

### **10.3 Use of Videoconferencing or Other Technology in Hearing**

If a party to a proceeding requests that the hearing include the use of videoconferencing or any other electronic means of transmitting or presenting evidence or argument and the panel grants such a request, the panel may impose such conditions as it considers appropriate, including:

- (a) specifying that the requesting party is responsible for making the necessary arrangements for the use of the requested technology; and
- (b) requiring that the requesting party pay all or part of the cost of providing the facilities and equipment necessary for the conduct of that part of the hearing.

## **PART 11 PUBLIC ACCESS TO HEARINGS AND RELATED DOCUMENTS**

### **11.1 Documents, Hearings and Orders**

- (a) Subject to Alberta securities laws and any applicable statute, notices of hearing, notices of motion, any other written request for a hearing, order, ruling or direction, any evidence admitted at a hearing, and any order, ruling or direction are public documents unless otherwise ordered or directed by a panel.
- (b) Notices of application and any affidavits or documents filed in support thereof are public documents once the panel has issued a final ruling with respect to the application, unless the panel has ordered or directed that they should not be made public.
- (c) Upon reasonable notice, any person or company may inspect public documents at the Commission's offices during the Commission's normal business hours. Copies



are available from the Registrar upon payment of any fees prescribed by Alberta securities laws or as determined by the Commission.

- (d) A hearing is open to the public unless the panel considers it in the public interest to order or direct otherwise.

## **11.2 Pre-Hearing Conference**

A pre-hearing conference is not public and shall be attended only by the parties to the proceeding, each party's counsel or agent, such other persons and companies given notice of the pre-hearing conference under section 8.2 of these Rules, and the panel conducting the pre-hearing conference. Any document filed or referred to during a pre-hearing conference and any document prepared as a result of a pre-hearing conference shall not be public documents unless otherwise ordered by a panel.

## **11.3 Recording of Hearing**

- (a) Any person or company that wishes to obtain a copy of the official transcripts of a hearing may do so directly from the court reporter at that person's or company's own expense.
- (b) No other audio or visual recording of all or part of a hearing shall be made without leave of the panel. If the panel grants leave, the person or company recording the hearing shall not engage in any activity that may disrupt or detract from the process, including:
  - (i) interviewing a person in the hearing room;
  - (ii) using lights, cables or other equipment which could distract any person in the hearing room;
  - (iii) using flash photography; and
  - (iv) moving any equipment.

## **PART 12 EFFECTIVE DATE**

### **12.1 Effective Date**

These Rules come into effect on April 1, 2009, and shall apply to proceedings commenced on or after that date.