

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:

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...\\John Doe\\Email\\
...\\John Doe\\Personal Computer\\
...\\John Doe\\Company Server\\
...\\John Doe\\iPad\\
...\\Mary Smith\\Email\\
...\\Mary Smith\\Company Server\\
...\\iCloud Host name\\
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...\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.