

# Ontario Securities Commission Statement of Governance Practices

February 2016

## BACKGROUND

The Ontario Securities Commission (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.

The Members adopted a *Charter of Governance: Roles and Responsibilities* (**Charter**) to ensure greater transparency in, and understanding of, the Commission's governance structure. The Charter delineates the Members' principal governance roles and responsibilities as regulators and

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

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.

## **MEMBERS OF THE COMMISSION**

The Act provides that the Commission is to be composed of at least nine and not more than sixteen Members. The Chair of the Commission and the Vice-Chairs devote their full time to the work of the Commission. The Chair is designated by the Act as the Chief Executive Officer of the Commission. The part-time Members of the Commission devote as much time as necessary to perform their duties. As at the date of publication, there are three full-time Members and twelve part-time Members.

The Board has established the position of Lead Director, a part-time Member who is elected by the other Part-time Members, meeting *in camera*. The Lead Director is appointed for a term having the same duration as the balance of his or her term of office as a Member provided, however, that the incumbent is not expected to serve for a period longer than three years in the absence of exceptional circumstances.

### ***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 and skills matrix are 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.

### ***Representation of Women on the Board***

The selection of candidates for nomination must be consistent with the government's policy, set out in every position posted on the website of the Public Appointments Secretariat, that "government appointees reflect the diversity of the people of Ontario and deliver services and decisions in a non-partisan, professional, ethical and competent manner with a commitment to the principles and values of public service."

Further, the Commission strives to follow best practices relating to all aspects of corporate governance, including the multi-lateral amendments made in 2014 to the policies outlined in National Instrument 58-101 *Disclosure of Corporate Governance Practices* relating to the representation of women on boards. The Commission makes every effort to ensure that women are actively sought out in the recruitment and nomination process. The Commission's objective is to have approximately equal representation of male and female Members; however, achieving this objective at any particular time is balanced with the objective of ensuring that the Members of the Commission collectively possess the required mix of skills and experience necessary to enable the Commission to carry out its mandate.

The Member Profile guides the Commission's selection of candidates who are recommended for appointment as Members, recognizing that the appointments are made by the Lieutenant Governor in Council on the recommendation of the Minister of Finance.

### ***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 *Agencies and 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.

### ***Orientation and Ongoing Member Development***

Upon their appointment to the Commission, Members participate in a rigorous orientation programme on the Commission's strategic priorities and rule-making process, Commission governance, Code of Conduct and policies made thereunder, adjudication, and the activities and processes of the Commission. All new Members are assigned a mentor from among the current Members. The new Members meet Directors of each of the operating and supporting branches. The Secretary and her team of adjudicative counsel discuss the Members' role in and adjudication. New Members are 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 bi-weekly policy meetings and quarterly Board meetings. Members are also briefed on adjudicative and administrative law issues at least quarterly.

Members are also 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 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 rules and policies are reviewed and approved, regulatory

## STATEMENT OF GOVERNANCE PRACTICES

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.

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.

### *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.

## 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.

### *Assessment of Commission/Board and Committee Effectiveness*

Following the adoption of the *Charter* and *Committee Mandates*, the Board established a process for the evaluation of the operation of the Commission, Board, and committees, including: strategic direction and risk management; the adequacy of information provided to Members and the Board; committee structure; and agenda planning for Board and committee meetings. The Commission conducts the evaluation process every two years.

### *Ethical Behaviour and Conflict Management*

#### *Code of Conduct*

The Commission's *Code of Conduct (Code)* applies to all Members and employees. It 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 ethics reporting policy encourages internal disclosures of alleged wrongdoing consistent with the directives under the *Public Service of Ontario Act, 2006 (PSOA)*. The Code contemplates a mechanism to facilitate anonymous disclosures of suspected violations administered by a third party. Procedures available under the PSOA for disclosing serious wrongdoing to the Integrity Commissioner are also outlined in the Code.

The Chair of the Commission is 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 receives annual reports on the compliance of Members with the provisions of the Code. Amendments to the Code are reviewed by the Governance and Nominating Committee for recommendation to the Board.

#### *Guidelines for Members and Employees Engaging in Adjudication*

The Commission adopted *Guidelines for Members and Employees Engaging in Adjudication* to 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. Its 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.

### ***Oversight of Strategic Planning***

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 provide annually a business plan to the Minister for 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, report on the previous year's Statement of Priorities, 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 the Statement of Priorities.

### ***Management Evaluation and Compensation***

At the beginning of the fiscal year, the Human Resources and Compensation Committee reviews and approves the goals and objectives of the Chair/CEO and the Vice-Chairs. The goals and objectives of the Executive Director and the Secretary, which are recommended by the Chair, are reviewed by the Committee at the same meeting. The Committee also reviews the mid-year assessments of achievements against the goals and objectives of the Chair/CEO, the Vice-Chairs, the Executive Director and the Secretary.

At the end of the fiscal year, the Committee reviews the performance of the Chair/CEO and Vice-Chairs and the recommendations of the Chair in respect of the performance of the Executive Director and the Secretary. The Committee recommends the annual performance compensation for these officers to the Board for approval.

### ***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 last review of the remuneration of Part-time Members resulting in an amendment to the remuneration rates was conducted in 2005.

### ***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.

## **REPORTING TO THE MINISTER**

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.

### ***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.

**RESOURCES:** The governance documents discussed are published on the Commission's website:

- Memorandum of Understanding between the Minister of Finance and the Commission
- Ontario Securities Commission Charter of Governance Roles and Responsibilities
- Mandate of the Audit and Finance Committee
- Mandate of the Governance and Nominating Committee
- Mandate of the Human Resources and Compensation Committee
- Mandate of the Adjudicative Committee
- Mandate of the Chair
- Mandate of the Vice-Chairs
- Mandate of the Lead Director
- Ontario Securities Commission Member Profile
- Member biographies
- Ontario Securities Commission Code of Conduct
- Guidelines for Members and Employees Engaging in Adjudication
- Remuneration Schedule for Part-time Members
- Ontario Securities Commission Annual Report (annual publication)