

B.C. Securities Commission

Governance Policy

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A. INTRODUCTION

Overview

The British Columbia Securities Commission is the independent provincial government agency responsible for regulating securities trading in British Columbia. The commission is established under, and administers, the *Securities Act*. The commissioners are appointed under the *Securities Act* and as a board have overall responsibility for the commission's operations.

The commissioners have four categories of responsibilities. They

- as a board, review and approve the development and implementation of securities legislation and guidance
- as a board, oversee the self-regulatory organizations, exchanges and other marketplaces
- act as adjudicators on enforcement matters brought under the *Securities Act* and applications for review of decisions made by self-regulatory organizations and exchanges
- as a board, oversee the commission's management, operations and financial affairs

The board is committed to maintaining a strong and effective governance framework for the commission. The purpose of the board's governance manual is to establish a framework that incorporates best practices within the securities industry and among public sector organizations.

The governance manual comprises:

- this policy
- terms of reference for the board
- terms of reference for board committees
- terms of reference for the governance committee
- terms of reference for the audit committee
- terms of reference for the human resources committee.

The manual serves as a guideline for the board in fulfilling its governance responsibilities in the most effective manner. The manual also sets out the expectations, roles and responsibilities of the chair, the vice chair(s), the other commissioners and the executive director.

The governance committee of the board reviews the governance manual on an annual basis, keeps the board informed about emerging best governance practices and recommends changes to the governance manual when appropriate.

Definitions

In the governance manual:

- the *commission* is the regulatory agency established under Part 2 of the *Securities Act* as the British Columbia Securities Commission
- a *commissioner* is a member of the commission appointed under the *Securities Act*
- the *board* is comprised of the commissioners
- the *chair* is the commissioner designated under the *Securities Act* and the *Administrative Tribunals Act* as the chair and chief executive officer of the commission

- a *vice chair* is a commissioner designated under the *Securities Act* and the *Administrative Tribunals Act* as a vice chair
- an *independent commissioner* is a commissioner who is not the chair or a vice chair
- the *executive director* is the executive director appointed by the board under the *Securities Act*
- an *executive* is
 - the chair, a vice chair, the executive director, the general counsel or
 - a person holding any other position designated as an executive position by the chair in consultation with the human resources committee
- a *senior manager* is
 - a director or
 - a person holding any other position designated as a senior manager by the chair in consultation with the human resources committee
- the *minister* means the minister of finance of British Columbia
- *service plan* means the business plan required by the *Securities Act*
- *annual report* means the annual report required by the *Securities Act*

B. COMMISSION GOVERNANCE FRAMEWORK

The commission

The commission is a regulatory agency created by statute. The commission reports directly to the minister. All commissioners sign annually the minister's mandate letter.

The commission's mission is to protect and promote the public interest by fostering

- a securities market that is fair and warrants public confidence and
- a dynamic and competitive securities industry that provides investment opportunities and access to capital.

The *Securities Act* establishes the commission's role in regulating securities markets and outlines the basic governance and accountability structure for the commission. The commission is also subject to financial and performance reporting requirements under other legislation of British Columbia. The commission is funded by fees and charges paid by market participants.

Members of the commission

The *Securities Act* sets the maximum number of commissioners at 11. The commissioners include a chair and one or more vice chairs. Under the *Securities Act* and the *Administrative Tribunals Act*, the government appoints the commissioners after a merit-based process. The government appoints independent commissioners after consultation with the chair.

Board independence

The *Securities Act* combines the roles of chair and chief executive officer. The commission ensures the board functions independently by

- requiring all board committees to be comprised solely of independent commissioners
- ensuring the independent commissioners have appropriate input into board agendas

- ensuring the independent commissioners meet alone without management present for a portion of every regularly scheduled board meeting
- maintaining a governance committee to review board independence, together with the chair establishing and implementing the commissioner selection process, leading the evaluation processes for the board, its committees, the tribunal, the chair and the independent commissioners and recommending appropriate governance policies
- assigning certain duties to the chair of the governance committee.

Commissioner appointment process

The government appoints the commissioners for a term of office specified under the *Administrative Tribunals Act*. A commissioner, other than the chair, is appointed for an initial term of two to four years and is eligible for reappointment for additional terms of up to five years. The board's practice is generally to seek three-year initial appointments for independent commissioners with staggered terms to provide continuity.

Part E of this policy explains how the chair is appointed.

Together with the chair, the governance committee, as described in its terms of reference, establishes and implements the process for selecting and recommending to the board candidates for independent commissioner. The governance committee assists the chair in selecting and recommending to the board candidates for vice chair. The board recommends candidates for appointment to the government. The chair presents the board's recommendations to the minister.

At least six months before the expiry of a commissioner's term, the governance committee initiates a process to determine whether to recommend to the board reappointment of the commissioner for a further term. The board recommends candidates for reappointment to the government. The chair presents the board's recommendations to the minister.

Under the *Administrative Tribunals Act*, the chair may authorize a commissioner who resigns or whose appointment has expired to continue as a member of a commission panel having jurisdiction over a proceeding that is under way at the time of such resignation or immediately before the expiry of such commissioner's term.

Relationship with the minister

The commission manages its working relationship with the minister through the chair. The chair

- keeps the minister informed on a timely basis regarding all issues within the commission's mandate that are of interest to government
- briefs the minister regularly on major initiatives undertaken by the commission
- ensures that the communications and education division at the commission works closely with those responsible for communications at the ministry.

C. COMMISSIONER QUALIFICATIONS AND DUTIES

All commissioners

The board recommends to the minister for appointment as commissioners candidates who have skills and experience in business, capital markets, law or regulation, a reputation for honesty, integrity and dependability, and an appropriate level of knowledge of securities law and industry practice to fulfill the role as a member of an expert tribunal. Every commissioner must develop and maintain an independent perspective and must discharge his or her adjudicative responsibilities impartially, fairly, expeditiously and in the public interest.

The board expects every commissioner to:

- act honestly and in good faith in the best interests of the commission
- comply with the commission's ethics and conduct policy
- keep informed of current information relevant to the commission's mandate, strategy and operations
- use best efforts to ensure that the board as a whole follows both the letter and the spirit of the practices described in the governance manual
- have the information necessary to make decisions
- use knowledge, experience and contacts to make a positive and constructive contribution to the success of the commission
- maintain an excellent attendance record at board and committee meetings
- prepare diligently for board and committee meetings and make a meaningful contribution to the discussions at those meetings
- establish effective, independent and constructive relationships with other commissioners and with management
- understand the difference between governing and managing and not encroach on management's areas of responsibility
- be available to a reasonable extent to sit on hearing panels
- participate on committees when asked
- have an appropriate level of knowledge for serving on any committee on which the commissioner serves.

Independent commissioners

An independent commissioner has the time and willingness to prepare for and attend board meetings, to serve on board committees when asked and to sit on hearing panels. The chair may also ask an independent commissioner with the appropriate skills and experience to chair a hearing panel and, in consultation with the other panel members, to draft the panel's decision. An independent commissioner may on occasion perform any of the duties of a vice chair if a vice chair is absent or has a conflict of interest.

Vice chair

A vice chair reports to the chair and has the following additional responsibilities:

- acts as chair while the chair is absent, if appointed by the chair to do so, or when the chair is otherwise unable to act
- is responsible for overall management of the hearing process

- generally, chairs hearing panels
- advises the chair on significant issues
- advises and directs staff on policy and exemption applications
- such other responsibilities as the chair may delegate.

D. COMMISSIONER ORIENTATION AND CONTINUING EDUCATION

Orientation

The board has a comprehensive orientation program for new commissioners. The orientation program familiarizes new commissioners with the mandate and operations of the commission, the role of the board and its committees and the relationship between the board and government.

The program includes written materials and an orientation session with the chair, the vice chair(s), the general counsel and their staff. The orientation covers:

- the governance manual
- the ethics and conduct policy
- information about the adjudication process
- information about the strategic planning process, including briefing materials relevant to the service plan and operating plans
- administrative items, such as the role of support staff, billing practices and expense claims

New commissioners also meet with the executive director and the director of each division to discuss the commission's operations and personnel.

Continuing education

The board provides ongoing educational opportunities for commissioners to learn about the commission, the securities industry, securities law and policy, emerging corporate governance practices and other areas relevant to the exercise of the commissioners' duties. The board encourages commissioners to take advantage of these opportunities.

E. CHAIR AND CHIEF EXECUTIVE OFFICER

The *Securities Act* designates the chair as the chief executive officer of the commission. The chair has the powers and duties set out in the *Securities Act*. The chair also has other powers and duties delegated to the chair by the board.

Appointment

The government appoints the chair under the *Securities Act* and the *Administrative Tribunals Act*, after a merit-based process. The chair is appointed for an initial term of three to five years and is eligible for reappointment for additional terms of up to five years. The governance committee establishes and leads the process for identifying and recruiting a candidate for recommendation to the board, as described in its terms of reference. The board recommends a candidate to the minister for appointment.

Responsibilities

The chair has the following additional responsibilities:

Chair of the board

- provides strong and effective leadership of the board in its roles in legislation and guidance, oversight of self-regulatory organizations, exchanges, and other marketplaces, adjudication and management oversight
- effectively manages the relationship between the commission, the minister and government
- represents the commission effectively as its primary public representative
- performs the specific duties described in the terms of reference for the board.

Chief executive officer

- provides strong and effective leadership of commission management and staff
- effectively manages the relationships among the board and management, industry, investors, other regulators and the public
- directs and monitors the activities of the commission so that the commission achieves its objectives
- oversees the development and implementation of the commission's service plan and annual report
- with the assistance of the human resources committee, selects and recommends to the board a candidate for executive director.

F. EXECUTIVE DIRECTOR

The executive director is the chief administrative officer of the commission and must comply with the policy directives given by the board. The executive director reports to the chair and has the powers and duties set out in the *Securities Act*. The executive director also has other powers and duties which the board delegates to the executive director.

The board appoints the executive director.

G. EVALUATION AND COMPENSATION

Evaluation

The governance committee develops, recommends to the board and oversees processes for the annual evaluation of the board, its committees, the tribunal and the chair, as well as peer and self-evaluations of the independent commissioners, as described in that committee's terms of reference.

These evaluations measure the performance of

- the board, against the requirements of this policy and the terms of reference for the board
- each committee, against the committee's terms of reference
- each independent commissioner, against the criteria in part C of this policy

The human resources committee leads the independent commissioners in the annual evaluation of the chair.

The independent commissioners evaluate the chair's performance against these criteria:

- the chair's performance objectives for the year
- the core attributes in the commission's performance management model
- the responsibilities of the chair set out in the governance manual.

The human resources committee reviews, in consultation with the chair, each vice-chair's performance as described in that committee's terms of reference.

Compensation

The compensation of the independent commissioners, the chair and each vice chair is determined using the processes described in the terms of reference for the human resources committee.

H. FINANCIAL AND RISK MANAGEMENT

Financial management

The audit committee generally oversees the monitoring of financial results, financial reporting, and internal controls, as described in that committee's terms of reference.

The commission has an internal auditor who reports administratively to the executive director and functionally to the audit committee.

The external auditor is appointed by the board on the recommendation of the audit committee and reports directly to the audit committee. The audit committee reviews the independence of the external auditor and reports any concerns to the board.

Risk management

The commission has processes for identifying and managing risk. Using these processes, management:

- identifies the principal financial and non-financial risks to the commission
- incorporates management of these risks into the commission's service plan
- specifies those accountable for
 - managing particular risks or categories of risk
 - implementing response strategies
 - maintaining risk controls
- reports to the audit committee the results of its risk reviews.

The board oversees the management of risk through the service plan, as described in the board's terms of reference. The audit committee oversees the commission's risk management processes, as described in that committee's terms of reference.

I. ETHICAL CONDUCT

The board has adopted an ethics and conduct policy for the commission.

The policy has a process for commissioners and staff to disclose real or potential conflicts of interest and a system for detecting and mitigating unethical activities by commissioners and staff. The policy also has a “whistle-blowing” process, which in some circumstances directs individuals to report contraventions of the policy to the governance committee chair.

The governance committee reviews the policy and oversees compliance with the policy, in accordance with that committee’s terms of reference.

J. COMMUNICATIONS AND DISCLOSURE

Communications policy

The commission exercises its oversight of communications through its communications and education division which is responsible for managing communications. The division manages internal communications, media relations, communications between the commission and government and education programs for investors and the regulated community.

The commission communicates with all stakeholders with a view to maximizing transparency and accountability. The chair and the executive director are the designated spokespersons for the commission, although, at the direction of the chair or the executive director, other executives, senior managers and staff sometimes speak for the commission on issues over which they have specific responsibility.

The commission also consults regularly with industry leaders and other representatives of capital market participants.

Commission corporate documents

The commission publishes on its website its

- service plan
- annual executive compensation report
- annual report
- annual *Financial Information Act* report.

Legislative and policy initiatives

The commission publishes on its website proposed legislation and policy initiatives, usually accompanied by a request for comment. The commission also publishes comments received on proposed initiatives and its responses to those comments, when it publishes the final version of the initiative.

Enforcement and compliance

The commission publishes on its website hearing information, including rulings, findings, decisions and settlements.

Governance

The commission publishes on its website:

- the governance manual
- the commission's ethics and conduct policy
- for each commissioner
 - name
 - date first appointed
 - expiry date of current appointment
 - a biography
 - each committee on which the commissioner serves.