

ONTARIO SECURITIES COMMISSION

MEMBER PROFILE MEMBER/DIRECTOR ATTRIBUTES

Introduction

The Ontario Securities Commission (the **Commission**), as the regulatory body responsible for overseeing the capital markets of Ontario, administers and enforces the *Securities Act* (Ontario) and the *Commodity Futures Act* (Ontario) (together, the **Acts**) and certain provisions of the *Business Corporations Act* (Ontario).

The mandate of the Commission is to provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in their integrity and to contribute to the stability of the financial system and the reduction of systemic risk.

Members of the Commission

The *Securities Act* establishes the Commission as a self-funded Crown corporation with a board of directors that is comprised of the members of the Commission (the **Members**). The Commission is comprised of at least nine and not more than 16 Members, each of whom is appointed by the Lieutenant Governor in Council. In addition, the Lieutenant Governor in Council designates one Member of the Commission as Chair of the Commission and may designate up to three Members as Vice-Chairs.

The Chair is designated by the *Securities Act* as the Chief Executive Officer of the Commission. The Chair and the Vice-Chairs devote their full time to the work of the Commission. Members other than the Chair and Vice-Chairs are part-time Members and devote as much time as necessary to perform their duties. As the Commission is structured as a corporation, the Members also serve as the Commission's Board of Directors (the **Board**). One of the part-time Members is selected by the other part-time Members to be the Board's Lead Director. The Lead Director, acting in consultation with the Chair of the Commission and the Chairs of Committees of the Board, is responsible for overseeing the operations of the Board to ensure that the Board carries out its responsibilities effectively.

Governance Framework

Although structured as a corporation, the Commission is a regulatory body and its purpose is mandated by statute.

The *Securities Act* establishes the Commission's role in regulating capital markets, sets out the fundamental principles that the Commission shall have regard to in overseeing the administration and enforcement of the Acts, and outlines the basic governance and accountability structure for the Commission.

The Commission is unlike a business corporation in that it does not have shareholders to whom the Board reports. Instead, the Commission is accountable to the Minister responsible for securities regulation and, through the Minister, to the Ontario Legislature under the terms of a Memorandum of Understanding (the **MOU**). The MOU remains in effect until it is renewed, usually every five years. The MOU sets out the accountability relationship between the Commission and the Minister, the Board and the Minister, and the Chair and the Minister. The MOU also describes the respective roles and responsibilities of the Minister, the Deputy Minister, the Chair, the Members and the Executive Director. The MOU specifies that the Commission is required to provide the Minister with an annual report and an annual business plan. The MOU can be found on the Commission's website.

Fundamental Principles of Regulation

Under the *Securities Act*, the Commission is responsible for using its regulatory powers:

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair and efficient capital markets and confidence in their integrity;
and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

The Commission is required by the *Securities Act* to have regard to the following fundamental principles when exercising its regulatory responsibilities:

- (a) Balancing the importance of each of the purposes of the *Securities Act*, namely, investor protection, fostering fair and efficient capital markets, and contributing to the stability of the financial system and the reduction of systemic risk.
- (b) The primary means for achieving the purposes of the *Securities Act* are:
 - requirements for timely, accurate and efficient disclosure of information;
 - restrictions on fraudulent and unfair market practices and procedures; and
 - requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.
- (c) Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of the *Securities Act* by the Commission.
- (d) The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
- (e) The integration of the capital markets is supported and promoted by the sound and responsible harmonization and coordination of securities regulation regimes.

- (f) Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

The Role of Members

The Members discharge their responsibilities under the Acts through the following two independent but related roles:

1. The Role of Members as Regulators of Ontario's Capital Markets

The Commission's regulatory responsibilities are exercised through the Commission's rule and policy-making function and its adjudicative function which are described as follows:

- (a) Policy Function: The Commission regulates Ontario capital markets by making rules that have the force of law (and granting exemptions where appropriate) and by adopting policies that influence the behaviour of capital market participants. The Commission exercises its regulatory oversight functions to achieve the objectives of the Acts. The Commission sets the regulatory priorities on an annual basis and oversees their implementation by Commission Staff.
- (b) Adjudicative Function: In regulating Ontario's capital markets, the Commission also performs an adjudicative function. Panels of Members, acting independently, hear enforcement matters (including proceedings involving alleged violations of the Acts, the regulations and the rules and proceedings involving conduct contrary to the public interest), conduct hearings involving regulatory policy issues and appeals of adjudicative decisions of self-regulatory organizations, and review decisions of Commission Staff. The Commission, as a whole, also has a responsibility to oversee the Commission's adjudicative processes and procedures generally.

While the foregoing functions are distinct, in both cases the Commission's powers are exercised in furtherance of investor protection, fostering fair and efficient markets, and contributing to the stability of the financial system and the reduction of systemic risk, while having regard to the fundamental principles described above.

2. The Role of Members as the Board of Directors of the Commission

Sitting as the Board, the Members oversee the management of the financial and other affairs of the Commission, including the Commission's strategic planning, resource allocation, risk management, financial reporting policies and procedures, and effectiveness of internal controls and management information systems. The Members also serve on the Committees of the Board.

Profile of Attributes and Qualifications

Each Member brings unique skills and experience to the Commission. When nominating candidates for appointment, attention is given to ensuring that the collective mix of skills and

experience of Members supports the Commission's ability to carry out its mandate. In addition, and consistent with government policy, the persons selected to serve must reflect the diversity of the people of Ontario and deliver services and decisions in a non-partisan, professional, ethical and competent manner with a commitment to the principles and values of public service and perform their duties with integrity.

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

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

The following is a list of the attributes, qualifications and expertise that the Members should possess to provide the effective stewardship and oversight that the Commission requires:

1. Individual Professional Qualifications and Personal Traits and Attributes

The Commission strives to ensure that its Members possess certain minimum demonstrated professional/industry experience and personal characteristics and traits, including the following:

- (a) Professional/Industry Experience: Significant business or professional experience relevant to the work of the Commission, preferably with demonstrated leadership or substantial achievement in their particular fields, including, collectively, expertise in the following areas:
- Accounting/Auditing (*Auditing and Accounting standards, principles and policies, and Internal Controls etc.*)
 - Finance (*Corporate Finance, Mergers and Acquisitions, Financial Reporting, Valuation etc.*)
 - Investment Management (*Investment Funds, Alternative Investment Structures, Hedge Funds, Investment Counseling, Portfolio Management, etc.*)
 - Investment Banking/Banking/Insurance (*Fixed Income/Equity Sales and Trading, Derivatives etc.*)
 - Retail and Institutional Investment (*Retail Investors, Brokerage, Distribution, Mutual Funds, Financial Planners, Pension Funds etc.*)
 - Legal (*Securities, Corporate, Commercial Law etc.*)
 - Adjudicative (*Litigation, Administrative, Procedural, Regulatory Law etc.*)
- (b) Independence: Each Member must have the ability to develop and maintain an independent perspective.

- (c) Integrity: High moral and ethical standards and integrity. Members are expected to act honestly and in good faith in carrying out their duties at the Commission.
- (d) Judgment: Ability to exercise sound business or professional judgment as a Member.
- (e) Commitment: Ability and willingness to allocate the necessary time and demonstrate the dedication and commitment required to fulfill the responsibilities of a Member.
- (f) Public Service: Commitment to promoting and supporting the principles and values of public service through leadership and example in fostering transparency, accountability, efficiency and effectiveness at the Commission.
- (g) Teamwork: Ability to work well with others, and communicate effectively.

2. Collective Functional Skills and Experience

In addition to the attributes noted above, given the multiple roles that Members play in fulfilling the Commission's mandate, it is vital that, collectively, Members have broad functional expertise and experience to effectively provide the required governance of the Commission.

The following list represents the skill sets, acumen and literacy that Members should collectively possess:

- (a) Securities/Business/Capital Markets: Able to provide credible provincial, national or international perspectives on business, financing, capital market trends and/or regulatory developments.
- (b) Adjudication: Litigation, administrative, procedural or regulatory law.
- (c) Financial Expertise: Accounting/auditing standards, internal controls and procedures, analysis and evaluation of financial statements, financial ratios and other indices.
- (d) Legal: Securities or business law.
- (e) Strategic/Business Management: Able to provide counsel on a broad range of strategic and business issues, with depth of knowledge of investing and capital markets.
- (f) Corporate Governance: Gained through service as a senior officer or director or through comparable educational or other experience.
- (g) Stakeholder Communications: Particularly those germane to complex regulatory environments.

Limits on Other Board Memberships and Commitments

While directorship on other boards can be an advantage, the Commission expects that a Member's current and future commitments will not materially interfere with the Member's obligations to the Commission.

Conflicts of Interest

Members must be independent of management (with the exception of the Chair and the Vice-Chairs).

All Members must be free from any interest or business or other relationship which could or could reasonably be perceived to materially interfere with the Member's ability to act with a view to the best interests of the Commission in the achievement of its mandate. Members are not precluded from acting on corporate or not-for-profit boards during their term of office. However, all Members must adhere to the requirements of the Commission's *Code of Conduct* and the *Public Service of Ontario Act, 2006* with respect to conflicts of interest in relation to the conduct of the affairs of the Commission.

When exercising their independent judgment as Members, Directors or as members of a Committee or a tribunal, Members must recuse themselves from any matter that gives rise to conflict of interest concerns, or where there may be a perception of conflict, or a perception that a Member may not bring objective judgment to his or her consideration of the matter.

Term of Appointment

Appointments to the Commission are made according to the procedures of the Public Appointments Secretariat. Each Member is appointed to the Commission for a fixed term by the Lieutenant Governor in Council. The *Agencies and Appointments Directive* provides that a person appointed to a government agency, such as the Commission, will serve an initial period of appointment of two years, and may be eligible for reappointment for a second term of up to three years and a third term of up to five years. The Commission has, however, adopted a policy that it will not normally recommend to the Minister the reappointment of an incumbent Member for more than two terms of two years each, for a total of six years.

The Chair and Vice-Chairs serve for a term as determined by the Lieutenant Governor in Council, not exceeding his or her term as a Member of the Commission.