

November 19, 2018

Introduction

The Alberta Securities Commission (**ASC**) has today implemented its new Whistleblower Program (**Program**), through the release of ASC Policy 15-602 *Whistleblower Program* (**Policy**) and the simultaneous coming-into-force of amendments to the *Securities Act* (Alberta) (**Act**).

The Program is intended to encourage employees (broadly defined) to report potential breaches of Alberta securities law to the ASC, and to protect them when doing so. Designed to promote compliance and help identify misconduct in Alberta's capital market at its earliest possible stages, the Program will enable the ASC to intervene, investigate, and minimize harm to investors.

New mechanisms and processes have been implemented to make reporting easier for whistleblowers, and new legislative provisions have been enacted to strengthen confidentiality, prohibit reprisals, and provide a civil right of action in the event a reprisal does occur. This Notice summarizes core elements of the Program, but should not be used in place of or to interpret the Policy or any provisions of the Act.

The text of the Policy is attached as Annex A to this Notice, and is also available on the ASC's website at www.albertasecurities.com. Legislative provisions referred to in this Notice or in the Policy are available through the Alberta Queen's Printer at www.qp.alberta.ca.

Background

As part of its fiscal 2018-2020 Strategic Plan, the ASC committed to developing a program to encourage and protect whistleblowers in the context of securities regulation.

Employees can be an important source of information to help identify serious securities misconduct – particularly regarding issues such as financial reporting, corporate disclosure, insider trading and tipping, and market manipulation. In many cases, however, uncertainty or fear about potential repercussions can discourage these individuals from coming forward.

Staff engaged an external consultant, carefully assessed other whistleblower programs nationally and internationally, reviewed scholarly research, evaluated the evidence of what program elements are effective, and developed a program that emphasizes practical protection for good-faith whistleblowers.

Staff concluded that an effective whistleblower program must:

- (a) protect the identity of whistleblowers;

- (b) make very clear to both prospective whistleblowers and capital market participants that whistleblowers will be protected, while those who take reprisal action against whistleblowers will be subject to clear, significant legal consequences; and
- (c) be simple to use.

Highlights of the Program

The Program facilitates simple reporting. By providing a dedicated whistleblower telephone “tip” line and easy access to forms for submission through email, regular mail or in person, the ASC aims to ensure that employees in Alberta can report suspicious securities activity easily and clearly. Whistleblowers will also have ready access to trained, knowledgeable staff if any questions arise relating to submitting a whistleblower tip.

Even more importantly, the hallmark of a sound whistleblower program is that it affords rigorous protection to those who use it – and the Program provides several layers of protection. In order to ensure that these protections have the required scope and effect, they have been set out in new legislative provisions in the Act.

Confidentiality

In addition to the general confidentiality requirement that applies to all investigative information, new provisions in the Act provide further protection for the identity of whistleblowers and information that may reasonably be expected to reveal their identity. Even in Commission hearings or court trials, this identifying information will remain confidential unless the whistleblower and the ASC’s Executive Director consent to its disclosure or it is necessary for respondents to prove that they did not commit the alleged misconduct.

Although whistleblowers will have their identity *as whistleblowers* protected by Commission staff, this does not mean that whistleblowers will be immune from having to provide documents, other information, or testimony as *witnesses* if an investigation and/or a hearing proceeds. Where a matter does proceed to a trial or hearing, no witnesses may be questioned about their knowledge or belief regarding the existence or identity of a whistleblower.

Obstruction and Reprisals are Expressly Prohibited

Under the Act, no one may take a reprisal against an employee for acting as a whistleblower, for seeking or providing advice about acting as a whistleblower, or even because a relative of the employee acted as, or sought or gave advice about, acting as a whistleblower.

“Reprisal” includes (among other things) termination of employment, suspension, demotion, transfer, reprimand, and other measures that would adversely and materially affect employment or working conditions.

Any individuals or corporations that do take prohibited reprisals against employees are subject to the full range of sanctions under the Act, including administrative penalties of up to \$1 million. In an appropriate case, Commission staff may prosecute such conduct as an offence, and seek fines of up to \$5 million and/or terms of imprisonment in Provincial Court.

Civil Right of Action if Reprisals Occur

In order to give further protection to whistleblowers and emphasize that reprisals will be subject to serious legal consequences, the Act also creates a statutory claim for damages in favour of employees who suffer a reprisal. This allows an employee who is dismissed or otherwise suffers a reprisal as a result of reporting a potential breach of Alberta securities laws, to claim damages in court against the employer and others involved in the reprisal. Such damages are in addition to any other compensation or claims the employee may be entitled to under other laws, and may amount to multiples of the employee's annual remuneration.

Anti Avoidance and Immunity

Whistleblowers will also be protected against certain contractual clauses that directly or indirectly attempt to prohibit the reporting of potential securities misconduct to the Commission, as new provisions in the Act render such clauses unenforceable. Other new provisions expressly provide immunity against legal liability for employees acting as whistleblowers or providing advice in that regard.

Transition

The Program is effective as of November 19, 2018. The protections will apply even in relation to securities misconduct that occurred prior to this date, but only in relation to tips regarding potential securities law violations that are first received by the Commission on or after this date. For example, an employee who provided a tip about a potential breach of Alberta securities laws in October, 2018 cannot be protected under the Program as a whistleblower. An employee who provided such a tip in December 2018 would be protected as a whistleblower (if he or she otherwise met the defined criteria).

Further Information

Additional information about the purpose, scope and operation of the ASC's new Whistleblower Program is available in the Policy annexed to this Notice.

Annex A

ALBERTA SECURITIES COMMISSION POLICY 15-602

WHISTLEBLOWER PROGRAM

Interpretation

1. In this Policy

“Act” means the *Securities Act* (Alberta);

“Office of the Whistleblower” means staff of the Commission who are designated from time to time to oversee and execute functions relating to the Program;

“Program” means the whistleblower program set out in this Policy;

“Reprisal Reporting Form” means the form prescribed by the Office of the Whistleblower from time to time for reporting a potential reprisal, available on the Commission website;

“Tip” means all information or things provided to the Commission under the Program regarding a potential breach of Alberta securities laws that has occurred, is ongoing, or is reasonably believed to be about to occur;

“Whistleblower Form” means a form prescribed by the Office of the Whistleblower from time to time for initiating a Tip, available on the Commission website.

2. Terms that are defined in the Act have the same meaning in this Policy. The terms “company”, “employee”, “person”, “relative”, “reprisal”, “whistleblower”, and “wrongdoing”, which are defined in the Act, are reproduced in Schedule A to this Policy for convenience.

Purpose

3. The Commission is committed to fostering a fair and efficient capital market in Alberta and to protecting investors. It can best fulfil this mandate when employees in Alberta feel safe in reporting, and have an easily accessible means to report, potential securities wrongdoing.

4. This Policy establishes the Program to protect employees in reporting, and encourage them to report, potential securities wrongdoing in Alberta.

5. This Policy

(a) provides guidance on the process of submitting a Tip to the Commission,

- (b) outlines what happens after a Tip is submitted to the Commission, and
- (c) provides summary information about the protections available to whistleblowers, which are set out in detail in Parts 2.1 and 17.02 of the Act.

What to include in a Tip

6. A whistleblower should provide relevant information to allow the Commission to investigate a potential breach of Alberta securities laws. A Tip should include each of the following:
 - (a) a description of the potential breach;
 - (b) date(s) the potential breach occurred;
 - (c) the name of person(s) and/or company/companies involved in the potential breach;
 - (d) whether the whistleblower previously reported the Tip to anyone else (for example, to an employer), and any resulting actions;
 - (e) any additional information or supporting evidence (where available);
 - (f) the whistleblower's name and contact information (unless a Tip is provided anonymously);
 - (g) confirmation that the information in the Tip is true and accurate to the best of the whistleblower's knowledge and belief.

How to submit a Tip

7. A whistleblower can provide a Tip directly to the Office of the Whistleblower by submitting a Whistleblower Form in accordance with section 9, including a detailed description of the potential breach. Alternatively, a Tip can be submitted by a lawyer on behalf of a client. The completeness of the Whistleblower Form and the information contained in it will affect any action taken by the Commission as a result of the Tip.
8. A whistleblower can contact the Office of the Whistleblower through a dedicated toll free number (**1-833-295-4387**) to ask questions about the whistleblower process. The line will be staffed during local business hours (Monday to Friday 8 a.m. - 5 p.m. MST/MDT) and voicemail will be available when the Office of the Whistleblower is unavailable or the call is made outside of business hours.

9. A Whistleblower Form can be submitted to the Office of the Whistleblower in one of the following ways:

(a) Download the form from the Commission website (www.albertasecurities.com/whistleblower/Form A or, for lawyers submitting on behalf of their clients, www.albertasecurities.com/whistleblower/Form B), as a PDF document. Complete and submit the form via email (owb@asc.ca);

(b) Print, complete and submit the form via mail to the following address:

OWB Confidential
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta, T2P 0R4;

(c) Print, complete and courier or hand deliver the form to the Commission's office at:

OWB Confidential
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta, T2P 0R4

Anonymous Tips

10. Anonymous Tips will be accepted by the Office of the Whistleblower. However, Tips submitted anonymously can limit the ability of Commission staff to thoroughly investigate a matter if insufficient information is provided, or if follow up information from the whistleblower is required but the identity of the whistleblower is unknown.

Internal reporting

11. Whistleblowers are strongly encouraged to use processes for internal reporting through employers or otherwise. However, Tips are not required to be submitted elsewhere before being submitted to the Office of the Whistleblower.

Acknowledging Tips

12. If requested by the whistleblower, the Office of the Whistleblower will provide acknowledgement of receipt of a Tip via email, mail or phone (depending on the whistleblower's stated preference), generally within two business days of receiving the Tip.

13. The Office of the Whistleblower may not be able to acknowledge anonymous Tips.

Use of Tips

- 14.** A Tip submitted to the Office of the Whistleblower will be collected and managed in accordance with Alberta securities laws and the procedures of the Office of the Whistleblower.
- 15.** The Office of the Whistleblower will review all Tips, although not all Tips will result in investigations or other action.
- 16.** The Commission may use a Tip for any purpose in carrying out its mandate. However, the Commission has no obligation to use any Tip submitted by a whistleblower.
- 17.** Any documents or items provided to the Office of the Whistleblower as part of a Tip will not be returned.

Additional information

- 18.** Upon review of a Tip, the Office of the Whistleblower may request that a whistleblower provide additional information including, but not limited to, a description and the location of documents and things that may help with an investigation.
- 19.** During the course of an investigation, a whistleblower may be compelled to provide documents or to answer questions under oath, in the same manner as another witness.

Providing updates

- 20.** The Office of the Whistleblower is generally unable to update a whistleblower regarding any action taken as a result of a Tip. However, the Office of the Whistleblower may, following receipt of a Tip, and at its discretion, do any of the following:
 - (a) advise the whistleblower that no further action is to be taken by the Commission;
 - (b) request additional information from the whistleblower;
 - (c) advise the whistleblower of the issuance of a notice of hearing or order, or the execution of a settlement agreement and undertaking.

General

- 21.** The Commission is committed to providing protection to whistleblowers who submit Tips in accordance with the Program.
- 22.** Some protections listed below may not be available to whistleblowers who submit anonymous Tips.

23. Some or all of the protections listed below may not be available where a whistleblower provides false or misleading information to the Commission, there are reasonable grounds to believe the whistleblower has committed an offence under the Act or the Criminal Code related to the information disclosed by the whistleblower, or the whistleblower did not reasonably believe the information provided to the Commission. Providing misleading information to the Commission is expressly prohibited under Section 57.7 of the Act.

Confidentiality

24. Section 57.2 of the Act provides that a whistleblower's identity, and any information that reasonably could be expected to reveal a whistleblower's identity, is confidential, and section 46.1(1) of the Act provides that all such information cannot be compelled from the Commission under the *Freedom of Information and Protection of Privacy Act* (Alberta).
25. Commission staff will not disclose a whistleblower's identity or information that could be reasonably expected to reveal a whistleblower's identity to other regulatory or law enforcement authorities without the consent of the whistleblower and the Executive Director.
26. Commission staff will manage their communications, activities, and reporting in such a way as to promote confidentiality of a whistleblower's identity.

Reprisals prohibited

27. Section 57.4 of the Act prohibits reprisals against an employee in response to actual or anticipated whistleblowing activity by the employee or a relative, or in response to cooperating, testifying or otherwise assisting in Commission investigations or proceedings.
28. The Commission has the power to investigate potential reprisals and take appropriate proceedings against employers or colleagues who commit or direct a reprisal against a whistleblower who submitted a Tip in good faith. Sanctions may include any of those listed in Sections 194, 198 or 199 of the Act.
29. A person may report a potential reprisal by completing the Reprisal Reporting Form (www.albertasecurities.com/whistleblower/reprisalform) and submitting it to the Office of the Whistleblower using a method described in section 9 above.
30. For Commission staff to investigate a potential reprisal, a Reprisal Reporting Form must generally be received within one year of the date the reprisal allegedly occurred.

Civil claim for reprisals

31. Section 211.0961 of the Act creates a statutory right for a whistleblower to claim certain damages for a reprisal. Investigative information from the ASC, including information from the Office of the Whistleblower, will generally not be available to the parties in any such legal action.

Anti-whistleblowing provisions unenforceable

32. Section 57.5 of the Act renders unenforceable any contractual provisions and policies that attempt to prohibit an employee from acting as a whistleblower, seeking or providing advice about acting as a whistleblower, or assisting in investigations or proceedings of the Commission.

Obstruction prohibited

33. Section 57.6 of the Act prohibits obstructing an employee from doing any of the following: acting as a whistleblower; seeking or providing advice about acting as a whistleblower; or assisting in investigations or proceedings of the Commission.

Limited immunity

34. Section 57.8 of the Act provides limited immunity to an employee against liability for acting as a whistleblower or for seeking or providing advice about acting as a whistleblower.

PART 5 - CREDIT FOR COOPERATION

35. Whistleblowers who are themselves involved in securities misconduct may in certain circumstances be entitled to receive credit in enforcement proceedings, for prompt cooperation during an ASC investigation, in accordance with ASC Policy 15-601 *Credit for Exemplary Cooperation in Enforcement Matters*.

Contact us

For more information about the Program, please contact the Office of the Whistleblower at:

Phone: **1-833-295-4387**

Email: owb@asc.ca

Or visit our website at www.albertasecurities.com.

SCHEDULE A

The following terms defined in the *Securities Act* (Alberta) relate specifically to this Alberta Securities Commission Policy 15-602 *Whistleblower Program*, and will assist in the interpretation of the Policy.

Definitions

1 In this Act,

...

(i) “company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

...

(mm) “person” means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative;

...

57.1 In this Part [Part 2.1 Whistleblowing],

...

(b) “employee” means, in respect of a person or company, an individual who is or was at the relevant time

(i) a full-time employee, a part-time employee or a director of that person or company,

(ii) an independent contractor for that person or company, or a full-time employee, part-time employee or director of that independent contractor, or

(iii) a full-time employee, part-time employee or director of an affiliate of that person or company;

(c) “relative” means, in respect of an employee, the parents, spouse, adult interdependent partner, siblings and children of the employee;

...

(e) “reprisal” means, in respect of an employee, any measure or conduct that adversely and materially affects employment or working conditions, including but not limited to dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a position, termination of a contract, change of workplace, reduction in remuneration, change in hours of work, reprimand,

harassment, denial of a benefit and any threat of any measure or conduct that would adversely and materially affect employment or working conditions;

- (f) “whistleblower” means an employee of a person or company who voluntarily discloses to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company, or an employee of the person or company, but does not include an employee
- (i) who only disclosed, or has already disclosed, the information in response to an order or a summons issued under a law of Canada, or
 - (ii) who is required to report or otherwise provide the information to the Commission as a result of a pre-existing legal duty.
- (g) “wrongdoing” means a contravention of Alberta securities laws.

...

211.096 In this Part [Part 17.02 Civil Liability for Reprisals Against Whistleblowers],

...

- (e) “whistleblower” means an employee of a person or company who has, or is believed to have,
- (i) voluntarily disclosed to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company or an employee of the person or company,
 - (ii) sought or provided advice about voluntarily disclosing, or expressed an intention to voluntarily disclose, to a Commission staff member information respecting alleged wrongdoing by or in connection with the person or company or an employee of the person or company;
 - (iii) in respect of any information described in subclause (i) or (ii), voluntarily co-operated, testified or otherwise assisted in , or expressed an intention to voluntarily co-operate, testify or otherwise assist in,
 - (A) an investigation by a Commission staff member, or
 - (B) a proceeding under this Act,

but does not include an individual who only disclosed, or has already disclosed, the information in response to an order or a summons issued under a law of Canada or who is required to report or otherwise provide the information to the Commission as a result of a pre-existing legal duty.