

B.C. Securities Commission Governance Policy

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A. INTRODUCTION

Definitions

In the governance manual:

- *annual report* means the annual report required by the *Securities Act*, RSBC 1996, c. 418
- the *board* is made up of the commissioners
- the *chair and CEO* is the commissioner designated under the *Securities Act* and the *Administrative Tribunals Act* as the chair and chief executive officer of the commission
- 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*
- an *executive* is
 - the chair and CEO, a vice-chair, the executive director, the general counsel, or
 - a person holding any other position designated as an executive position by the chair and CEO in consultation with the human resources committee
- the *executive director* is the executive director appointed by the board under the *Securities Act*
- an *independent commissioner* is a commissioner who is not the chair and CEO or a vice-chair
- the *minister* means the minister of finance of British Columbia
- a *recognized entity* is a self-regulatory organization, clearing agency, trade repository, exchange or other marketplace
- a *senior manager* is
 - a director, or
 - a person holding any other position designated as a senior manager by the chair and CEO in consultation with the human resources committee
- *service plan* means the business plan required by the *Securities Act*
- *tribunal* refers to the commission when acting as an administrative tribunal in the performance of its adjudicative role
- a *vice-chair* is a commissioner designated under the *Securities Act* as a vice-chair

Overview

The commission is the independent provincial government agency responsible for regulating the securities and derivatives markets in British Columbia.

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

- securities and derivatives markets that are fair and warrant public confidence
- a dynamic and competitive securities and derivatives industry that provides opportunities for investors and access to capital for businesses

The *Securities Act* sets out the commission's role in regulating securities and derivatives markets and outlines the governance and accountability structure for the commission. It establishes the commission as a corporation consisting of up to 11 commissioners. The commission is responsible for the administration of the *Securities Act*.

Unlike a business corporation, the commission does not have shareholders to whom the board reports. Instead, the commission is accountable to the government of British Columbia and reports directly to the minister. All commissioners sign the minister's mandate letter annually.

This letter sets out the respective roles and responsibilities of the commission and the province of British Columbia and, at a high level, the government's expectations of the commission. The commission is subject to financial and performance reporting requirements under other British Columbia legislation, including the *Financial Administration Act* and the *Budget Transparency and Accountability Act*. The commission is funded primarily by fees and charges paid by securities and derivatives market participants.

The commissioners have three principal areas of responsibility:

Regulation and policy making

- reviewing and approving the development and implementation of securities and derivatives rules, policies and guidance
- recommending to government legislation and regulations to enhance securities and derivatives regulation
- exercising regulatory oversight of the BC securities and derivatives markets, including overseeing recognized entities

Adjudication

- adjudicating, acting independently and impartially from their other responsibilities, in enforcement proceedings and other adjudicative matters under the *Securities Act*, including reviews of decisions made by the executive director and recognized entities

Governance

- setting the strategic priorities of the commission
- overseeing the commission's management, operations and financial affairs
- approving reporting to the government required under the *Securities Act*
- overseeing the chair and CEO's management of the commission's relationship with the minister

B. COMMISSION GOVERNANCE FRAMEWORK

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 provide a framework that incorporates best practices of securities and derivatives regulators and public sector organizations.

The governance manual is composed of:

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

The manual assists commissioners in fulfilling their governance responsibilities in the most effective manner. The manual also sets out expectations, roles and responsibilities of the chair and CEO, the vice-chair(s), independent commissioners and the executive director.

The governance committee reviews the governance manual annually, keeps the board informed about emerging best governance practices and recommends changes to the governance manual when appropriate.

Members of the commission

The *Securities Act* sets the maximum number of commissioners at 11. The commissioners include a chair and CEO 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 chair and CEO and vice-chair(s) are full-time members. The independent commissioners are part-time members and are independent of management. They devote as much time as necessary to the performance of their duties.

Board independence

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

- requiring that all board committees be composed solely of independent commissioners
- ensuring the independent commissioners have input into board agendas
- ensuring the independent commissioners meet alone without management, the chair and CEO or vice-chair present for a portion of every regularly scheduled board and board committee meeting
- maintaining a governance committee to:
 - review board independence
 - together with the chair and CEO, establish and implement the commissioner selection process
 - lead the evaluation processes for the board, its committees, the tribunal, the chair and CEO, the vice-chair(s) and the independent commissioners
 - recommend governance policies
- assigning certain duties to the chair of the governance committee, such as calling and chairing independent commissioners' meetings and apprising the chair and CEO of the matters considered on behalf of the independent commissioners, as appropriate
- providing that any commissioner, with the approval of the governance committee, may retain outside advisors at the expense of the commission

Commissioner appointment process

The government appoints the commissioners for limited terms of office under the *Securities Act* and the *Administrative Tribunals Act*. A commissioner, other than the chair and CEO, 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 recommend to government two or three-year initial appointments for independent commissioners with staggered terms to provide continuity.

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

The commission is committed to board renewal to ensure ongoing good governance. It reviews and assesses board size and composition annually to ensure the board has the right mix of skills, qualifications and experience over time, balancing the commission's need for experienced commissioners with the benefits of new skills, qualifications and perspectives.

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 to seek reappointment of the commissioner for a further term. When considering whether to recommend a commissioner for reappointment, the board's considerations include:

- the commissioner's skills, qualifications, length of service and performance
- the commission's need for the person's experience as a commissioner, given the existing composition of the board
- the commission's need for new skills, qualifications or perspectives on the board.

The board recommends candidates for reappointment to the government. The chair and CEO presents the board's recommendations to the minister.

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

Appointment of the chair and CEO

The government appoints the chair and CEO under the *Securities Act* and the *Administrative Tribunals Act*, after a merit-based process. The chair and CEO 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.

Relationship with the minister

The commission manages its relationship with the minister through the chair and CEO. The chair and CEO:

- 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 and derivatives law and industry practice to fulfill the role as a panel member of the tribunal. Commissioners are

responsible for administering the *Securities Act* in the public interest. Every commissioner must maintain an independent perspective and discharge their tribunal responsibilities impartially, fairly and expeditiously.

Commissioners must:

- act honestly and in good faith, in the best interests of the commission and in the public interest
- comply with the policies of the commission
- keep informed of current information relevant to the commission's mandate, service plan and operations
- obtain the information necessary to make decisions
- use their knowledge and experience to make a positive and constructive contribution to the goals and objectives 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
- maintain effective, independent and constructive relationships with other commissioners and with management
- participate on committees and task forces when asked
- maintain an appropriate level of knowledge for serving on any committee or task force on which the commissioner serves

Independent commissioners

An independent commissioner must have the time and willingness to prepare for and attend board meetings, to serve on board committees when asked and to sit on tribunal panels. The chair and CEO may also ask an independent commissioner with the appropriate skills and experience to chair a tribunal panel. The panel chair may ask a commissioner to take the lead in drafting the panel's reasons for decision. An independent commissioner may, at the request of the chair and CEO, perform any of the duties of a vice-chair if a vice-chair is absent or has a conflict of interest. Independent commissioners must understand the difference between governing and managing and not encroach on management's areas of primary responsibility.

Chair and CEO

The role of the chair and CEO is described more fully in section D.

Vice-chair

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

- acts as chair and CEO while the chair and CEO is absent, if appointed by the chair and CEO to do so, or when the chair and CEO is otherwise unable to act
- is responsible for overall management of the tribunal process
- generally, chairs tribunal panels
- advises the chair and CEO on significant issues
- advises and directs staff on policy matters and applications for controversial or significant exemptions from regulatory requirements
- such other responsibilities as the chair and CEO may delegate

D. CHAIR AND CHIEF EXECUTIVE OFFICER

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

Responsibilities

Chair of the board

As chair of the board, the chair and CEO:

- provides leadership to the board, including in the discharge of its regulatory and governance roles and in carrying out its responsibilities as set out in the terms of reference for the board and board committees
- manages the relationships between the commission, the minister and government
- represents the commission as its primary public representative and spokesperson
- performs the specific duties assigned to the chair and CEO described in the terms of reference for the board

Chief executive officer

As chief executive officer, the chair and CEO:

- provides leadership to commission staff
- manages the relationships between the board and management, and between the board and the securities and derivatives industry, investors, other regulators and the public
- directs and monitors the activities of the commission so that the commission achieves its objectives
- establishes a governance and risk management framework for the commission to support the board in fulfilling its responsibilities
- oversees the development and implementation of the commission's service plan and preparation of its annual report
- with the assistance of the human resources committee, selects and recommends to the board a candidate for executive director

The chair and CEO does not sit on hearing panels because of the chair and CEO's involvement in monitoring high profile enforcement matters and in making certain orders under the *Securities Act*. The commission has delegated the authority to issue investigation orders under sections 142 and 143.1 of the Act and preservation orders under section 164.04 of the Act to a single commissioner. A commissioner who issues an order under one of these sections is prohibited under section 7(4) of the Act from sitting on a tribunal panel with respect to any matter related to the order. The commission's practice is for the chair and CEO to issue these types of orders on behalf of the commission, to permit all remaining commissioners to sit on tribunal panels.

E. EXECUTIVE DIRECTOR

The board appoints the executive director. The executive director is the chief administrative officer of the commission and reports to the chair and CEO. The executive director has certain powers and duties set out in the *Securities Act* and also exercises some of the powers and duties of the commission under the *Securities Act*, which the commission has delegated to the executive director. The executive director must comply with the commission's policy directives.

The executive director is responsible for managing the day-to-day operations of the commission and providing leadership to staff to achieve the commission's mandate and service plan objectives.

F. COMMISSIONER ORIENTATION AND CONTINUING EDUCATION

Orientation

The commission has a comprehensive orientation program for new commissioners. The orientation program familiarizes new commissioners with the mandate, service plan and operations of the commission; the role of the board and its committees; the role of the tribunal, the organizational structure and roles of commission staff; and the relationship between the board and government.

The program includes written materials and orientation sessions with the chair and CEO, the vice-chair(s), the general counsel, tribunal counsel and their staff. The orientation includes information about:

- the governance manual
- the Ethics and Conduct Policy
- the Respectful Workplace Policy
- the tribunal processes
- the strategic planning process, including materials relevant to the service plan, operating and capital budgets and risk management
- administrative items, such as the role of commissioners' support staff, billing practices and expense claims

New commissioners also meet with the executive director and the director of each operational division of the commission to discuss the commission's organizational structure, roles of commission staff and key operational initiatives.

Continuing education

The commission provides continuing educational opportunities for commissioners to learn about the commission, the securities and derivatives industry, securities and derivatives regulation, administrative law, emerging governance practices, and other areas relevant to the exercise of the commissioners' duties.

G. EVALUATION AND COMPENSATION

Evaluation

The governance committee develops, recommends to the board and oversees processes for the evaluation of the board, its committees, the tribunal, the chair and CEO and the vice-chair(s), as well as peer and self-evaluations of the independent commissioners, as described in the governance committee's terms of reference. The evaluations generally take place annually.

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 tribunal evaluation measures the overall effectiveness of tribunal processes, but not specific matters that come before the tribunal. The vice-chair evaluation measures the overall effectiveness of a vice-chair in leading the tribunal function, but not specific matters that come before the vice-chair as a tribunal member.

The human resources committee leads the independent commissioners in the evaluation of the chair and CEO. The evaluation of the chair and CEO's performance is against these criteria:

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

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

Compensation

The compensation of the independent commissioners, the chair and CEO 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 board is responsible for approving and overseeing the commission's operating and capital budgets and the integrity of financial reporting and internal controls.

The audit and risk committee monitors the commission's financial operations and results and internal controls, as described in the audit and risk committee's terms of reference.

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

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

Risk management

The board is responsible for providing risk management oversight. It does this by ensuring that an appropriate risk management plan is in place, including the identification of risks and implementation of mitigation strategies and controls. The board provides input to management on trends and risks the board believes management should consider.

The audit and risk committee monitors the commission's risk management processes, as described in that committee's terms of reference. The commission's processes include management developing a risk management plan that:

- identifies the principal internal and external risks to the commission, markets, investors and capital raisers that could impact the commission's ability to carry out its mandate
- identifies controls to mitigate the risks identified

- incorporates strategies to mitigate the most significant risks into the commission’s service plan
- specifies those accountable for
 - managing particular risks or categories of risk
 - identifying and implementing response and mitigation strategies
 - maintaining risk controls
- provides for reporting on implementation of the risk management plan and risk controls and mitigation plans

Management is responsible for implementation of the risk management plan and is the primary owner of the plan. Management reports to the audit and risk committee about the risk management plan and the results of its annual risk reviews. The audit and risk committee reports to the board on the risk management plan and risk reviews.

I. ETHICAL CONDUCT

The board has adopted the Ethics and Conduct Policy.

The policy has a process for commissioners and staff to disclose real, perceived or potential conflicts of interest and a system for reporting, investigating and mitigating unethical activities by commissioners and staff. The policy provides for a “whistle-blowing” process, which in some circumstances requires reporting contraventions of the policy to the governance committee chair or anonymously, using a reporting line as described in Appendix B to the Ethics and Conduct Policy.

The governance committee reviews the policy and monitors compliance with the policy, in accordance with the governance 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 and external communications, media relations, communications between the commission, the minister and the government, and education programs for the public and the securities and derivatives industry.

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

The commission also consults regularly with securities and derivatives industry leaders, capital markets participants and investor protection advocates.

Commission documents

The commission publishes on its public website its:

- mandate letter from the minister
- service plan
- annual executive compensation and independent commissioner remuneration
- annual report
- annual *Financial Information Act* report

Legislative and policy initiatives

The commission publishes on its public website proposed regulation and policy initiatives, usually accompanied by requests for comment. The commission also publishes summaries of 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 public website information concerning its compliance and enforcement activities, including investor alerts, rulings, findings, decisions and settlements.

Governance

The commission publishes on its public 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.