

B.C. Securities Commission
Governance Policy

Effective January 14, 2010

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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 and enforces, the *Securities Act*. The commissioners appointed under the *Securities Act* are the members of the commission and have overall responsibility for the commission's operations.

The commissioners have four categories of responsibilities. They

- review and approve the development and implementation of securities legislation, regulations, rules, policies, and guidance
- 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
- act as the commission's board of directors, overseeing 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 individual commissioners, the chair, the vice chair, and the executive director.

Except where noted, the policies and practices outlined in the governance manual meet the government's *Best Practice Guidelines – BC Governance and Disclosure Guidelines for Governing Boards of Public Sector Organizations* (2005, Board Resourcing and Development Office). The governance committee of the board reviews the manual on an annual basis, keeps the board informed about emerging best governance practices, and recommends changes to the 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* as the chair and chief executive officer of the commission

- the *vice chair* is the commissioner designated under the *Securities Act* as the vice chair
- an *independent commissioner* is a commissioner who is not the chair or the vice chair
- the *executive director* is the executive director appointed by the board under the *Securities Act*
- an *executive* is
 - the chair, the 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
- *management* comprises the executive director and the management positions reporting directly or indirectly to the executive director
- a *senior manager* is
 - a director, or
 - a person holding any other position designated as a senior management position by the chair in consultation with the human resources committee
- the *minister* means the minister within the provincial government who is responsible for the commission

B. COMMISSION GOVERNANCE FRAMEWORK

The commission

The commission, a Crown corporation, is a regulatory body created by statute. The commission is accountable to the provincial legislature and reports directly to the minister. The chair, on behalf of the commission, signs annually a shareholder's letter of expectations with the minister that describes the commission's mandate and its responsibilities.

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, sets out the fundamental principles that the commission must consider in administering and enforcing the Act, and outlines the basic governance and accountability structure for the commission. The commission is also subject to financial and performance reporting requirements under the *Budget Transparency and Accountability Act*, the *Financial Administration Act*, and the *Financial Information Act*. The commission is self-funded.

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. A majority of the commissioners must be independent commissioners. The commissioners, collectively, have the required competencies and personal attributes to carry out the board's responsibilities effectively.

Board independence

An independent commissioner must have no direct or indirect association with the commission that, in the view of the board, could be reasonably expected to interfere with the exercise of the commissioner's independent judgment.

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 without the chair, vice chair, or management present for a portion of every board meeting
- maintaining a governance committee to review board independence, lead the commissioner selection and evaluation processes, and recommend 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 or, since legislative changes came into force on February 13, 2004, the vice 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.

The governance committee, as described in its terms of reference, leads the process for selecting and recommending to the board for approval candidates for independent commissioner. The governance committee assists the chair in selecting and recommending to the board for approval a candidate for vice chair. The board recommends final candidates to the minister for appointment.

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. If the board approves, it recommends to the minister that the government reappoint the commissioner.

Under the *Administrative Tribunals Act*, the chair may authorize a retiring commissioner, or one 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 the resignation or expiry.

Relationship with 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 division at the commission works closely with those responsible for communications at the ministry

C. COMMISSIONER QUALIFICATIONS AND DUTIES

All commissioners

Every commissioner has 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 quasi-judicial responsibilities 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 area 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. On occasion, an independent commissioner may perform any of the duties of the vice chair if the vice chair is absent or has a conflict of interest.

Vice chair

The vice chair has the following responsibilities:

- serves on the board as a commissioner
- acts as chair when the chair is absent or unable to act
- is responsible for overall management of the hearing process
- chairs most 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 organization,

the role of the board and its committees, and the relationship and division of responsibilities between the board and government.

The program includes written materials, an orientation session with the vice chair, the general counsel, and the commission secretary. The orientation session 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 strategic and operating plans
- administrative items, such as the role of support staff, billing practices, and expense claims

New commissioners also meet with the director of each division to discuss the division'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 for a term of office specified under the *Administrative Tribunals Act*. Since legislative changes came into force on February 13, 2004, 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 leads the process for identifying, recruiting, and appointing the chair, as described in its terms of reference. The board recommends a final candidate to the minister for appointment.

Responsibilities

The chair has the following responsibilities:

Chair of the board

- provides strong and effective leadership of the board in its roles of rule and policy-making, oversight of self-regulatory organizations, exchanges, and other marketplaces, adjudication, and management oversight
- effectively manages the relationship between the commission, the minister, and other government departments and agencies
- 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, the commission, 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 strategic plan, annual operating plan, and capital budget
- with the assistance of the human resources committee, selects and recommends to the board for approval a candidate for executive director

F. EXECUTIVE DIRECTOR

The *Securities Act* designates the executive director as the chief administrative officer of the commission. 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 delegated to the executive director by the board or by the chair.

The board appoints the executive director.

G. EVALUATION AND COMPENSATION

Evaluation

The governance committee and the human resources committee develop, recommend to the board, and oversee processes for the annual evaluation of the board, its committees, the commissioners, and the chair, as described in the committees' 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 commissioner, against the criteria in part C of this policy

The board annually reviews the chair's performance against these criteria:

- the commission's objectives for the year
- the other criteria in the commission's performance management system
- the responsibilities of the chair set out in the governance manual

Compensation

The compensation of the independent commissioners, the chair, and the 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 the 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 commission's external auditor is the Auditor General, which has standards that ensures it remains independent of the government agencies it audits. The external auditor reports directly to the audit committee.

Risk management

The commission has processes for identifying and managing risk, including a comprehensive business continuity plan. Using these processes, management

- identifies the principal financial and non-financial risks to the commission
- incorporates management of these risks into the commission’s strategic 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 strategic plan, as described in the board’s terms of reference. The audit committee oversees the commission’s risk management processes, as described in the committee’s terms of reference.

I. ETHICAL CONDUCT

The board has adopted an ethics and conduct policy for the commission. It meets the government’s *Standards of Ethical Conduct for Directors of Public Sector Organizations* (2005, Board Resourcing and Development Office).

The policy has a process for commissioners 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 requires individuals to report contraventions of the policy to the audit committee or the human resources committee.

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

J. COMMUNICATIONS AND DISCLOSURE

Communications policy

The commission exercises its oversight of communications policy 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 the executives and senior managers sometimes speak for the commission on issues over which they have specific responsibility.

The commission also consults regularly with representatives from industry through regular meetings with its advisory committees and *ad hoc* meetings with industry leaders and other representatives of capital market participants.

Reporting practices

Commission corporate documents

The commission publishes on its website its

- service plan
- quarterly financial statements and related management discussion and analysis
- annual report
- annual *Financial Information Act* report

Policy initiatives

The commission publishes on its website all proposed policy initiatives, usually accompanied by a request for comment. The commission also publishes comments received on proposed policy 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 the text of its enforcement and compliance settlements, rulings, findings, and decisions.

Governance disclosure

Except as noted below, the commission discloses information about its governance policies and practices on the governance page of its website. When that information changes, the page is promptly revised. Disclosure of this information in other documents is made by cross-reference to the website.

Website

The commission publishes the following information on the governance page of 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 comprehensive biography
 - whether an executive or an independent commissioner
- for each member of each board committee
 - name
 - a description of the member's relevant skills and experience including, in the case of the audit committee, the member's financial literacy, and if applicable, financial management experience
- a description of any instances in which the commission's governance practices do not meet the government's *Best Practice Guidelines – BC Governance and Disclosure Guidelines for Governing Boards Of Public Sector Organizations* (2005, Board Resourcing and Development Office)

Annual report

The commission publishes the following information in its annual report:

- a description of any waivers the board granted during the year under the commission's ethics and conduct policy, with reasons
- for each commissioner
 - total compensation for the year
 - attendance record for the year

- for any compensation consultant retained during the year to assist in determining compensation for any of the commissioners or senior managers
 - the consultant's identity
 - a summary of the consultant's mandate
 - a description of the nature of any other work for which the consultant has been retained
- for each ad hoc committee of the board formed during the year, the committee's
 - terms of reference
 - termination date
- if during the year the commission did not follow the policies and practices in the governance manual, a description of the circumstances and the reasons