

Ontario Securities Commission

Commission Charter of Governance Roles and Responsibilities

Introduction

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) and the *Commodity Futures Act* (Ontario) (together the Acts) and certain provisions of the *Business Corporations Act* (Ontario).

The mandate of the Commission is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity.

Members of the Commission

The *Securities Act* establishes the Commission as a self-funded Crown corporation with a board of directors which consists of the members of the Commission (Members). The Commission is composed of at least nine and not more than 15 Members, each of whom is appointed by the Lieutenant Governor in Council. In addition, the Lieutenant Governor in Council designates one Member of the Commission as Chair of the Commission and may designate up to three Members as Vice-Chairs.

The Chair is designated by the *Securities Act* as the Chief Executive Officer of the Commission. The Chair and the Vice-Chairs devote their full time to the work of the Commission. Members other than the Chair and Vice-Chairs are part-time Members and devote as much time as necessary to perform their duties. As the Commission is structured as a corporation, the Members also serve as the Commission's Board of Directors. One of the part-time Members is selected by the other part-time Members to be the Board's Lead Director. The Lead Director, acting in consultation with the Chair of the Commission and the Chairs of Committees of the Board, is responsible for overseeing the operations of the Board to ensure that the Board carries out its responsibilities effectively.

Governance Framework

Although structured as a corporation, the Commission is a regulatory body and its purpose is mandated by statute.

The *Securities 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 is unlike a business corporation in that it does not have shareholders to whom the board of directors report. Instead, the Commission is accountable to the Minister responsible for securities regulation and, through the Minister, to the Ontario Legislature. Every five years the Commission enters into a Memorandum of Understanding (MOU) with the Minister. The MOU sets out the accountability relationship between the Commission and the Minister, the Board of Directors and the Minister, and the Chair and the Minister; and, describes the respective roles and responsibilities of the Minister, the Deputy Minister, the Chair, the Members, and the Executive Director. The MOU also specifies that the Commission is required to provide

the Minister with an annual report and an annual business plan. The MOU can be found on the Commission's website.

Fundamental Principles of Regulation

The Commission is responsible for using its regulatory powers:

- a) to provide protection to investors from unfair, improper or fraudulent practices; and
- b) to foster fair and efficient capital markets and confidence in their integrity.

The Commission is required by the *Securities Act* to have regard to the following fundamental principles when exercising its regulatory responsibilities:

- Balancing the importance to be given to each of the two purposes of the *Securities Act*, namely investor protection and fostering fair and efficient capital markets.
- The primary means for achieving the purposes of the *Securities Act* are:
 - requirements for timely, accurate and efficient disclosure of information;
 - restrictions on fraudulent and unfair market practices and procedures; and
 - requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.
- Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of the *Securities Act* by the Commission.
- The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
- The integration of the capital markets is supported and promoted by the sound and responsible harmonization and coordination of securities regulation regimes.
- Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

The Role of Members – an Overview

The Members of the Commission discharge their responsibilities under the Acts through two independent but related roles:

1. The Role of Members as Regulators of Ontario Capital Markets

The Commission's regulatory responsibilities are exercised through the Commission's rule and policy-making function and the Commission's adjudicative function. While these functions are distinct, in both cases the Commission's powers are exercised in furtherance of investor protection and in aid of fostering fair and efficient markets, while having regard to the fundamental principles described above.

- a) **Policy Function:** The Commission regulates Ontario capital markets by making rules that have the force of law (and granting exemptions where appropriate) and by adopting policies that influence the behaviour of capital market participants. The Commission exercises its regulatory

oversight functions to achieve the objectives of the Acts. The Commission sets the regulatory priorities on an annual basis and oversees their implementation by Commission Staff.

- b) ***Adjudicative Function:*** In regulating Ontario's capital markets the Commission also performs an adjudicative function. Panels of Members, acting independently, hear enforcement matters (including proceedings involving alleged violations of the Acts, the regulations and the rules and proceedings involving conduct contrary to the public interest), conduct hearings involving regulatory policy issues and appeals of adjudicative decisions of self-regulatory organizations, and review decisions of Commission Staff. The Commission, as a whole, also has a responsibility to oversee the Commission's adjudicative processes and procedures generally.

2. The Role of Members as the Board of Directors of the Commission

As the Board of Directors, the Members oversee the management of the financial and other affairs 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 Members also serve on the Committees of the Board.

The Commission has adopted this Charter to delineate its role and responsibilities and to ensure transparency in its governance structure. Members, either directly or through Committees of the Board, are responsible for performing the duties set out in this Charter, and will perform further duties as may be necessary or appropriate for the Members to fulfil their governance and regulatory responsibilities.

The Role of Members as Regulators of Ontario Capital Markets

a) The Rule and Policy-making Function of Members

The primary responsibilities of Members, acting as a rule and policy-making body, include:

Regulatory Strategic Planning

- Setting the strategic priorities of the Commission in rule-making, policy-making and enforcement, having regard to the changing needs and circumstances of investors and the capital markets.
- Providing guidance to Staff of the Commission on emerging trends and developments in the capital markets.
- Overseeing the formulation of the Commission's annual Statement of Priorities, including its publication for comment, and approving the Statement of Priorities, when finalized, for delivery to the Minister.
- Assessing management's progress in implementing and achieving the regulatory priorities set by the Commission.

Regulatory Initiatives

- Providing input at various stages of development of proposed rules, policies and concept papers for publication for comment.
- Making rules and adopting policies that further investor protection and help foster fair and efficient capital markets, reflect the fundamental principles set out in the *Securities Act*, and support identified regulatory objectives.
- Overseeing the Commission's initiatives with other securities regulators, including the Commission's involvement in the Canadian Securities Administrators (CSA).

- Overseeing Staff's review of the overall regulatory effectiveness of existing rules and policies of the Commission, having regard to the changing needs and circumstances of investors and the capital markets.

Oversight of the Administration of the Acts, Regulations and Rules

- Approving the initiatives proposed by each operating branch of the Commission to implement and achieve the regulatory strategic priorities set by the Commission.
- Receiving reports from the Chair on the status of enforcement priorities and related initiatives.
- Delegating the exercise of Commission authority, as permitted under the Act and where appropriate, to Commission staff for the orderly administration of the Acts and overseeing the exercise of delegated authority.
- Establishing protocols for the exercise by Staff of delegated authority and periodically reviewing the exercise by Staff of delegated authority to ensure that the authority has been exercised in accordance with the terms of the delegation.

Oversight of Self-Regulatory Organizations (SROs)

- Making recognition orders with respect to SROs and setting the terms and conditions of such orders.
- Approving by-laws of SROs and amendments to by-laws of SROs.
- Reviewing periodic reports from Staff on SRO activities.
- Overseeing and annually monitoring the Commission's exercise of its statutory powers with respect to the SROs.

b) The Adjudicative Function of Members

Members perform their adjudicative function by individually serving on adjudicative panels that conduct hearings and render decisions *independently* of the Commission as a whole. Nonetheless, the Commission, as a whole, has a responsibility to oversee the Commission's adjudicative processes and procedures generally.

Conducting hearings

Adjudicative panels of the Commission, usually composed of two or more Members, conduct hearings on proceedings brought before the Commission. In these hearings, the panel may be asked, for example, to issue an order imposing a sanction in the public interest, to issue an order freezing assets, to review a decision made by Commission staff, or to review a decision of an SRO. The way in which these proceedings are conducted is governed by the *Statutory Powers Procedures Act* (Ontario), the Commission's *Rules of Practice* and principles of administrative law. The Act provides for appeal of final decisions of the Commission to the Divisional Court.

Oversight of adjudicative processes and procedures

The Commission's responsibility for the administration of the Act through its adjudicative functions includes:

- Overseeing policies, practices and procedures relating to the discharge of the Commission's adjudicative function to promote the conduct of proceedings in a fair, independent and transparent manner, and the bringing of matters before the Commission in a timely fashion.
- Approving internal policies and procedures to ensure transparency of Commission proceedings through the timely publication of notices, decisions and reasons.
- Overseeing policies and procedures that ensure the independence of all Members acting within the scope of their adjudicative function.
- Overseeing the policies and procedures of the Office of the Secretary, including those relating to the management of the hearings process.
- Approving the Commission's Rules of Practice.
- Approving the mandate of, and appointing Members to, the Commission's Adjudicative Committee.

The Role of Members as a Board of Directors of the Commission

Board of Directors — Responsibilities & Duties

Members comprise the Board of Directors of the Commission and, acting in that capacity, oversee the management of the financial and other affairs of the Commission.

Members, acting as the Board of Directors, have the following responsibilities for the overall stewardship of the Commission:

Strategic Planning and Annual Budgets

- Providing guidance to management on emerging trends and issues.
- Adopting a strategic planning process, and annually approving the Commission's Business Plan and Operating and Capital budgets.
- Monitoring the effectiveness of, and management's implementation of, the Commission's Business Plan.

Financial Review, Reporting and Disclosure

- Approving the Commission's annual report and financial statements and overseeing its compliance with applicable audit, accounting and reporting requirements.
- Reviewing on a quarterly basis the Commission's performance against its approved Operating and Capital budgets.
- Approving significant expenditures that exceed threshold amounts set by the Board.
- Appointing the Commission's external auditor.
- Adopting a communications and public disclosure policy for the Commission.

Risk Assessment and Internal Controls

- Overseeing management's identification of principal risks to the Commission's operations and the implementation of appropriate processes to manage principal risks.
- Monitoring the integrity and effectiveness of the Commission's internal control and management information systems.

Board Governance

- Approving the Memorandum of Understanding between the Commission and the Minister.
- Overseeing the Commission's adherence to the management principles established by the Government of Ontario relating to ethical behaviour, accountability, excellence in management, wise use of public funds, high quality service to the public and fairness in the marketplace.
- Establishing appropriate Board Committees, determining their mandates and appointing Members to each Committee.
- Determining the Lead Director's mandate, and ensuring that the part-time Members appoint a Lead Director independent of management.
- Holding closed sessions of the Board at regularly scheduled meetings at which the Commission staff are not in attendance (with the exception of the Secretary to the Commission).
- Holding regularly scheduled meetings of the part-time Members at which the Chair, Vice-Chairs and other representatives of management are not in attendance.
- Annually reviewing the Commission Charter and Committee mandates.
- Undertaking regular evaluations of the Board, its Committees and the individual Members with a view to improving the effectiveness, contribution and independence of the Board, its Committees and its members.
- Engaging advisors as necessary to provide independent advice to the Board or its Committees, at the expense of the Commission.

Chair and Vice-Chairs

- Establishing and reviewing the powers, functions and duties of the Chair, each Vice-Chair and officers employed by the Commission (Executive Director and Secretary) and setting the objectives the Chair and Vice-Chairs are expected to meet.
- Approving the employment contracts of the Chair and Vice-Chairs.
- Annually approving the remuneration and benefits of the Chair and each Vice-Chair in conjunction with the Independent Compensation Committee established by the Minister and the Chair.

Senior Management

- Appointing an Executive Director and Secretary of the Commission.
- Approving the employment contract of the Executive Director and reviewing annually the compensation of the Executive Director.
- Overseeing the Commission's succession planning processes for senior management and the development of significant human resources policies.

Appointment and Reappointment of Members

- Approving the selection criteria for identifying Member candidates, reflecting the skills, attributes and qualifications that the Commission, as a whole, should possess.
- Recommending to the Minister candidates for appointment and reappointment as Members, within the Public Appointments Secretariat process.
- Setting the remuneration of the Members in conjunction with the Independent Compensation Committee established by the Minister and the Chair.
- Overseeing an orientation program for new Members, and ongoing development of Members.

Integrity and Ethical Standards

- Adhering to the highest standards of corporate governance, ethics and integrity and promoting a culture of integrity at the Commission.
- Approving the policies and processes designed to promote ethical behaviour and compliance with applicable laws and the Commission's own governing documents, including the MOU.
- Approving procedures for monitoring compliance by Members and Staff with the *Public Service of Ontario Act* and the Commission's *Code of Conduct*, and approving in advance any waivers from the *Code of Conduct* that are granted for the benefit of the Members or senior management.