

**ALBERTA SECURITIES COMMISSION**

***GUIDELINES FOR USING ELECTRONIC DOCUMENTS IN ASC ENFORCEMENT HEARINGS***

**TABLE OF CONTENTS**

**PART 1** General..... 1

**1.1** Enforcement Proceedings to be Conducted by E-hearing..... 1

**1.2** Parties in E-hearing ..... 1

**1.3** Purpose of Guidelines ..... 1

**1.4** Calculation of Time..... 1

**1.5** Documents in E-hearing..... 1

**1.6** Requesting Alternative Hearing Process..... 1

**1.7** E-hearing Materials and Deadlines ..... 2

**1.8** Confidentiality..... 2

**1.9** Contact for Assistance..... 2

**PART 2** Rule 15-501 Reciprocal Disclosure Documents..... 2

**2.1** Reciprocal Disclosure Documents ..... 2

**2.2** Pre-hearing Disclosure by Enforcement Staff..... 2

**2.3** Pre-hearing Disclosure by Respondents..... 2

**2.4** Consequence of Incomplete Disclosure ..... 2

**PART 3** Provision of Reciprocal Disclosure Documents and Document Index to Clerk ..... 3

**3.1** Providing Materials to Clerk ..... 3

**3.2** Document Index Template..... 3

**PART 4** Preparation of Draft Exhibit List and Working Exhibit List ..... 3

**4.1** Draft Exhibit List ..... 3

**4.2** Working Exhibit List..... 4

**4.3** Exhibit Numbers ..... 5

**PART 5** Summary of Certain Pre-hearing Timelines..... 5

**PART 6** Procedure During E-hearing..... 6

**6.1** Presenting Documents..... 6

**6.2** Tendering Documents ..... 6

**6.3** Document Status ..... 6

**PART 7** Procedure After E-hearing..... 7

**7.1** Final Exhibit List..... 7

<b>PART 8</b>	Delivery of Material to Clerk .....	8
<b>8.1</b>	Delivery of Material to Clerk .....	8
APPENDIX A	.....	10
<b>A.</b>	General .....	10
<b>B.</b>	Document Formats .....	10
<b>C.</b>	Document Index .....	10
APPENDIX B	.....	12
APPENDIX C	.....	13
APPENDIX D	.....	14

*(updated August 25, 2020)*

## **PART 1 GENERAL**

### **1.1 Enforcement Proceedings to be Conducted by E-hearing**

An Alberta Securities Commission (ASC) hearing for an enforcement proceeding started by a **Notice of Hearing** dated April 1, 2019 or later is to be conducted using electronic documents instead of paper documents, unless ordered otherwise (see section 10.4 of Rule 15-501 [\*Rules of Practice and Procedure for Commission Proceedings \(Rule 15-501\)\*](#)). This is referred to as an electronic hearing or an **E-hearing**.

### **1.2 Parties in E-hearing**

The **Parties** in an E-hearing are **Enforcement Staff** of the ASC and one or more **Respondents** against whom allegations have been made in a Notice of Hearing.

### **1.3 Purpose of Guidelines**

These Guidelines are intended to help Parties prepare for and participate in an E-hearing.

### **1.4 Calculation of Time**

Calculation of time in these Guidelines is based on section 2.5 of Rule 15-501.

### **1.5 Documents in E-hearing**

In these Guidelines, **Document** has the same meaning as in section 1.1(d) of Rule 15-501. Essentially, a Document is a record of information in any form and any medium. This could include, for example, contracts, emails, images, graphs, tables, audio recordings and video recordings.

Documents referred to during an E-hearing are to be accessed and presented electronically in the hearing room. A Document is **tendered** when a Party asks the hearing panel to have the Document admitted as evidence in the hearing. A Party can tender a Document by having a witness testify about the Document or by agreement among all Parties. A Document does not become evidence in a hearing unless the hearing panel admits it.

### **1.6 Requesting Alternative Hearing Process**

If a Party takes the position that the E-hearing process would not be suitable for that Party's particular hearing, that Party is to apply as soon as practicable after a Notice of Hearing is issued for an order that the hearing be conducted using only paper documents or using a combination of paper documents and electronic documents (for this application process, see section 3.5 of Rule 15-501 regarding "motions").

## **1.7 E-hearing Materials and Deadlines**

For an E-hearing, all Parties are to provide the **Clerk** (the ASC staff member responsible for the administration of hearings) with certain information by certain deadlines, as set out in Rule 15-501 and in these Guidelines. Those deadlines are calculated based on the scheduled first day of the E-hearing.

## **1.8 Confidentiality**

Documents a Respondent receives in preparation for a hearing are to be treated as confidential and used only for the purpose of the hearing process. These Documents are not to be used in any other way, including posting them on social media.

## **1.9 Contact for Assistance**

Any questions about these Guidelines are to be directed to the Clerk by email at [clerk@asc.ca](mailto:clerk@asc.ca).

## **PART 2 RULE 15-501 RECIPROCAL DISCLOSURE DOCUMENTS**

### **2.1 Reciprocal Disclosure Documents**

Before an E-hearing, each Party electronically discloses all Documents that Party intends to rely on as evidence during the E-hearing. These are referred to here as **Reciprocal Disclosure Documents**.

### **2.2 Pre-hearing Disclosure by Enforcement Staff**

Enforcement Staff, at least 60 days before the start of the E-hearing, are to provide electronically all of Enforcement Staff's Reciprocal Disclosure Documents to each Respondent (see sections 7.1(c) and 10.4 of Rule 15-501).

### **2.3 Pre-hearing Disclosure by Respondents**

Each Respondent, at least 30 days before the start of the E-hearing, is to provide electronically all of that Respondent's Reciprocal Disclosure Documents to each other Party (see sections 7.2(b) and 10.4 of Rule 15-501).

### **2.4 Consequence of Incomplete Disclosure**

If a Party does not provide a certain Document by the deadline set out in Rule 15-501, that Party is not able to tender that Document at the E-hearing without a panel's approval.

## **PART 3 PROVISION OF RECIPROCAL DISCLOSURE DOCUMENTS AND DOCUMENT INDEX TO CLERK**

### **3.1 Providing Materials to Clerk**

At the time a Party provides Reciprocal Disclosure Documents electronically to each other Party, the Party providing those Reciprocal Disclosure Documents is also to provide electronically to the Clerk the following:

- (a) those Reciprocal Disclosure Documents, in accordance with Appendix A to these Guidelines; and
- (b) a **Document Index** listing each of the Party's Reciprocal Disclosure Documents, in accordance with Appendices A and B to these Guidelines.

### **3.2 Document Index Template**

The Clerk is to provide electronically to each Party a template for the Document Index.

If a Party has any technical questions or issues regarding this template for the Document Index or the provision of the Document Index to the Clerk, that Party is to contact the Clerk with those questions or issues at least **7 days** before that Party's deadline for providing the Document Index (at least **67 days** before the start of the E-hearing for Enforcement Staff and at least **37 days** before the start of the E-hearing for Respondents).

## **PART 4 PREPARATION OF DRAFT EXHIBIT LIST AND WORKING EXHIBIT LIST**

### **4.1 Draft Exhibit List**

The Clerk is to use each Party's Reciprocal Disclosure Documents and Document Index to create a **Draft Exhibit List**. An example of a Draft Exhibit List is in Appendix C to these Guidelines.

- (a) The Clerk is to provide electronically the Draft Exhibit List to all Parties for their responses (as set out below). The Clerk is to use Parties' responses to the Draft Exhibit List as the basis for the **Working Exhibit List**, which is to be used at the E-hearing to organize, identify and present the Reciprocal Disclosure Documents. An example of a Working Exhibit List is in Appendix D to these Guidelines.
- (b) At least **21 days** before the start of the E-hearing, the Clerk is to provide electronically to all Parties:
  - (i) the Draft Exhibit List; and
  - (ii) the Documents listed in the Draft Exhibit List.

- (c) After receiving the Draft Exhibit List from the Clerk, each Party is to review it.
- (d) Each Party is to provide to the Clerk at least **15 days** before the start of the E-hearing:
  - (i) an electronic copy of the Draft Exhibit List with the No Objection to Admissibility column for each Document from each other Party completed as follows:
    - if the Party does not object to the admissibility of a Document being tendered as evidence during the E-hearing, that Party is to put a check mark in the No Objection to Admissibility column for that Document; or
    - if the Party objects to the admissibility of a Document being tendered as evidence during the E-hearing, that Party is to leave blank the No Objection to Admissibility column for that Document; and
  - (ii) a notification of any apparent errors in the Draft Exhibit List.

#### **4.2 Working Exhibit List**

In creating the Working Exhibit List from the Draft Exhibit List, the Clerk is to:

- (a) compile the responses in the No Objection to Admissibility column from all Parties into the Pre-hearing Status column of the Working Exhibit List:
  - (i) if all Parties have responded with a check mark in the No Objection to Admissibility column for a particular Document, that Document is to be categorized as "No Objection to Admissibility" for the E-hearing, with that notation made in the Pre-hearing Status column of the Working Exhibit List for that Document; or
  - (ii) if any Party has not responded with a check mark in the No Objection to Admissibility column for a particular document, that Document is not to be categorized as "No Objection to Admissibility" for the E-hearing and no such notation is to be made in the Pre-hearing Status column of the Working Exhibit List for that Document; and
- (b) correct any errors identified.

The Clerk is to provide electronically to all Parties the Working Exhibit List at least **5 days** before the start of the E-hearing.

The inclusion of a Document on the Working Exhibit List does not mean that Document will become evidence in the E-hearing, as that determination can only be made by the hearing panel after a Document is tendered.

### 4.3 Exhibit Numbers

The Clerk is to assign an **Exhibit Number** to each Document listed in the Draft Exhibit List. The same Exhibit Number is to be used for that Document in the Working Exhibit List. These Exhibit Numbers are for the convenience of the Parties and the hearing panel when referring to Documents during and after the E-hearing.

The assignment of an Exhibit Number to a Document does not mean that Document will become evidence in the E-hearing, as that determination can only be made by the hearing panel after a Document is tendered.

## PART 5 SUMMARY OF CERTAIN PRE-HEARING TIMELINES

Days before hearing	Procedure
<b>60</b>	Enforcement Staff's Reciprocal Disclosure Documents and Document Index are to be provided electronically to the Clerk.
<b>30</b>	Each Respondent's Reciprocal Disclosure Documents and Document Index are to be provided electronically to the Clerk.
	All of the Parties' Reciprocal Disclosure Documents and information from the Document Indices are to be compiled by the Clerk into the Draft Exhibit List.
<b>21</b>	The Clerk is to provide electronically to all Parties the Draft Exhibit List and the Documents.
<b>15</b>	<p>Each Party is to provide electronically to the Clerk and to all other Parties:</p> <ul style="list-style-type: none"> <li>• the Draft Exhibit List with that Party's responses in the No Objection to Admissibility column: <ul style="list-style-type: none"> <li>○ a check mark if the Party does not object to the admissibility of a particular Document being tendered as evidence during the E-hearing; or</li> <li>○ no entry (blank) if the Party objects to the admissibility of a particular Document being tendered as evidence during the E-hearing; and</li> </ul> </li> <li>• notification of any apparent errors in the Draft Exhibit List.</li> </ul>
<b>5</b>	A Working Exhibit List is to be provided electronically by the Clerk to all Parties. This list is to be used and updated throughout the E-hearing. The Working Exhibit List is to have a Pre-hearing Status column which is to be based on the responses received by the Clerk from each Party in the No Objection to Admissibility column of the Draft Exhibit List.

## **PART 6 PROCEDURE DURING E-HEARING**

### **6.1 Presenting Documents**

- (a) During an E-hearing, a Party that wants to direct a witness to a Document is to ask the Clerk to present the Document by referring to the Exhibit Number in the Working Exhibit List.
- (b) If the Document is in text or image form, the Clerk is to present it on monitors in the hearing room. If the Document is not in text or image form, the Clerk is to present it with the appropriate technology.
- (c) Monitors are to be available in the hearing room for all Parties. Parties may bring their own electronic devices such as laptop computers, but these cannot be linked to the computer system in the hearing room. Documents presented by the Clerk will not be displayed on a Party's own electronic device.
- (d) The Clerk typically controls the Document being presented according to directions from the witness or the Party questioning the witness. In some circumstances, the hearing panel may allow a Party or a witness to control the Document.

### **6.2 Tendering Documents**

- (a) No Document will become evidence in the E-hearing unless a Party tenders that Document and the hearing panel admits that Document as evidence. That process is required even if a particular Document has the Pre-hearing Status of "No Objection to Admissibility".
- (b) If a Party wants to tender as evidence during the E-hearing a Document which the Party did not include in its Reciprocal Disclosure Documents and Document Index, that Party may do so only with the hearing panel's approval. If the hearing panel allows the Document to be tendered, the Clerk is to add that Document to the Working Exhibit List.

### **6.3 Document Status**

- (a) When the hearing panel has determined whether a tendered Document will be admitted as evidence in the E-hearing, the Clerk is to record that status in the Exhibit Status column on the Working Exhibit List. The categories of status for a tendered Document are:
  - (i) Admitted;
  - (ii) Partially Admitted;
  - (iii) Not Admitted; and
  - (iv) Exhibit for Identification.



- (b) If a Document marked as an Exhibit for Identification is later admitted or partially admitted by the hearing panel, the Clerk is to record that new status in the Exhibit Status column on the Working Exhibit List.
- (c) If the hearing panel rules that a Document is "Partially Admitted", the Clerk is to note on the Working Exhibit List which parts of the Document are admitted.
- (d) As soon as practicable after the end of each day of the E-hearing, the Clerk is to prepare and provide electronically to the Parties an updated version of the Working Exhibit List as at that point in the E-hearing.

## **PART 7 PROCEDURE AFTER E-HEARING**

### **7.1 Final Exhibit List**

- (a) After the evidence portion of the E-hearing is completed, the Clerk is to prepare the **Final Exhibit List**, based on the Working Exhibit List. The Clerk is to provide the Final Exhibit List electronically to all Parties as soon as practicable.
- (b) The Final Exhibit List is to have links to Documents admitted or partially admitted by the hearing panel as evidence during the E-hearing. If a Document is partially admitted, the Clerk is to redact unadmitted portions from the Document as linked to the Final Exhibit List.
- (c) If a Document is tendered during the E-hearing and marked as an Exhibit for Identification but neither admitted nor partially admitted by the hearing panel as evidence by the end of the E-hearing:
  - (i) it is to be noted as "Exhibit for Identification" in the Exhibit Status column on the Final Exhibit List;
  - (ii) the Exhibit Number column is to remain unchanged;
  - (iii) all other columns on the Final Exhibit List for that Document are to be blank; and
  - (iv) the Final Exhibit List is to have no link to that Document.
- (d) If a Document is tendered during the E-hearing but neither admitted nor partially admitted by the hearing panel as evidence:
  - (i) it is to be noted as "Not Admitted" in the Exhibit Status column on the Final Exhibit List;
  - (ii) the Exhibit Number column is to remain unchanged;
  - (iii) all other columns on the Final Exhibit List for that Document are to be blank; and

- (iv) the Final Exhibit List is to have no link to that Document.
- (e) If a Document is not tendered during the E-hearing:
  - (i) it is to be noted as "Not Tendered" in the Exhibit Status column on the Final Exhibit List;
  - (ii) the Exhibit Number column is to remain unchanged;
  - (iii) all other columns on the Final Exhibit List for that Document are to be blank; and
  - (iv) the Final Exhibit List is to have no link to that Document.
- (f) When preparing their written and oral submissions, if any, Parties are to refer to the Documents in evidence using the Exhibit Numbers assigned by the Clerk and showing as evidence on the Final Exhibit List.

## **PART 8 DELIVERY OF MATERIAL TO CLERK**

### **8.1 Delivery of Material to Clerk**

- (a) The electronic version of a Party's Reciprocal Disclosure Documents and the Document Index may be provided to the Clerk by:
  - (i) a labelled USB flash drive;
  - (ii) a labelled CD;
  - (iii) a labelled external hard drive;
  - (iv) **ShareFile**, the ASC's secure file transfer protocol (**FTP**); or
  - (v) another method determined in consultation with the Clerk.
- (b) If providing this electronic information physically, it is to be delivered to:

Alberta Securities Commission  
600, 250 – 5 Street SW  
Calgary, AB T2P 0R4  
Attention: ASC Hearing Clerk
- (c) If providing this electronic information by ShareFile, a Party is to contact the Clerk for a link.

- (d) Documents, the Document Index and other materials delivered to the Clerk are to be identified with the name of the Party providing the materials and a reference to the proceeding for which the materials are being delivered.

**APPENDIX A**

**PARAMETERS FOR RECIPROCAL DISCLOSURE DOCUMENTS AND DOCUMENT INDEX**

**A. General**

1. Each Reciprocal Disclosure Document is to be:
  - (a) accessible (that is, not individually encrypted or password-protected);
  - (b) legible, audible or viewable; and
  - (c) free of viruses and other forms of malicious software code.
2. Each Reciprocal Disclosure Document is to be identified by a unique **Document Identifier** or have a unique Document Identifier included as part of the document name. A Party may use a simple system (for example, 1, 2, 3, etc.) or may use a complex system (for example, as in Appendix B).

**B. Document Formats**

1. The acceptable Document formats are:

<b>Document Type</b>	<b>Acceptable Format</b>
Text or image	.pdf
Spreadsheet	.csv, .xls or .xlsx
Audio recordings	.wav, .mp3 or .mp4
Video recordings	.mp4

2. A single text or image Document with one or more pages is to be provided as a single PDF.
3. Distinct text or image Documents are to be provided as distinct PDFs, not bundled together with other Documents in a single PDF.
4. If scanning technology is used, scanning resolution is to be at least 300 dots per inch.
5. If the original Document contains colour, the electronic version provided is to be in colour.

**C. Document Index**

1. The Clerk is to provide electronically a template to the Parties for their use in preparing their version of the Document Index.

2. The Document Index is to be in a spreadsheet format that is viewable in Microsoft Excel (for example, .csv, .xls or .xlsx) with the following fields completed by each Party for each Document in that Party's Reciprocal Document Disclosure (as in the example in Appendix B):
  - (a) **Document Identifier** (as referred to in section A.2 of Appendix A);
  - (b) **Description** of the Document, indicating the type, subject and the date of the Document (if available);
  - (c) **File Format**, indicating the electronic file type of each Document (for example, .pdf, .xls or .wav);
  - (d) **Page Count** for a text or image Document; and
  - (e) **Category** to identify related Documents, if the Party chooses to do so, such as corporate searches, banking documents, or documents relating to a certain witness (this may be left blank).

**APPENDIX B**  
**DOCUMENT INDEX EXAMPLE**  
**(.CSV, .XLS OR .XLSX FORMAT)**

Document Identifier	Description	File Format	Page Count	Category
212345678	Affidavit of John Smith sworn June 23, 2017	.pdf	12	–
212345679	Letter to Alberta Co. re Section 40(2) Order dated April 15, 2017	.pdf	3	Alberta Co.
212345677	Video titled "Investment information"	.mp4	–	–
212345674	Memo re Offer Price dated January 14, 2016	.pdf	8	Jane Doe
212345671	Cheque for \$30,000 from Jane Doe to Alberta Co. dated January 21, 2016	.pdf	1	Jane Doe
212365175	CORES Alberta Co. dated December 30, 2016	.pdf	3	CORES
328716011	RBC Statement of Alberta Co. dated January 2016	.pdf	5	Banking Records
328716012	RBC Statement of Alberta Co. dated February 2016	.pdf	4	Banking Records

**APPENDIX C**  
**DRAFT EXHIBIT LIST EXAMPLE**  
**(.CSV, .XLS OR .XLSX FORMAT)**

Exhibit Number	Document Identifier	Description	File Format	Page Count	Category	No Objection to Admissibility (check if no objection)
<a href="#">001</a>	212345678	Affidavit of John Smith sworn June 23, 2017	.pdf	12	–	
<a href="#">002</a>	212345679	Letter to Alberta Co. re Section 40(2) Order dated April 15, 2017	.pdf	3	Alberta Co.	
<a href="#">003</a>	212345677	Video titled "Investment information"	.mp4	–	–	
<a href="#">004</a>	212345674	Memo re Offer Price dated January 14, 2016	.pdf	8	Jane Doe	
<a href="#">005</a>	212345671	Cheque for \$30,000 from Jane Doe to Alberta Co. dated January 21, 2016	.pdf	1	Jane Doe	√
<a href="#">006</a>	212365175	CORES Alberta Co. dated December 30, 2016	.pdf	3	CORES	√
<a href="#">007</a>	328716011	RBC Statement of Alberta Co. dated January 2016	.pdf	5	Banking Records	
<a href="#">008</a>	328716012	RBC Statement of Alberta Co. dated February 2016	.pdf	4	Banking Records	

**APPENDIX D**  
**WORKING EXHIBIT LIST EXAMPLE**

Exhibit Number	Description	Page Count	Category	Pre-Hearing Status	Exhibit Status	Date Entered	Entered By	Entered Through	Notes
<a href="#">001</a>	Affidavit of John Smith sworn June 23, 2017	12	–	–	Admitted	July 8, 2019	Staff	Witness 1	
<a href="#">002</a>	Letter to Alberta Co. re Section 40(2) Order dated April 15, 2017	3	Alberta Co.	–	Admitted	July 8, 2019	Staff	Witness 1	
<a href="#">003</a>	Video titled "Investment information"	–	–	–	Partially Admitted	July 8, 2019	Staff	Witness 1	0:00 – 3:58 only
<a href="#">004</a>	Memo re Offer Price dated January 14, 2016	8	Jane Doe	–	Admitted	July 8, 2019	Staff	Witness 1	
<a href="#">005</a>	Cheque for \$30,000 from Jane Doe to Alberta Co. dated January 21, 2016	1	Jane Doe	No Objection to Admissibility	Admitted	July 8, 2019	Staff	Witness 2	
<a href="#">006</a>	CORES Alberta Co. dated December 30, 2016	3	CORES	No Objection to Admissibility	Admitted	July 9, 2019	Staff	Witness 2	
<a href="#">007</a>	RBC Statement of Alberta Co. dated January 2016	5	Banking Records	–	Admitted	July 9, 2019	Staff	Witness 2	
<a href="#">008</a>	RBC Statement of Alberta Co. dated February 2016	4	Banking Records	–	Admitted	July 9, 2019	Staff	Witness 2	