

**1.1.4 Memorandum of Understanding Dated
May 26, 2003 Between the Minister of
Finance of Ontario and the OSC**

**MEMORANDUM OF UNDERSTANDING
DATED MAY 26, 2003
BETWEEN
THE MINISTER OF FINANCE OF ONTARIO
(herein called the "Minister")**

AND

**THE ONTARIO SECURITIES COMMISSION
(herein called the "Commission")**

A INTRODUCTION

1. The Commission is a statutory corporation without share capital and comprised of members appointed by the Lieutenant Governor in Council. The Commission is an agent of Her Majesty in right of Ontario (section 3(12) of the *Securities Act*) and is classified by the Management Board of Cabinet (Management Board) as a Regulatory Agency with a governing board.
2. Under the *Securities Act* and the *Commodity Futures Act* (the "Statutes"), the Commission is responsible for the administration of the Statutes and for discharging the powers and duties assigned to it under the Statutes and any other relevant legislation.
3. The mandate of the Commission under section 1.1 of the *Securities Act* and section 1.1 of the *Commodity Futures Act* 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.
4. The *Securities Act* requires that every five years the Commission and the Minister shall enter into a memorandum of understanding setting out:
 - a. the respective roles and responsibilities of the Minister and the Chair of the Commission (the "Chief Executive Officer" or "Chair");
 - b. the accountability relationship between the Commission and the Minister;
 - c. the responsibility of the Commission to provide to the Minister business plans,

- operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
- d. any other matters that the Minister may require.
5. The *Securities Act* further requires that the Commission shall promptly give the Minister or his/her designate (the "Minister") such information about its activities, operations and financial affairs as the Minister requests.
6. The Minister and the Chair are committed to a strong and independent Commission that is empowered to fulfill its statutory mandate efficiently and effectively and share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Commission and fulfilment of its statutory responsibilities.
7. The purpose of this Memorandum of Understanding ("Memorandum") is to clarify the operational roles, responsibilities and relationship between the Commission and the Minister and record their mutual understanding in respect of these matters.
8. The Memorandum does not affect, modify, limit or interfere with the responsibilities of the Minister, the Commission or the Chair under the Statutes or any other legislation. In the event of a conflict between the provisions of the Memorandum and the Statutes or such other legislation, the Statutes or such other legislation shall prevail.

B GUIDING PRINCIPLES

9. The parties agree that they will adhere to the principles set out below in their relationship.
10. The Minister recognizes that the Commission is a statutory entity and that the Commission, the Chair and the Executive Director of the Commission (the "Chief Operating Officer" or "COO") exercise powers and perform duties in accordance with their respective mandates under the Statutes and other relevant legislation. The Commission's regulatory and adjudicative decisions must be made and be seen by the public to be made in an independent and impartial manner.

11. The Commission shall operate as an arms-length agency of the Government of Ontario.
12. Commission staff are employees of the Commission and are accountable to the Chair and the COO. Commission staff are not members of the Ontario Public Service.
13. The Commission acknowledges that it is accountable to the Minister as set out in the Statutes in exercising its statutory mandate. The fundamental principle of accountability will be observed in the management, administration and operations of the Commission.
14. As an agency of the Government, the Commission agrees to abide by the management principles established by the Government of Ontario. These principles include ethical behaviour, accountability, excellence in management, wise use of public funds, high quality service to the public and fairness in the marketplace.
15. All members, employees and special employees will be subject to Commission By-law No. 2 relating to conflicts of interest in connection with the conduct of the affairs of the Commission.
16. The parties to this Memorandum are committed to avoiding duplication of work or services.
17. The parties to this Memorandum recognize that the timely exchange of information and effective consultation when necessary are essential to discharging their respective responsibilities.
18. The Commission undertakes to report to, and share information with, the Minister as required by the Statutes and this Memorandum.

C ROLES AND RESPONSIBILITIES

The Minister

The Minister is accountable to the Legislature for the Commission's fulfilment of its mandate and its compliance with government policies, and for reporting to the Legislature on the affairs of the Commission. In addition to the rights and duties of the Minister as set out in the Statutes, the Minister is responsible for:

19. monitoring the activities of the Commission to ensure that its mandate is being fulfilled. To this end, the Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Commission, as provided in section 3.8(2) of the *Securities Act*;
20. reporting to Cabinet and the Legislature on the affairs of the Commission, including tabling reports in the Legislature as required. This includes the requirement that the Minister shall lay the Commission's annual report before the Assembly within one month of receiving the Commission's report;
21. reviewing the Commission's annual business plan and submitting the plan to Management Board, as required by the Agency Establishment and Accountability Directive;
22. as may be permitted, ensuring that the Commission is advised and consulted when significant new directions for the Commission are contemplated or when initiatives are taken to amend any legislation or regulations that affect the Commission;
23. ensuring that the Commission is aware of policy directions or decisions of the Government that may impact the Commission's business plan;
24. meeting with the Chair as necessary (at a minimum, once a year) to discuss issues relating to the effective discharge of the Commission's mandate and the need for services or support to be provided by the Ministry to the Commission;
25. making recommendations to Cabinet relating to the appointment and reappointment of the Chair, Vice-Chair(s) and Commission members pursuant to the process established by legislation or by Management Board, as applicable, following consultation with the Chair, as appropriate;
26. ensuring that members appointed to the Commission are aware of all policies, directives, guidelines and procedures for Cabinet appointees as applicable;
27. ensuring that the Commission is aware of Management Board Directives; and
28. ensuring that the Commission receives such information and assistance as

required or as requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives and this Memorandum.

The Chair and Board of Directors

In addition to the rights and duties as set out in the Statutes, the Chair and Board of Directors are responsible and accountable to the Minister for:

29. overseeing the management of the financial and other affairs of the Commission in accordance with its statutory mandate and business plan;
30. ensuring the provision of high quality regulatory services that protect the public interest and enhance public confidence in the regulated sectors;
31. ensuring that the Commission adopts procedures and otherwise conducts itself in accordance with good governance practices;

Furthermore, the Chair is responsible and accountable to the Minister for:

32. providing any necessary orientation of new members of the Commission, ensuring that new members are made aware of the conflict of interest provisions in Commission By-law No. 2, and developing an effective performance measurement system for evaluating Commission members in a manner consistent with best practices;
33. reviewing with the Minister the Commission's performance based results included in the Commission's statement of priorities on an annual basis;
34. ensuring that significant policy initiatives undertaken by the Commission, and other matters relating to its operations, that would be of importance to the Minister are brought to the attention of the Minister in a timely fashion, as well as being addressed at the next scheduled monthly work-in-progress meeting;
35. ensuring the Commission's compliance with applicable Management Board Directives;
36. causing the Commission to prepare and deliver to the Minister the Commission's statement of priorities, annual report including financial statements and any other information about the

Commission's activities, operations and financial affairs as the Minister requests;

Nominating Committee, and Compensation Committee.)

37. causing the Commission to prepare, submit and review with the Minister its business plan for the current year and at least two years beyond following its adoption by the Commission;
38. at the request of the Minister, preparing material, attending and/or making a presentation before Cabinet, the Legislature or Committees of either, on matters affecting or pertaining to the Commission;
39. notifying the Minister of upcoming vacancies in order-in-council appointments to the Commission and making recommendations to the Minister on persons appropriate to fill such vacancies; and
40. providing the Commission with such information, assistance and advice as the Commission requires to meet its responsibilities under the Statutes.

The Board of Directors

Furthermore, the Board of Directors is responsible and accountable to the Minister for:

41. subject to the approval of the Minister, making by-laws governing a variety of corporate matters, including:
 - a. the administration, management and conduct of the affairs of the Commission;
 - b. the appointment of an auditor;
 - c. the powers, functions and duties of the Chair, each Vice-Chair and officers employed by the Commission;
 - d. the remuneration and benefits of the Chair, each Vice-Chair and the other members of the Commission; and
 - e. the appointment, operation or dissolution of committees of the Board and the delegation of duties of the Board to such committees. (For example, the Board has established the following standing committees: Audit and Finance Committee, Corporate Governance and

The Deputy Minister

The Deputy Minister is accountable to the Minister for the performance of the Ministry in providing administrative support to the Commission and for carrying out the roles and responsibilities assigned to him by the Minister, Management Board Directives and this Memorandum. In accordance with the *Public Service Act* (and applicable Government directives), the Deputy Minister may delegate any of the powers and duties assigned to him by law. The Deputy Minister is responsible for:

42. advising and assisting the Minister in discharging assigned ministerial responsibility with respect to the Commission;
43. monitoring the activities of the Commission on behalf of the Minister to ensure that its mandate is being fulfilled and that it is acting in accordance with applicable Government policies;
44. informing the Commission of all directives, guidelines, policies and decisions of the Ministry and Government that apply to or may affect the Commission;
45. ensuring that the Commission receives such information and assistance as required or requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives, and this Memorandum; and
46. undertaking on behalf of the Minister assessments of whether or not the Commission is fulfilling its legislative mandate, identifying any need for corrective action and recommending to the Minister ways to resolve issues that have been identified.

The Chief Operating Officer

The COO of the Commission is responsible and accountable to the Chair for:

47. the development, implementation and ongoing monitoring of an effective performance measurement and management system for the Commission under the direction of the Chair. The performance measures relating to the Commission's goals and priorities once approved by the Commission and prior to

March 31, each year, will be forwarded to the Minister for approval;

48. ensuring that the Commission provides high quality service to the public in carrying out its responsibilities;
49. ensuring the development and maintenance of the necessary information, case management and reporting systems in support of the efficient functioning of the Commission;
50. keeping the Chair and the Board of Directors informed and up-to-date on program operations;
51. preparing documents and reports as requested by the Board of Directors including corporate plans and budgets, annual business plans and quarterly reports; and
52. the maintenance of documentation and proper controls to support expenditures and keep track of material variances between projected and actual expenditures.

D FINANCIAL ARRANGEMENTS

53. The operations of the Commission are funded by fees collected from market participants and details regarding the Commission's authority with respect to the fees and revenue it collects are set out in section 3.4 of the *Securities Act*.
54. The Commission acknowledges that property and/or services ordered/purchased by the Commission are purchased by it for the use of the Crown in right of Ontario, and are not subject to the goods and services tax.

E REPORTING REQUIREMENTS

55. The Commission shall forward for the Minister's approval an annual business plan.
56. The business plan shall meet the requirements set out in Schedule D of the Agency Establishment and Accountability Directive.
57. Within six months after the end of each fiscal year, the Commission shall deliver to the Minister an annual report on the affairs of the Commission for that fiscal year. Within one month of receiving the Commission's annual report, the Minister shall lay the report before the Assembly.

58. The annual report shall include the Commission's audited financial statements for the most recently completed financial year and the auditor's report thereon; a description of activities during the financial year reported on; a description of performance achieved as against the objectives and targets set out in the Commission's business plan; a discussion of significant variances between actual and planned results and an explanation of actions to be taken, if any, to address these variances; a description of the Commission's corporate governance structure; and the names of the appointees to the Commission, including when each was first appointed and when the current term of appointment expires.

59. The Commission will ensure that all reports and other material set out in Appendix A, required to be submitted to the Minister are submitted in a timely manner, as outlined in the Appendix.

F AUDIT ARRANGEMENTS

60. Pursuant to the *Securities Act*, the Commission shall prepare financial statements according to generally accepted accounting principles. The financial statements must present the financial position, results of operations and changes in the financial position of the Commission for its most recently completed financial year.

61. The Commission shall appoint one or more auditors licensed under the *Public Accountancy Act* or the Provincial Auditor to audit the financial statements of the Commission for each financial year.

62. The Chair shall promptly provide the Minister with a copy of any report from an audit of the Commission conducted pursuant to paragraph 61 of this Memorandum. The Chair shall have an opportunity to comment on any audit report that is submitted to the Minister or Management Board prior to such submission.

63. The Commission shall advise the Minister annually of any outstanding audit recommendations.

G ADMINISTRATIVE ARRANGEMENTS

64. The Commission may participate in government-wide shared services or arrangements, where applicable.

65. The Commission shall respond to access requests and privacy investigations and shall fulfill all requirements under the *Freedom of Information and Protection of Privacy Act* (FOIPPA) with support from the Ministry of Finance FOIPPA Co-ordinator.

Memorandum to Management Board for approval.

IN WITNESS WHEREOF this Memorandum has been signed by the Minister and by the Chair of the Commission on behalf of the Commission

66. The Commission will be subject to the following Management Board Directives, Operational Policy and Guidelines: Agency Establishment and Accountability; Agencies-Government Appointees; Enhancing Privacy: Computer Matching of Personal Information; Freedom of Information and Privacy; Management of Recorded Information; and Visual Identity.

“Janet Ecker” May 26, 2003
The Honourable Janet Ecker
Minister of Finance Date

“David A. Brown”
David A. Brown, Q.C.
Chair Date
Ontario Securities Commission

67. Where the same matters dealt with in these Directives are the subject of provisions in the *Securities Act*, the regulations and the rules thereunder, the latter provisions will govern. For greater clarity, the provision under the heading "Remuneration" in the "Government Appointees" Directive that provides for remuneration of appointees is not applicable to the Commission by virtue of section 3.2 of the *Securities Act*.

H TIME PERIOD AND PROCESS FOR REVIEW AND AMENDMENT

68. This Memorandum, to be executed by the Minister and the Chair on behalf of the Commission, becomes effective when executed by the parties. It shall remain in effect for a period of five years from the date of signature unless earlier amended or replaced. If not earlier amended or replaced, this Memorandum must be reviewed before expiry and renewed or revised. It shall remain in effect until superceded by a new memorandum of understanding approved by Management Board and executed by the parties.

69. This Memorandum shall be reviewed upon the request of either party to it. This Memorandum must be either affirmed for continuance or revised upon the appointment of a new Minister or Chair.

70. The Minister is responsible for recommending to Management Board the approval of this Memorandum prior to execution by the parties. If this Memorandum is amended, the Minister shall submit a copy of the amended

Appendix "A"

**Ontario Securities Commission
Statutory Reporting Requirements and
Communications with the Minister of Finance**

**Reporting Required under the Securities Act and
Commodity Futures Act (CFA)**

The following is a list of statutory reporting requirements (Commission to the Minister):

- **MOU with the Minister:** The Commission and the Minister shall enter into an MOU every five years, beginning with the 1998-99 fiscal year. (*Securities Act*, s. 3.7(1))
- **Provision of Information to the Minister:** The Commission shall promptly give the Minister such information about its activities, operations and financial affairs as the Minister requests. (*Securities Act*, s. 3.8(1))
- **Annual Report and Audited Financial Statements:** Within six months after the end of each fiscal year (i.e., September 30), the Commission shall deliver to the Minister an annual report, including the Commission's audited financial statements, on the affairs of the Commission for that fiscal year. (*Securities Act*, s. 3.10(1))
- **Statement of Priorities:** The Commission is to deliver its statement of priorities to the Minister within 90 days after the end of its financial year (i.e., June 30). (*Securities Act*, s. 143.9(1))

Statutory Requirements for Ministerial Approval

- **Ministerial Approval of By-laws:** The Commission must deliver to the Minister a copy of every by-law passed by it for Ministerial approval. (*Securities Act*, s. 3.2(4))
- **Ministerial Approval of Short-term Borrowing:** The Minister must approve terms and conditions of any short-term (up to two years) borrowing by the Commission. (*Securities Act*, s. 3.3(2))
- **Ministerial Approval of Commission Regulations:** Concurrently with making a rule and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC under the *Securities Act* or by the Commission under subsection 143(3) of the *Securities Act* or subsection 65(3) of the CFA, that in the opinion of the Commission is necessary or advisable to effectively implement the rule. (*Securities Act*, s. 143(3)) (CFA, s. 65(3))
- **Ministerial Approval of Non-publication of Notice of Urgent Rule:** The Commission is not

required to publish notice of a proposed rule if it believes there is an urgent need for the rule and without it there is substantial risk of material harm to investors or to the integrity of the capital markets, and if the Minister approves. (*Securities Act*, s. 143.2(5)) (CFA, s. 67(5))

- **Ministerial Approval of Rules:** The Commission must deliver to the Minister a copy of every rule made by it together with the following:
 - (1) A copy of the notices published under section 143.2, unless publication of notice was not required, and copies of all documents referred to in the notices.
 - (2) A summary of the representations made and other documents submitted in respect of the rule as proposed.
 - (3) All other material information that was considered by the Commission in connection with the making of the rule. (*Securities Act*, s. 143.3(1)) (CFA, s. 68(1))
- **Ministerial Approval of MOU's:** The Commission must deliver to the Minister for approval every agreement, memorandum of understanding or arrangement between the Commission and,
 - (1) another securities or financial regulatory authority;
 - (2) any self-regulatory body or organization; or
 - (3) any jurisdiction. (*Securities Act*, s. 143.10(1)) (CFA, s. 74(1))

Other Communications

- **Business Plan –** Not statutorily mandated. The practice is to forward the Plan to the Ministry following Board approval.

**Current Communications Protocol – Rules, Policies,
MOU's**

1. **Ministerial Approval of Rules**
 - The Commission must approve a proposed rule for publication for comment, following which the proposed rule will be published in the Bulletin. The minimum comment period is 90 days. (Note: Publication of notice of a proposed rule is not required in certain circumstances (see *Securities Act*, s. 143.2(5) and CFA, s. 67(5)). One of these is where the Commission believes there is an urgent need for the proposed rule and that, without it, there is a substantial risk of material harm to investors or the integrity of the capital markets. In these circumstances, the Commission

must have prior approval of the Minister to make the rule without publication of notice.)

- If the Commission does not propose any material changes to the proposed rule after the comment period, the rule must go back to the Commission to be approved/made. It must then be delivered to the Minister for approval. A notice of the final rule must be published in the Bulletin.
- If material changes are made to the rule then the Commission must approve its re-publication for further comment. The Ministry will be notified prior to any re-publication and provided with a copy of the changes to rule and the notice.
- Following any further comment period, the rule must be approved/made by the Commission. Once approved by the Commission it will be sent to the Minister for approval and published in the Bulletin.
- Within 60 days after a rule is delivered to the Minister, the Minister may,
 - approve the rule,
 - reject the rule, or
 - return it to the Commission for further consideration.
- A rule that is approved by the Minister comes into force 15 days after it is approved unless there is a later day specified in the rule, in which case it comes into force on that later day.
- If the Minister does not approve a rule, reject it or return it to the Commission for further consideration, the rule comes into force:
 - if a day is specified in the rule that is at least 75 days after the rule is delivered to the Minister, then on that date;
 - if no date is specified, then on the 75th day after the rule is delivered to the Minister; or
 - if the date specified is within 75 days after the rule is delivered to the Minister, then on the 75th day after the rule is delivered to the Minister.

2. Policies

- There is no statutory requirement that policies be approved by the Minister. However, the Commission has adopted an informal practice of sending to the Minister (for information purposes) a copy of every proposed and final policy.

3. Ministerial Approval of MOU's

- The Commission must deliver to the Minister for approval every agreement, MOU or arrangement between the Commission and,
 - another securities or financial regulatory authority;
 - any self-regulatory body or organization; or
 - any jurisdiction.
- The Commission will provide the Minister with a copy of the proposed MOU together with a copy of the notice that will be published in the Bulletin.
- The Minister may approve or reject the agreement, MOU or arrangement within 60 days after it is published in the Bulletin.
- If the Minister approves the MOU within the 60 day period, the MOU is effective on the date approved. If the Minister does not approve or reject the MOU before the expiration of 60 days, the MOU comes into effect on the 60th day after the date of its publication in the Bulletin.

4. Commission Regulations

- Concurrently with making a rule, and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC or by the Commission under section 143(3) of the *Securities Act* or section 65(2) of the CFA that in the opinion of the Commission is necessary or advisable to effectively implement the rule.
- The proposed regulation must be made by the Commission and sent to the Minister for final approval.

5. Other

- The Commission provides the Ministry with an overview of rule-making and MOU activity at the Commission on a regular basis.
- WIP meetings are scheduled on a regular basis.