

**ALBERTA SECURITIES COMMISSION  
NOTICE AND REQUEST FOR COMMENT**

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

**January 18, 2013**

**1. Introduction**

The Alberta Securities Commission (**Commission** or **ASC**) is pleased to publish and request comment on the following:

- Proposed Rule 15-503 *Production of Records* (**Rule 15-503** or the **Rule**), attached hereto as Appendix A; and
- Proposed Companion Policy 15-503CP *Production of Records* (**15-503CP** or the **Companion Policy**), attached hereto as Appendix B.

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

ASC staff invite public comment on Rule 15-503 and its Companion Policy. Both substantive and technical comments are helpful, and significantly contribute towards ensuring that we implement a practical, beneficial rule. Comments should be provided in writing (as set out at the end of this Notice), and may be made up to and including 24 March 2013.

**2. Background**

Rule 15-503 has been developed in response to explosive growth in the use and retention of “electronic” forms of information, coupled with the increasing challenges faced by securities commission investigators around obtaining, identifying and tracking records received in the course of an investigation.

Organizations such as the *Sedona Conference* have, since the late 1990s, dedicated enormous effort to identifying issues and establishing principles relating to electronic “discovery” and production of records. In the civil litigation context, the *Alberta Rules of Court* (and the corresponding rules in other jurisdictions) set out rules, practice notes, and recommendations on how parties and their lawyers should deal with procuring and producing electronic and physical records, including how records should be listed and identified. In the securities regulatory context, both the Securities and Exchange Commission (**SEC**) and the Commodity Futures Trading Commission (**CFTC**) in the United States issue multi-page “Data Delivery Standards”

documents along with their record production orders or subpoenas, directing recipients in great detail as to how they are to provide the records in question. What these initiatives recognize is, first, that the information in electronic records is not accurately captured by simply printing those records, and second, that the proper management of records produced in investigative and litigation contexts requires standards for identification, description, and processing of such records.

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

### **3. Highlights of the Rule**

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

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

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

Other definitions address the modern reality of electronic information. Terms like “metadata”, “load file”, and “remote electronic custodian” are included so that provisions in the Rule can expressly deal with how electronic information is to be produced.

The Rule includes a basic “legal hold” requirement. Section 93.4 of the Act already sets out a generic prohibition on “destroying” or “withholding” any information, property or thing reasonably required for a hearing, review or investigation, but ASC staff believe that a more specific obligation is appropriate in circumstances where a formal demand for information has been made.

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

The Rule specifies that in general “true copies” of records are to be produced instead of originals, but that the original records must be retained and available should the need arise.

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

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

Recognizing that there are varying levels of sophistication amongst recipients of production orders, the Rule permits staff to give written authorization to deviate from the prescribed methods of producing paper records. ASC staff may, for instance, authorize an investor who is a prospective witness in a proceeding to simply initial the copy of the Offering Memorandum or sales brochure he or she provides to staff, without any numbering requirement.

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

#### **4. Proposed Companion Policy 15-503CP**

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

#### **8. Comments**

You may provide written comments in paper or electronic form. The comment period expires 24 March 2013.

Please send your comments to the following address:

Elaine Balestra  
Electronic Evidence Specialist  
Alberta Securities Commission  
Suite 600, 250-5th Street SW  
Calgary, AB, T2P 0R4  
Email: [elaine.balestra@asc.ca](mailto:elaine.balestra@asc.ca)

## APPENDIX A

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

#### PART 1 – INTERPRETATION

##### Definitions

##### 1. In this Rule

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

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

“electronic records” means data stored on any type of electronic media, including but not limited to computers, hard disk drives, removable disk drives, compact disks, DVD disks, USB drives, mobile or smart phones, GPS devices, digital recorders, digital answering systems, and tape drives;

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

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

“native format” means the electronic file format in which electronic records were created;

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

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

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

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

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

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

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

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

2. Unless defined in this Rule, terms defined in section 1 of the Act apply.

## **PART 2 – GENERAL PROVISIONS**

### **Purposes of this Rule**

3. The purposes of this Rule are to assist staff in efficiently obtaining, organizing, reviewing and maintaining records obtained 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.

### **Preservation of Records**

4. (1) A respondent who receives a production order in which that respondent is named must not destroy, delete, dispose of, or otherwise damage or alter records described in the production order or records reasonably identifiable as being related to such records, either by deliberate action or by failing to take reasonable steps to preserve records that are subject to scheduled or periodic deletion, overwriting, or replacement.  
(2) A respondent named in a production order must promptly and clearly communicate to affected employees, agents or contractors the obligation not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order or reasonably identifiable as being related to such records.  
(3) A respondent named in a production order must promptly and clearly notify any remote electronic custodian of the obligation not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order or reasonably identifiable as being related to such records.  
(4) An employee, agent, or contractor of the respondent, and any remote electronic custodian in receipt of a notification provided by a respondent in accordance with subsection (2) or (3) of this section, is subject to subsection (1) of this section with respect to the records in its possession or control.

### **Multiple Copies**

5. (1) Where multiple copies of a record exist and the copies differ from one another in any way, including but not limited to having different notations, colours, signatures, or other markings, each copy must be treated as a distinct record and each copy must be provided if included within the scope of the production order.

- (2) Notwithstanding subsection (1), where the only difference between multiple copies of a record is that one copy is in physical form and one or more other copies are electronic records, a respondent is only required to provide the electronic records.
- (3) Where a respondent has multiple copies of a record and the copies are identical to one another, the respondent is only required to provide one copy of the record but must identify, to the extent possible, the custodians of all copies of the record.

### **Cover letter**

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

### **Delivery of Records**

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

### **Original Records**

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

## **PART 3 – PHYSICAL RECORDS**

### **Paper Only Records**

9. (1) Where a production order applies to records that a respondent holds only in paper or other printed format, the respondent must provide true copies of such records
  - (a) in paper or other printed format, or
  - (b) as true, accurate and complete electronic images of the paper or other printed records.
- (2) Where a production order applies to records that a respondent holds only in paper or other printed format, the respondent must provide true copies of such records
  - (a) grouped according to the person or location from whom or from which they were obtained,
  - (b) grouped in the same order as they were in their native format, and not re-organized or re-sorted,
  - (c) in a manner that ensures
    - (i) that the true copies are not less legible than the originals,

- (ii) that all marginal notes, footers, and similar features are not obliterated, masked or inadvertently lost in the copying process,
  - (iii) that where a record includes information on both sides of one or more pages, both sides of such pages have been copied or imaged,
  - (iv) that folded paper (including “dog-eared” pages) is unfolded prior to copying or imaging, and
  - (v) that paper (or image) size is appropriate to legibly reproduce all of the information on the original record, and
- (d) in a manner that maintains the grouping and relationship of the records in their native format, and in particular by using paper or electronic slip sheets, staples, paper clips, or similar fasteners to keep related pages of records together where appropriate.
- (3) Where a respondent produces records to staff under section 9(1)(a) of this Rule in paper or other printed format, such records must each be marked with a sequentially-numbered record number.
- (4) Where a respondent produces records to staff under section 9(1)(b) of this Rule in the form of electronic images,
- (a) such electronic images must each contain a unique identifying number that is
    - (i) in a format specified in the production order, or where no format is specified, consisting of a unique alphanumeric prefix followed by a seven digit, zero-filled number, consecutively sequenced in the order of the records produced, and
    - (ii) electronically affixed to each image in the lower right corner, unless this would obscure text or other existing information on the image, in which case such number may be placed in the upper right corner;
  - (b) the media containing the images must be accompanied by such embedded information or additional electronic files that enable staff to:
    - (i) relate each electronic image file to the unique identifying number affixed to each image (for single-page image files), or to the range of unique identifying numbers affixed to multiple images (for multi-page image files);
    - (ii) relate each electronic image file to a specific source and custodian from which it was obtained; and

- (iii) load the electronic image files, together with the corresponding unique identifying numbers and the source and custodian information relating to each electronic image file, into a database; and
- (c) the following formats must be used:
  - (i) black and white images must be provided in the form of Group IV single-page TIFF files with a resolution of at least 300 dpi;
  - (ii) colour images must be provided in the form of JPEG files with a resolution of at least 150 dpi; and
- (5) Upon request, and notwithstanding anything in this section, staff may authorize a respondent to produce records that a respondent holds only in paper or other printed format in a manner other than as prescribed in subsections (2), (3), and (4) of this section.

### **Other Physical Records**

- 10.** (1) Where a production order applies to physical records other than paper or printed records, a respondent must provide true copies of such records
  - (a) in the same physical format as the original, or
  - (b) electronically, by copying the records in question in a manner that is accurate, complete, and that can be reviewed using commercially available systems or tools.
- (2) Notwithstanding subsection (1), where it is impractical to reproduce a true copy of a physical record other than paper or printed records either in physical or electronic format, a respondent may produce the original of such record.

## **PART 4 – ELECTRONIC RECORDS**

### **Native Format**

- 11.** (1) Except as otherwise provided in this Rule, electronic records must be provided in their native format whenever possible.
- (2) Notwithstanding subsection (1), where electronic records in their native format can only be reviewed or interpreted by the use of non-commercially available, proprietary systems or software, a respondent must identify such records to staff and

- (a) make available to staff the systems or software to enable review and interpreting of the records, or
- (b) provide a reasonable alternative electronic means of reviewing or interpreting the records, which does not compromise the accuracy or completeness of the records as they exist in their native format.

### **Access to Electronic Records**

- 12.** Where access to review electronic records, including review of metadata, is restricted by means of passwords, encryption, or other forms of access limitation, the respondent providing the records must also provide the means through such restrictions so as to enable staff to review the records.

### **Electronic Messaging**

- 13.** Where a production order applies to records of any form of electronic messaging or text messaging, and where a respondent is unable to provide such records in their native format, the records may be provided in another electronic format that accurately and completely captures the content of and metadata relating to the records in their native format.

### **Audio and Video Files**

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

### **Records Stored With A Remote Electronic Custodian**

- 15.** Where a production order applies to records in the possession or control of a remote electronic custodian, a respondent must provide all of the source records which were provided to the remote electronic custodian; the metadata, if available, relating to the

records; and copies of the records as they were modified, presented, published, or retained by the remote electronic custodian.

#### **PART 5 – EXEMPTIONS**

- 16.** Upon an application, the Commission or the Executive Director may grant an exemption from all or any part of this Rule, and any such exemption may be made subject to any terms and conditions.

## APPENDIX B

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

#### PART 1 – INTERPRETATION

##### Definitions in this Policy

1. Terms defined in Alberta Securities Commission Rule 15-503 *Production of Records* (**Rule 15-503**) have the same meaning in this Policy.

#### PART 2 – GENERAL PROVISIONS

##### Purpose of this Policy

2. (1) The purpose of this Policy is to assist respondents in understanding how to comply with Rule 15-503, and to explain staff's application of Rule 15-503 in relation to specific issues and circumstances.
- (2) Generally speaking, Rule 15-503 is intended to assist both staff and respondents with respect to respondents' obligation to produce records. The basic concepts 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 demanded 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.

- (2) Subsection 4(2) of Rule 15-503 makes clear that a firm must 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, 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) Rule 15-503 specifies that respondents are required to produce all copies of records captured within a production order, except where
  - (a) such records truly are exact duplicates, 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 requirement 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. 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.

- (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 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. 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 ASC 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 six years. In the event that it becomes necessary for staff to review originals, Rule 15-503 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, Rule 15-503 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 ASC 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 easy to “affix” digital record numbers to each scanned image, a greater level of detail is expected. Specifically, each image (i.e., of each “page”) must have a seven digit, zero-filled number with a unique prefix affixed to it – for example XCo-0000013. Staff will normally assign the unique prefix when sending the production order, but respondents may use letters of their choosing if no prefix is assigned.
- (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:

<b>BegNumber</b>	<b>EndNumber</b>	<b>Location</b>	<b>Custodian</b>
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 Rule 15-503. 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 a formal exemption, of course, from any provision in Rule 15-503 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) 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 (sometimes called “zip 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.
- (3) Electronic records should be organized on the portable media used to provide them, according to the custodian or location of the records in question at the time of receipt of the production order. For example, file folders on a DVD-Rom used to provide records may be organized as follows:

```

... \John Doe \Email \
... \John Doe \Personal Computer \
... \John Doe \Company Server \
... \John Doe \iPad \
... \Mary Smith \Email \
... \Mary Smith \Company Server \
... \iCloud Host name \
... \WebSite Name \VersionDate1 \
... \WebSite Name \VersionDate2 \
... \Google Ad \VersionDate1 \

```

- (4) 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 a formal 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.