

May 4, 2018



## **Backgrounder: ASC new provision within the Credit for Exemplary Cooperation in Enforcement Matters Policy**

### **Overview**

The ASC's mission is to foster a fair and efficient capital market in Alberta and to protect investors. To achieve these goals, our Enforcement Division continues to broaden its available tools and resources to achieve efficient and effective outcomes. The latest tool, the ability to establish no-contest settlement agreements, is a provision within the *Credit For Exemplary Cooperation in Enforcement Matters Policy* and may be considered in limited circumstances.

### **No-contest settlement agreement considerations**

No-contest settlement agreements may be considered when respondents have self-reported, are fully cooperating with the ASC and are taking financial responsibility for their actions.

A no-contest settlement agreement will not be considered if the ASC has reason to believe that a respondent has engaged in abusive or fraudulent misconduct, or if it is in the public interest to proceed with a quasi-criminal or criminal investigation. In these cases the ASC will take action to secure admissions or findings of misconduct while also holding respondents accountable.

A no-contest settlement agreement may expedite some cases, freeing up limited resources that can then be reallocated to pursue other securities violations. Additionally, these agreements can result in timely restitution by a respondent directly to investors, or those harmed by their actions. It will always be in the sole discretion of the ASC whether a no-contest settlement agreement will be available in the circumstances.

### **Factors influencing the availability of a no-contest settlement agreement**

To earn credit for exemplary cooperation and the ability to negotiate a no-contest settlement agreement, the following are factors for consideration as outlined within the policy:

- self-report if you think you may have done something illegal or harmful to Alberta investors;
- promptly give complete information, including all documents and records, to the ASC or any other regulator or law enforcement agency;
- fully cooperate with ASC staff's requests for assistance or information, including prompt and complete responses to production orders, summonses, or other lawful requests and demands made by ASC staff;
- fully investigate the matter (if applicable), in addition to reporting it to the ASC;
- collect, preserve, and disclose all relevant documents and information in your possession or control;
- give ASC staff any reports prepared by experts or professionals that you or your legal counsel obtained, that are not subject to legal or other privilege;
- request that employees, officers and directors provide evidence to ASC staff, make these individuals available for interviews and provide the relevant documents to support the evidence they give in those interviews;
- promptly investigate any failure of internal controls and compliance, take corrective action, and implement new systems of control and compliance, as appropriate;
- fully investigate any conduct by an employee, officer or director that may have breached Alberta securities laws or may be contrary to the public interest and take, independently of whatever action a regulator or law enforcement agency may take, corrective action;
- make restitution;
- disgorge, in a manner and amount satisfactory to ASC staff, any amounts obtained or payments or losses avoided as a result of the misconduct; and,
- make best efforts to locate and obtain any relevant documents, records or other information that are held overseas or in a foreign jurisdiction, and, at the very least, provide ASC staff with information of the location and contents of those documents, records or information.