

Ontario Securities Commission 2009 - 2010 Statement of Governance Practices

This Statement of Governance Practices is intended to supplement the discussion of the Commission's governance contained in the OSC 2010 Annual Report. The OSC 2010 Annual Report is published on the Commission's website.

BACKGROUND

The Ontario Securities Commission (**OSC** or the **Commission**), as the regulatory body responsible for overseeing the capital markets in Ontario, administers and enforces the *Securities Act* (Ontario), the *Commodity Futures Act* (Ontario) and certain provisions of the *Business Corporations Act* (Ontario) (the **Acts**).

The *Securities Act* (Ontario) (the **Act**) establishes the Commission's role in regulating capital markets, sets out the fundamental principles that the Commission shall have regard to in overseeing the administration and enforcement of the Act, and outlines the basic governance and accountability structure for the Commission.

The Commission's Governance Framework

The Commission is established as a self-funded Crown corporation under the Act with a board of directors consisting of the members of the Commission (**Members** or **Commissioners**). Unlike a public company, the Commission does not have shareholders to whom the board of directors is accountable. Instead, the Commission is accountable to the Minister responsible for securities regulation (the **Minister**) and, through the Minister, to the Ontario Legislature.

The Act sets out the statutory responsibilities of the Members and requires the Commission to enter into a *Memorandum of Understanding* (**MOU**) with the Minister every five years that sets out the accountability relationship between: (a) the Commission and the Minister, (b) the Board of Directors and the Minister, and (c) the Chair and the Minister. The MOU also describes the respective roles and responsibilities of the Minister, the Deputy Minister, the Chair, the Members and the Executive Director. It also sets out the Commission's obligations to report to the Minister, which are discussed further, below, under the heading "*Reporting to the Minister*".

The Commission has made rules and adopted policies with respect to the corporate governance obligations of reporting issuers.* These instruments set out the regulatory requirements and policy guidance that issuers should consider in developing and disclosing their corporate governance practices.

The Commission is aware that its own governance practices and procedures should adhere to the highest principles underlying the Instruments. Therefore, although the Instruments are not applicable to the Commission as a public regulatory body, the Commission has determined that it should adopt the best governance practices currently advocated in the Instruments for reporting issuers, wherever practicable and appropriate for a public regulatory body governed by statute.

* National Instrument 58-101 *Disclosure of Corporate Governance Practices*, National Instrument 52-110 *Audit Committees*, and National Policy 58-201 *Corporate Governance Guidelines*.

In 2006, to ensure greater transparency in, and understanding of, the Commission's governance structure, the Members adopted a *Charter of Governance: Roles and Responsibilities (Charter)*. The Charter delineates the Members' principal governance roles and responsibilities as regulators and administrators of the Act and as the Board of Directors. Under the Charter, the Board adopted the mandates of the Board and Commission committees, the Chair, the Vice-Chairs and the Lead Director.

In 2007, the Board determined to enhance the transparency of its governance practices and procedures by publishing along with the Commission's *Annual Report* an annual statement of governance practices that reports on the governance initiatives undertaken by the Commission each year. The present edition is intended to highlight current governance practices and to provide an update on governance initiatives undertaken in the 2009-2010 fiscal year. Updates are noted in boxes throughout this document. The original *2006-2007 Statement of Governance Practices* and all annual updates are published on the Commission's website.

- In June 2009, together with its *2009 Annual Report*, the Commission published its second *Statement of Governance Practices*, fulfilling its commitment in 2007 to continue to enhance the transparency of its governance practices.
- The Commission and the Minister of Finance entered into a new Memorandum of Understanding effective November 5, 2009.

RESOURCES: All of the governance documents of the Commission are published on the Commission's website. Links to the documents are provided throughout this Statement and are clickable in the electronic form of the Statement. The governance documents discussed above may be found at the following links:

- Memorandum of Understanding between the Minister of Finance and the OSC:
http://www.osc.gov.on.ca/documents/en/Securities/mou_20091204_min-finance-osc.pdf
- Ontario Securities Commission Charter of Governance Roles and Responsibilities:
http://www.osc.gov.on.ca/documents/en/About/ga_20100316_charter_of_governance.pdf
- Mandate of the Audit and Finance Committee:
http://www.osc.gov.on.ca/documents/en/About/ga_20090317_afc_mandate.pdf
- Mandate of the Governance and Nominating Committee:
http://www.osc.gov.on.ca/documents/en/About/ga_20090317_gnc_mandate.pdf
- Mandate of the Human Resources and Compensation Committee:
http://www.osc.gov.on.ca/documents/en/About/ga_20090317_hrcc_mandate.pdf
- Mandate of the Chair:
http://www.osc.gov.on.ca/documents/en/About/ga_2009_osc_mandate_of_chair.pdf
- Mandate of the Vice-Chairs:
http://www.osc.gov.on.ca/documents/en/About/ga_2007_osc_mandate_of_vchair.pdf
- Mandate of the Lead Director:
http://www.osc.gov.on.ca/documents/en/About/ga_2007_osc_lead_director.pdf
- Ontario Securities Commission Annual Report (annual publication):
http://www.osc.gov.on.ca/en/Publications_annual-report_index.htm
- Ontario Securities Commission Statement of Governance Practices (annual publication):
<http://www.osc.gov.on.ca/en/19644.htm>

MEMBERS OF THE COMMISSION

The Act provides that the Commission is to be composed of at least nine and not more than 15 Members. Currently, there are twelve Members, three of whom are full-time and nine of whom are part-time. The full-time Members are the Chair of the Commission, W. D. Wilson, and Vice-Chairs L. E. Ritchie and J. E. A. Turner.

- In December 2009, the Act was amended to allow for up to fifteen Members, up to three of whom may be designated as Vice-Chairs by the Lieutenant Governor in Council.
- The following table lists the Members incumbent as at March 31, 2010 with their respective dates of appointment, dates of expiry of their terms of appointment and the committees of the Board and Commission on which they serve as at the date of publication of this Statement.

Table 1: Members of the Commission – April 1, 2009 to March 31, 2010

Member	Initial appointment	Appointment expiry
W. David Wilson, Chair ⁽¹⁰⁾	November 1, 2005	November 1, 2010
James E. A Turner, Vice-Chair ⁽⁹⁾	February 21, 2007	February 21, 2012
Lawrence E. Ritchie, Vice-Chair [⊕]	February 21, 2007	February 21, 2012
Sinan O. Akdeniz ^{(6)(8) *}	September 8, 2009	September 8, 2011
James D. Carnwath ^{(5)(7) *}	August 12, 2009	August 12, 2011
Mary G. Condon ⁽⁷⁾⁽⁹⁾	April 9, 2008	March 31, 2013
Margot C. Howard ⁽²⁾⁽⁸⁾	December 6, 2006	December 6, 2011
Kevin J. Kelly ⁽¹⁾	December 6, 2006	December 6, 2011
Paulette L. Kennedy ⁽⁴⁾⁽⁶⁾	April 9, 2008	March 31, 2013
Patrick J. LeSage ⁽⁸⁾⁽⁹⁾	December 15, 2005	February 11, 2011
Carol S. Perry ⁽³⁾⁽⁹⁾	February 15, 2005	February 14, 2011
C. Wesley M. Scott ^{(7)(8) *}	September 8, 2009	September 8, 2011
David L. Knight ^{**}	August 25, 2004	June 6, 2010

- (1) Lead Director
- (2) Chair of the Audit and Finance Committee
- (3) Chair of the Governance and Nominating Committee
- (4) Chair of the Human Resources and Compensation Committee
- (5) Chair of the Adjudicative Committee
- (6) Member of the Audit and Finance Committee
- (7) Member of Governance and Nominating Committee
- (8) Member of Human Resources and Compensation Committee
- (9) Member of Adjudicative Committee
- (10) The Chair of the Commission is an *ex officio* member of the Governance and Nominating Committee
- * On the expiry of their initial terms of appointment, Commissioners Akdeniz, Carnwath, and Scott will be eligible for reappointment.
- ** Commissioner Knight was Lead Director until May 31, 2010
- ⊕ Vice-Chair Ritchie was seconded to the Canadian Securities Transition Office effective September 1, 2009.

LINK: Member biographies are published in the Commission's Annual Report and on the Commission's website: http://www.osc.gov.on.ca/en/About_members_index.htm

Attributes and Qualification of Members

The integrity, competence, capability and commitment of its Members are vital to the discharge of the Commission's statutory mandate to administer the Acts. The Commission regularly reviews the individual qualifications, attributes, skills and experience of the Members to ensure that Members, individually and collectively, meet the standards necessary to exercise their responsibilities effectively. A Member Profile is used to identify any gaps in attributes, skills and qualifications that might arise as a result of an upcoming vacancy on the Commission. The Commission also considers whether developments in the capital markets require either the appointment of a new Member with specialized knowledge or experience not already represented on the Commission or additional training of some or all of the incumbent Members.

LINK: the Commission's Member Profile is published on the Commission's website:
http://www.osc.gov.on.ca/documents/en/About/ga_20080916_osc_member_profile.pdf

Appointment of Members

Appointments to the Commission are made according to the procedures of the Public Appointments Secretariat of the Government of Ontario. Each Member is appointed to the Commission for a fixed term by the Lieutenant Governor in Council. The 2006 *Government Appointees Directive* provides that a person appointed to a government agency, such as the Commission, will serve an initial appointment for a period of two years, and may be eligible for reappointment for a second term of up to three years and a third term of up to five years. The Commission, however, has adopted a policy that it will not normally recommend to the Minister the reappointment of an incumbent Member for more than two terms for a total of five years and, only in exceptional circumstances, would recommend reappointment for a third term of one year.

Retirement of Members in 2009/10

- The final term of appointment of Part-time Member David L. Knight expired on June 6, 2010.

Appointment of New Part-Time Members in 2009/10:

- Following the appointments process established by the Ontario Government's Public Appointments Secretariat, on the recommendation of the Minister of Finance, the Lieutenant Governor in Council appointed the following as Part-time Members for a term of two years: James D. Carnwath (August 12, 2009) and Sinan O. Akdeniz (September 8, 2009) and Charles Wesley Moore Scott (September 8, 2009).

In December 2009, the Commission commenced the nominations process for two new Part-time Members to fill the vacancies arising from the expiration of Commissioner Knight's term of appointment and the additional Part-time Member position created by Act amendment in December 2009.

Reappointment of Members in 2009/10:

- On March 31, 2010, Commissioners Mary G. Condon and Paulette L. Kennedy were reappointed Part-time Members for a second term of three years.

LINK: the website of the Public Appointments Secretariat of the Government of Ontario is located at: <http://www.pas.gov.on.ca/>

Orientation and Ongoing Member Development

Upon their appointment to the Commission, Members receive an orientation binder that describes the activities and processes of the Commission. Meetings are arranged for new Members to meet with the Secretary, to discuss their role in Commission governance and adjudication, and with the Directors of each of the OSC branches. New Members are also registered for the adjudicator training course provided by the Society of Ontario Adjudicators and Regulators.

As part of their rule-making and strategic planning functions, Members are briefed on current market and securities industry developments at biweekly policy meetings and quarterly Board meetings. Members are also briefed on adjudicative and administrative law issues quarterly, and they participate in an annual adjudicative retreat produced in-house. Members are encouraged to attend relevant courses and seminars on securities industry and board governance issues produced by third-party providers, for which the Members are allotted the same training budget available to OSC employees.

Members' Duties and Responsibilities

The Act provides that Members are responsible for the administration of the Act and for overseeing the management of the financial and other affairs of the Commission.

Regulatory / Policy Making Role

Members of the Commission discharge statutory responsibilities under the Acts as regulators of Ontario's capital markets. The Members, acting in their regulatory capacity, approve and oversee the implementation of the Commission's regulatory initiatives and priorities, set enforcement priorities and review enforcement practices and procedures. Members of the Commission hold bi-weekly policy meetings with senior Commission staff at which regulatory initiatives are identified and considered, proposed policies and rules are reviewed and approved, regulatory priorities are set and their implementation reviewed, and other matters with respect to the due administration of the Acts are considered. In addition, meetings of two Members acting as a statutory quorum of the Commission (Quorum) are held twice-weekly to consider and approve applications for exemptive relief and other matters permitted by statute and authorized by the Commission to be decided by a Quorum.

Adjudication

Members, acting independently of the Commission as a whole, also perform an adjudicative function by serving individually, as required, on panels that preside over administrative proceedings. The Members, acting as a whole, however, have a responsibility to oversee the Commission's adjudicative policies, practices and procedures to promote the fair, independent, transparent and expeditious disposition of all adjudicative matters.

- In 2009-2010, Members served on panels that sat for a total of 305 sitting days to preside over adjudicative matters.
- A report on the Commission's regulatory, administrative and adjudicative activities in the fiscal year 2009-2010 is contained in the *OSC 2010 Annual Report*

To assist it in the discharge of this responsibility, the Commission established a standing committee, the Adjudicative Committee, to oversee the Commission's adjudicative policies, procedures and practices and the operations of the Office of the Secretary and the Registrar to ensure they are independent, effective and fair. The Secretary is an *ex officio* member of the Adjudicative Committee.

For fiscal year 2010/11, the Commission's **Adjudicative Committee** is composed of:

James D. Carnwath, Chair
Mary G. Condon
Patrick J. LeSage
Carol S. Perry
James E. A. Turner
Ex officio: John P. Stevenson, Secretary

LINK: The mandate of the Adjudicative Committee may be found at this link:
http://www.osc.gov.on.ca/documents/en/About/ga_20070515_osc_adj_com_mandate.pdf

The Role of the Board of Directors

The Members, acting as the Commission's Board of Directors, oversee the operations of the Commission, including the Commission's strategic planning, resource allocation, risk management, financial reporting policies and procedures, and effectiveness of internal controls and management information systems. The Board of Directors exercises its corporate oversight both through regular and special meetings of the full Board and its standing committees. Full meetings of the Board are held not less frequently than quarterly and special meetings are held as required. The Board also conducts strategic planning and priorities-setting meetings with senior management.

The Board annually appoints the members of the committees on the recommendation of the Chair of the Commission and the Lead Director. No Member is expected to serve as a committee member for longer than five years or as a committee chair for longer than three years, absent exceptional circumstances.

There are three standing committees of the Board, each of which meets no less frequently than quarterly and holds special meetings when required. The three standing committees are: the Audit and Finance Committee; the Governance and Nominating Committee; and the Human Resources and Compensation Committee. The Secretary to the Commission acts as secretary and counsel to the Board and each of its committees. Each Board committee is composed of Part-time Members only, with the exception of the Governance and Nominating Committee, on which the Chair of the Commission serves as an *ex officio* member.

The forward agenda of each committee is established annually by the committee chairs in consultation with the Lead Director and the forward agenda for the Board is established annually by the Chair of the Commission in consultation with the Lead Director.

The following table lists the number of regular and special policy and regulatory meetings of the Commission, the number of meetings of a Quorum of the Commission, the number of meetings of the Adjudicative Committee, and the number of meetings of the Board and Board Committees during the past fiscal year. The aggregate attendance rate by Members for Commission and Board meetings was 96.5 percent.

Table 2

**Number of Meetings of Members the Commission
April 1, 2009 to March 31, 2010**

	Regular Meetings	Special Meetings
Commission policy and regulatory meetings	24	2
Quorum meetings	100	–
Board of Directors	5	8
Audit and Finance Committee	6	3
Governance and Nominating Committee	4	2
Human Resources and Compensation Committee	4	–
Adjudicative Committee	11	–

Committee Appointments in 2010/11:

At the meeting of the Board held May 27, 2010, Commissioner Howard was reappointed chair of the Audit and Finance Committee, Commissioner Perry was reappointed chair of the Governance and Nominating Committee, and Commissioner Kennedy was appointed chair of the Human Resources and Compensation Committee.

The composition of the Board committees for the fiscal year 2010/11, effective June 1, 2010, is:

Audit and Finance Committee

Margot C. Howard, Chair
Paulette L. Kennedy
Sinan O. Akdeniz

Governance and Nominating Committee

Carol S. Perry, Chair
James D. Carnwath
Mary G. Condon
C. Wesley M. Scott
Ex officio: David W. Wilson, Chair of the Commission

Human Resources and Compensation Committee

Paulette L. Kennedy, Chair
Sinan O. Akdeniz
Margot C. Howard
Patrick J. LeSage
C. Wesley M. Scott

Appointment of the Lead Director:

On May 27, 2010, the Part-time Members of the Commission appointed Commissioner Kevin J. Kelly to serve as Lead Director for a term of one year. The mandate of the Lead Director is to assist the Members of the Commission in fulfilling their governance responsibilities and to oversee the governance obligations of the Board and its committees. Commissioner Kelly was first appointed as a Part-time Member in 2006 and has served as chair of the Human Resources and Compensation Committee.

GOVERNANCE INITIATIVES

Reports of the Committees

Each committee reports on its meetings at each Board or Commission meeting immediately following a committee meeting and provides an annual written report of the committee's activities to the Board or, in the case of the Adjudicative Committee, to the Commission. The following are summaries of the committees' annual reports.

Audit and Finance Committee

The Committee held six regular and three special meetings during the fiscal year 2009-2010. The aggregate attendance rate by the Committee Members was 87 percent.

Financial Review, Reporting and Public Disclosure: The Committee reviewed and recommended for approval by the Board the annual (audited) and quarterly financial statements and management's discussion and analysis. The Committee also received quarterly presentations on contract and procurement issues. The Committee reviewed with management the appropriateness of the OSC's accounting and financial reporting policies and recommended amendments to these policies to the Board for approval. The Committee reviewed the new OSC fee rules and the impact of fee models on the financial position of the Commission, including the Commission's operating surplus. The Committee received regular updates on International Financial Reporting Standards ("IFRS") and the implications of IFRS on the OSC's financial reporting.

Oversight of Internal Controls: The Committee reviewed reports of management's evaluation of the design of internal controls over financial reporting, and management's fraud risk assessment and anti-fraud processes and controls. The Committee also reviewed the OSC's business continuity processes.

Risk Management and Internal Audit: The Committee received and reviewed regular presentations on risk management, reviewed the implementation of the OSC-wide risk framework initiative, and considered the appropriateness of conducting an internal audit in the context of implementation of the risk framework initiative in 2010-2011.

Government Policies and Guidelines: The Committee received regular updates on the OSC's compliance with applicable provisions of the Ontario government's procurement directive and certain other directives, trade agreements, and practices. The Committee recommended the approval of amendments to the OSC's Travel, Meals, and Hospitality Policy.

External Auditors: The Committee reviewed and approved the annual audit plan and audit findings report of the external auditor (the Auditor General of Ontario). The Committee reviewed the submissions of the external auditor confirming the external auditor's independence and met with the external auditor without management present.

Governance and Nominating Committee

The Committee held four regular and two special meetings during the fiscal year 2009-2010. The aggregate attendance rate by the Committee Members was 100 percent.

In this period, the Committee reviewed and recommended the Commission's approval of its *2008-2009 Statement of Governance Practices* for publication on the Commission's website contemporaneously with the issuance of the Commission's *2008-09 Annual Report*.

Assessment of Commission / Board and Committee Effectiveness: In November 2009, the Committee initiated the third annual Commission / Board and Committee evaluation, which was completed in March 2010. As part of the process, the Committee monitored progress against the action items identified in the 2008-2009 evaluation. The process and recommendations are discussed further under the heading "Assessment of Commission/Board and Committee Effectiveness".

Nominations and Appointments: In November 2009, the Committee reviewed the Commission's *Member Profile* and initiated the process for the reappointment of Commissioners Condon and Kennedy. In December 2009, the Committee initiated the recruitment process for the recommendation of nominees to the Minister in Summer 2010 for two Part-time Member positions.

Annual Review of Governance Documents: The Committee conducted a comprehensive review of the Commission's governance documents including the Charter, Member Profile, and the Mandates of the Board and its Committees. Following the recommendations of the Committee, the Board approved and adopted revisions to its governance documents in order to enhance the Board and committee governance structure.

New Memorandum of Understanding: The Committee monitored the negotiation of the new Memorandum of Understanding with the Minister, which was approved by the Board on September 29, 2009 and which came into effect on November 5, 2009.

Human Resources and Compensation Committee

The Committee held four regular meetings during the fiscal year 2009-2010. The aggregate attendance rate by the Committee Members was 90 percent.

Executive Performance and Compensation: In April 2009, the Committee reviewed the performance and achievements of the Chair and the Vice-Chairs for fiscal 2008-2009 against their corporate goals and plans for that year. The Committee's recommendation on the Chair's and Vice-Chairs' compensation was approved by the External Compensation Committee and by the Board. The management evaluation and compensation process is described in greater detail later in this *Statement*. In September 2009, the Committee reviewed and recommended the Board's approval of the corporate goals and plans of the Chair and Vice-Chairs for the fiscal year 2009-2010.

Executive Pension Plans: The Committee reviewed and recommend the the actuarial assumptions underlying the OSC supplemental pension plan in March 2010.

Human Resources Policies: The Committee reviewed human resource policies and programs, including reviewing and recommending to the Board for approval significant changes to the compensation structure applicable to Commission employees.

Internal Audit of OSC Human Resources: In December 2009, the Committee conducted its final review and approved for recommendation to the Audit and Finance Committee the internal audit of OSC Human Resources conducted by Ernst & Young.

Adjudicative Committee

The Adjudicative Committee held eleven regular meetings during the fiscal year and Committee members met frequently during this period to complete several projects that had been identified by the Committee as key adjudicative policy initiatives for the year.

New Case Management Procedures: The Commission's case load and adjudicative sitting days have considerably increased over the years, with much of the increase being attributable to the substantial rise in the number and complexity of procedural and other interlocutory matters. Accordingly, the Committee determined that its current case management procedures should be amended to ensure that the Commission could continue to resolve matters fairly, cost-effectively and expeditiously.

The Committee developed new case management procedures to improve the early identification and resolution of preliminary matters to: (i) ensure that adjudicative proceedings can be brought on for final resolution more quickly and more cost effectively; (ii) enhance the flexibility of the hearings schedule; and (iii) reduce the demands on the time and resources of both the parties and the Commission.

On July 21, 2009, the Commission approved the changes to its case management procedures proposed by the Committee, and a Notice from the Office of the Secretary was published to communicate these changes. One of the changes implemented is a practice, whenever possible, of assigning a single commissioner (authorized pursuant to the authorization order) at the commencement of each adjudicative matter to preside over and to hear and determine all matters other than the hearing on the merits.

Settlement Rule Consultation and Amendment: One of the Committee's key initiatives for the fiscal year was to propose a revision to Rule 12 of the Rules of Procedure regarding the settlement agreement approval process.

Roundtable Discussion with Respondent Counsel: On September 30, 2009, the Committee held a roundtable discussion with counsel who frequently appear before the tribunal to discuss settlement issues such as transparency, costs, certainty, efficiency of negotiations, "no-contest" settlements, the role of commissioners in settlement negotiations and approvals, self-represented respondents, the role of Commission Staff during the negotiation of settlement agreements, and Executive Director settlements. Following the roundtable, the Committee considered various recommendations on amendments to its practice and to the Rules. After due consideration, the Committee recommend the adoption of a draft Rule regarding the approval of settlement agreements (new draft Rule 12). The draft Rule was published for comment on March 12, 2010 and approved by the Commission on July 20, 2010.

OSC Guide to Hearings and Frequently Asked Questions Regarding Hearings: The Commission's statistics demonstrate that OSC hearings involve an increasing number of self-represented respondents. The Committee has discussed issues relating to the increasing number of self-represented respondents in Commission hearings. The Committee agreed to prepare a guide for self-represented respondents to provide an overview of the Commission hearing process and the different steps involved. Two documents: a "Guide to OSC Hearings", and "Frequently Asked Questions Regarding Hearings" have been drafted and tabled with the Committee for comment.

Paralegals: Recommended Changes to the Rules of Procedure: The Committee has also been examining the Rules of Procedure in light of the changes to the regulation of paralegals in Ontario and the Committee recommended changes to the Rules of Procedure to reflect these legal developments.

Assessment of Commission/Board and Committee Effectiveness

Following the adoption of the *Charter* and *Committee Mandates* in 2006, the Members retained an independent consultant to assist in the development of a Commission/Board and Committee evaluation process and implemented that process in April 2007. The evaluation addressed the operation of the Commission/Board and committees, the adequacy of information provided to Members and the Board, committee structure, agenda planning for Board and committee meetings, and strategic direction and process. The evaluation was completed in November 2007, and the results were reported in the Commission's *2007 – 08 Governance Disclosure Statement*. Since then, the Commission has conducted Commission / Board / Committee evaluations annually.

The Commission conducted its annual evaluation process in the fourth quarter of fiscal 2009-2010. The process resulted in the identification of initiatives for enhancing the effectiveness of the Commission's governance. These initiatives include: (i) ensuring that the new risk framework initiative is substantially implemented in the 2010-2011 fiscal year; (ii) placing continued emphasis on the Board's up-front involvement in setting strategic priorities and understanding market developments; and (iii) enhancing training and ongoing development of the Members, including adjudicative training.

The 2009-2010 evaluation process also confirmed that the initiatives identified in the 2008-09 evaluation had been substantially completed.

The Commission has developed an action plan to monitor the progress made during the year in respect of each of these initiatives and will report on them in its 2010-2011 *Statement of Governance Practices*.

Ethical Behaviour and Conflict Management

Code of Conduct

On August 20, 2008 the Commission revoked By-law Number 2 and adopted in its place a new, more comprehensive *Code of Conduct* applicable to all Members and employees. The Conflict of Interest Commissioner gave final approval to the conflict-related provisions of the Code in accordance with the *Public Service of Ontario Act, 2006* (PSOA). The *Code* builds on the Commission's existing policies and procedures that support and promote accountability, transparency and ethical behaviour at the Commission. The *Code* also delivers on the Commission's commitment to review and strengthen the Commission's high standards of ethics, integrity and accountability.

The *Code* sets out, among other things, the requirements for the conduct of Commission Members and employees relating to: (i) the avoidance and disclosure of conflicts of interest; (ii) prohibitions on the disclosure and use of confidential information; (iii) personal securities transactions and related reporting requirements; and (iv) conduct of former Members and former employees.

The *Code* also includes an ethics reporting policy which reflects the procedures for dealing with disclosures of wrongdoing established by the Management Board of Cabinet Directive. The intent of the Commission's new ethics reporting policy is to encourage internal disclosures of alleged wrongdoing consistent with the directives under the PSOA. The *Code* contemplates a mechanism to facilitate anonymous disclosures of suspected

violations administered by a third party. The procedures available under the PSOA to disclose serious wrongdoing to the Integrity Commissioner are also outlined in the *Code*.

The Chair of the Commission became the Ethics Executive for Members and employees, responsible for, among other things, promoting ethical conduct at the Commission, dealing with inquiries about potential or actual conflicts and making determinations in respect of those inquiries.

The Audit and Finance Committee and the Governance and Nominating Committee receive annual reports on the compliance of Members with the provisions of the *Code*.

No violations of the Code of Conduct were reported in respect of Members of the Commission in fiscal 2009-2010.

LINK: The Code of Conduct is published on the Commission's website at this link:
http://www.osc.gov.on.ca/documents/en/About/ga_20091208_osc-code-conduct.pdf

Guidelines for Members and Employees Engaging in Adjudication

In addition to the *Code of Conduct*, the Commission also adopted *Guidelines for Members and Employees Engaging in Adjudication* in 2008. The Guidelines enhance the transparency of the Commission's adjudicative processes and provide guidance to Members and employees on the professional and ethical standards expected of them in the exercise of their adjudicative responsibilities. The purpose is to ensure that all proceedings before the Commission's adjudicative panels are, and are seen to be, conducted with integrity, competence, effectiveness, independence and impartiality.

LINK: The Guidelines for Members and Employees Engaging in Adjudication are published on the Commission's website at this link:
http://www.osc.gov.on.ca/documents/en/About/ga_20080401_guide_lines_for_members.pdf

Oversight of Strategic Planning

As discussed below under the heading "*Reporting to the Minister*", the Commission is required to provide to the Minister, and to publish, an annual report and a statement of priorities. The Commission is also required to annually provide a business plan to the Minister for his or her approval. Members actively participate in the setting of the Commission's regulatory priorities in discussion with management, approve the draft *Statement of Priorities* before publication for comment and the final *Statement of Priorities* for delivery to the Minister, and approve the business plan. At each quarterly meeting, the Board receives comprehensive reports from Commission management on the status of the Commission's priorities and initiatives identified in its business plan.

Management Evaluation and Compensation

The Commission is satisfied that its current executive compensation policies and programs are aligned with individual performance and reflect competitive market practices to allow it to attract, retain and motivate talented individuals to serve as executive management of the Commission.

The Human Resources and Compensation Committee annually reviews the performance of the Chair and Vice-Chairs and recommends to the Board the annual performance compensation for these executives. The Committee's Mandate requires that it measure the annual performance of these executives against performance goals and objectives for each of them as approved by the Board at the commencement of the fiscal year to which the goals and objectives apply. The compensation for the Chair and Vice-Chairs includes an annual base salary fixed by contract and eligibility for an annual performance bonus. The Chair and Vice-Chairs are not eligible for any remuneration applicable only to Part-time Members as discussed below under the heading "*Compensation of Part-time Members*".

To ensure an independent perspective, the Committee's recommendations are reviewed by a three member independent compensation committee (*External Compensation Committee*) before the Committee submits its recommendations to the Board for approval. The chair of the External Compensation Committee is the Chair of the Human Resources and Compensation Committee. The two other members of the Committee are required to be individuals at arm's length to the Commission and are jointly appointed by the Minister and the Chair of the Commission.

The current members of the External Compensation Committee are:

- Paulette L. Kennedy, Chair, Human Resources and Compensation Committee
- J. Urban Joseph⁽¹⁾
- Robert (Robin) W. Korthals⁽²⁾

LINK: The terms of reference of the External Compensation Committee are published on the Commission's website at this link:

http://www.osc.gov.on.ca/documents/en/About/ga_20050517_ecc_terms_of_reference.pdf

Compensation of Part-time Members

The Human Resources and Compensation Committee is also responsible for periodically reviewing and making recommendations to the Board in respect of the compensation paid to Part-time Members to ensure that they are competitive for the purpose of attracting and retaining the services of experienced and highly qualified candidates. The remuneration scale for Part-time Members is also reviewed by the External Compensation Committee

⁽¹⁾ **J. Urban Joseph, O.C.** holds directorships in a number of companies and organizations including First Nations Bank of Canada, Blue Mountain Resorts, Bird Construction, Ontario Pension Board, Medcan Health Management, We Care Health Services, Meditech International, Canadian Orthopaedic Foundation, Career Edge Organization, The Design Exchange, and Prime Mentors. Mr. Joseph served as Vice-Chairman of the Toronto Dominion Bank from 1992 to 1996.

⁽²⁾ **Robert (Robin) W. Korthals** is active on a wide variety of boards, including Cognos Inc., Bucyrus International, Inc., Easyhome Ltd., Jannock Properties Limited, and several Mulvihill mutual funds. Mr. Korthals served as Chair of the Ontario Teachers' Pension Plan Board from January 2000 to December 2006. He retired as President of The Toronto-Dominion Bank in 1995, after a career spanning twenty-eight years. He is currently Chair of Cadillac Fairview Corp. Mr. Korthals served as a Part-time Commissioner from 1995 to 2004.

prior to approval by the Board. The last review of the remuneration of Part-time Members resulting in an amendment to the remuneration policy was conducted in 2005.

LINK: The Remuneration Schedule for Part-time Members is published on the Commission's website at this link:

http://www.osc.gov.on.ca/documents/en/About/ga_20050401_pt_com_renum.pdf

Disclosure of Compensation of Chair, Vice-Chairs and Members

The *Public Sector Salary Disclosure Act, 1996*, S.O. 1996, c. 1, Sch. A requires the disclosure of the total annual remuneration of the Chair, Vice-Chairs, Executive Director and Members who receive remuneration in excess of \$100,000 in the year.

LINK: The public salary disclosure is published by the Ministry of Finance at this link:

<http://www.fin.gov.on.ca/en/publications/salarydisclosure/2010/>

REPORTING TO THE MINISTER

As noted above, the Commission is accountable to the Minister and, through the Minister, to the Ontario Legislature. The Act provides that the Commission shall “promptly give the Minister such information about its activities, operations and financial affairs as the Minister requests” and requires the Commission to enter into a MOU with the Minister. The Act and the MOU together identify the information the Commission shall annually provide to the Minister.

Annual Report

The Commission's Annual Report is required to be delivered to the Minister within six months after the end of each fiscal year. In 2006 the Commission determined that it would deliver its Annual Report to the Minister within 90 days after the end of each fiscal year to conform to the requirements set out in National Instrument 51-102 *Continuous Disclosure Obligations* for the filing by reporting issuers of an annual information form. The Commission's fiscal year end is March 31st.

The Commission's 2010 Annual Report was delivered to the Minister on June 15, 2010 and submitted to the Legislative Assembly by the Minister on August 17, 2010.

Statement of Priorities

The Act requires the Commission to publish in the *Ontario Securities Commission Bulletin* and to deliver to the Minister by June 30 of each year a statement by the Chair setting out the priorities of the Commission for the current fiscal year. The Statement of Priorities sets out the Commission's strategic goals and the initiatives for the fiscal year in support of each goal. The Commission publishes a notice in the *Bulletin* inviting interested persons or companies to comment on its priorities at least 60 days before the publication date of the Statement of Priorities.

The Commission's draft *Statement of Priorities for Fiscal 2009/2010* was published in the *Bulletin* on December 11, 2009 and comments were received until February 15,

2010. Following consideration of the comments received, the Members of the Commission approved the final Statement of Priorities on March 16, 2010 for delivery to the Minister.

LINK: The Statement of Priorities is published annually on the Commission's website at this link: http://www.osc.gov.on.ca/en/Publications_statement-priorities_index.htm

Statement of Governance Practices

Although not required under the Act or the MOU, the Commission has determined that it will issue an annual report on its governance practices contemporaneously with the publication of its Annual Report. This *2009-2010 Statement of Governance Practices* is the fourth such report.

Approved by the Commission
September 2010