

# **ALBERTA SECURITIES COMMISSION**

## **GOVERNANCE POLICY**

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## I. INTRODUCTION

Although structured as a corporation, the Commission is a regulatory body created by statute. The Commission is unlike a business corporation in that it does not have shareholders to whom the board of directors reports. Instead, the Commission is accountable to the Minister and through him or her to the Alberta Legislature.

The purpose of this document is to outline the governance policy of the Commission. While based, in part, on governance policies for corporations, the policy reflects the fact that important differences exist between the Commission, as an agency of the Crown in right of Alberta, and a private sector corporation. The objective of the policy is to provide a flexible and practical framework for effective management of, and decision making by, the Commission. The policy is expected to change and evolve in response to the periodic review of its effectiveness by the Members.

## II. INTERPRETATION

In this Policy:

"**Act**" means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

"**CEO**" means the Chief Executive Officer of the Commission;

"**Chair**" means the Chair of the Commission;

"**Commission**" means the Alberta Securities Commission;

"**Decision**" means a decision of the Commission made under a power or right conferred by the Legislation or Rules;

"**Governance Committee**" means a committee of Members established to assist the Members in the development of the Commission's policies, practices and processes for good governance and in the selection, evaluation and succession of Independent Members of the Commission and its committees;

"**Government**" means the Government of Alberta;

"**Human Resources Committee**" means a committee of Members established to, *inter alia*, assist the Members in the selection, evaluation and compensation of and succession planning for Members who are officers and employees of the Commission and to oversee the creation and maintenance of an effective organizational structure, human resources policies, and compensation and benefits plans for the Commission;

"**Independent Member**" means a Member who is neither an officer nor employee of the Commission;

"**Lead Independent Member**" means an Independent Member appointed pursuant to the Act with powers, duties and functions that are specified by the Lieutenant Governor in Council;

"**Legislation**" means the Act and the regulations made under the Act;

"**Member**" means a member of the Commission appointed pursuant to the Act;

"**Minister**" means the minister of the Government responsible for securities regulation in Alberta;

"**Policy Instruments**" means policy statements, blanket orders and notices issued by the Commission;

"**Rules**" means the rules made by the Commission under section 224 or 211.6(2) of the Act; and

"**Senior Management**" means those employees of the Commission holding the following positions: Chair, Vice-chair, CEO, Executive Director, General Counsel, Chief Accountant, Controller and Director.

### **III. ROLE OF THE COMMISSION AND ITS MEMBERS**

The Members' responsibility for the administration of the Act includes management oversight, Rule making and adjudication. To meet their responsibilities in each of these functions, the Members require the nature and degree of objectivity appropriate to the exercise of each function.

Accordingly, the Members adopt the principles of objectivity and accountability. Senior Management is accountable to the Members and in addition, in the case of the Chair and the CEO, to the Government. The Members are accountable to the Government, and by extension, to the public, for the proper administration of the Act and the effective governance of the Commission.

In their role as *de facto* directors of the Commission, the Members are responsible for overseeing the management of the business and affairs of the Commission, including approval of the Commission's strategic plan and annual business plan/operating budget.

In their Rule making role, the Members meet regularly to approve new Rules and amendments to existing Rules.

In their role as adjudicators, panels of Members hear enforcement proceedings, consider applications for exemptive relief from the requirements of the Legislation or Rules and hear appeals from decisions of the Executive Director and self regulatory organizations. The Members may, from time to time, adopt guidelines governing the preparation and release of decisions of panels of Members.

**A. Terms of Reference for a Member**

- (1) This section describes the responsibilities and guidelines for the conduct of Members. Each Member has the responsibility, in respect of the discharge of his or her duties under the Act to:
- (a) act honestly and in good faith;
  - (b) have an appropriate level of knowledge of the Legislation, Rules, Policy Instruments and Decisions;
  - (c) keep informed of current policy issues and initiatives;
  - (d) maintain a reasonable attendance record at meetings of the Commission and committees of which he or she is a member;
  - (e) prepare for meetings by reading the materials provided;
  - (f) ensure that he or she has the information necessary to make decisions;
  - (g) participate fully and frankly in the deliberations and discussions of the Commission;
  - (h) be available to a reasonable extent to sit on hearing panels;
  - (i) discharge his or her quasi judicial responsibilities fairly, expeditiously and in accordance with the public interest and administrative law principles generally;
  - (j) act objectively; and
  - (k) maintain confidentiality respecting the Commission's activities and affairs.
- (2) Each Member is expected to:
- (a) participate in the review and approval of Commission policies and strategies and in monitoring their implementation;
  - (b) be an available resource to Senior Management and the Commission;
  - (c) advise the Chair before introducing significant or previously unknown information or material at a Commission meeting;
  - (d) understand the difference between governing and managing and not encroach on Senior Management's areas of responsibility;
  - (e) communicate with the Chair or Lead Independent Member between meetings, when appropriate;
  - (f) encourage free and open discussion of the affairs of the Commission by its Members;

- (g) ask appropriate and relevant questions of Senior Management respecting the activities and affairs of the Commission;
- (h) become acquainted with Senior Management and question them appropriately and at proper times on strategy, implementation and results;
- (i) demonstrate interest in the long term success of the Commission;
- (j) establish effective and collegial relationships with other Members;
- (k) participate on committees when asked and become knowledgeable about the purposes and terms of reference of any such committee;
- (l) be an effective ambassador for and representative of the Commission; and
- (m) conduct his or her business and personal affairs in such a manner that no embarrassment to the Commission could reasonably result therefrom.

**B. Terms of Reference for the Chair and CEO**

- (1) Under the Act, the roles of the Chair and the CEO are combined. The Chair is entitled to expect the Members to provide support, advice and constructive criticism, all as appropriate from time to time. The following are the Terms of Reference for the Chair and CEO, distinguishing the responsibilities of Chair from those of CEO.
- (2) The Chair and CEO, in his or her capacity as Chair, shall:
  - (a) ensure that Senior Management is aware of, and responsive to, the concerns of the Members, the Government and other stakeholders;
  - (b) provide strong leadership to the Members in their roles of management oversight, Rule making and adjudication;
  - (c) provide strong leadership in identifying emerging issues in securities regulation;
  - (d) advise the Members when it is appropriate to establish additional committees of the Members;
  - (e) conduct Commission meetings in an effective, efficient and focused manner;
  - (f) appoint hearing panels and generally oversee the Commission's hearing procedures;
  - (g) ensure that the Commission is appropriately represented at functions and on occasions where it is in the Commission's interest to be so represented; and
  - (h) communicate effectively and persuasively the Commission's recommendations to the Minister as contemplated by this policy.

- (3) The Chair and CEO, in his or her capacity as CEO, shall:
- (a) lead and manage the Commission;
  - (b) report to the Minister and the Members;
  - (c) keep the Members current on major developments, ensuring that the Members have sufficient information to permit them to fully discuss potential issues and to make decisions;
  - (d) direct and monitor the activities of the Commission so that the Commission's objectives are achieved;
  - (e) develop and recommend to the Members the overall structure and staffing of the Commission;
  - (f) oversee the interactions among the Members;
  - (g) oversee the relationship between the Commission and the public, including the industry it regulates; and
  - (h) oversee the development and implementation of the Commission's strategic plan and annual business plan/operating budget.

**C. Terms of Reference for a Vice-chair**

- (1) In addition to his or her duties and responsibilities as a Member, the primary responsibility of a Vice-chair of the Commission shall be:
- (a) at the direction of the Chair, to participate as a member of panels of the Commission, including acting as chair of same; and
  - (b) as directed by the Members of a panel, to ensure the preparation as promptly as practicable and in accordance with such decision release guidelines as may be approved by the Members from time to time, of written decisions of such panel in respect of any hearing, review, inquiry, investigation or other proceeding conducted by such panel.
- (2) In addition to the foregoing, a Vice-chair shall have the following duties and responsibilities:
- (a) to be responsible for and direct such special projects and policy matters as may be delegated to such Vice-chair from time to time by the Chair;
  - (b) to conduct meetings of the Commission in the absence of the Chair; and
  - (c) to represent the Chair and the Commission at various meetings, conferences and events as requested from time to time by the Chair.

**D. Terms of Reference for the Lead Independent Member**

- (1) The duties of the Lead Independent Member shall be:
  - (a) to call meetings of the Independent Members at least quarterly in each fiscal year; and
  - (b) to chair the meetings of the Independent Members and determine the agendas for and procedures of those meetings.
- (2) In addition, the Lead Independent Member may:
  - (a) in consultation with the Chair, review and make recommendations with respect to the agenda for full meetings of the Commission;
  - (b) in consultation with the chairs of each of the committees of the Commission, review and make recommendations with respect to the agenda for any of the meetings of the committees of the Commission;
  - (c) attend any committee meeting, but with no authority to vote on any matter before the committee except in his or her capacity as a member of the committee;
  - (d) at any time during a meeting of the Commission request an adjournment of the meeting so that the Independent Members can meet;
  - (e) advise the Chair of any issues regarding the governance system of the Commission; and
  - (f) assist in the communication amongst the Members.

**IV. APPOINTMENT PROCESS**

**A. Appointment of Members (other than the Chair and Vice-chair)**

- (1) Although all Members are appointed by Order in Council issued by the Lieutenant Governor in Council, it is important that the Members play a central role in the selection of candidates to be recommended to the Minister for appointment to the Commission. The Governance Committee will solicit input from the Members for suggestions regarding suitable candidates and shall be responsible for identifying, interviewing and selecting candidates for recommendation to the Minister. Further, the Governance Committee shall be responsible for the following process:
  - (a) the Governance Committee shall review periodically the Commission's requirements for Members as a result of changing circumstances or pending retirements. At least six months in advance of the expiry of the term of a Member, the Governance Committee shall review the Member so as to determine whether to seek to renew his or her term or begin the search for a candidate to be appointed as a new Member;



- (b) if new Members are being sought, the Governance Committee shall prepare a “position profile” outlining the needs of the Commission, the skill set and other qualifications required of prospective candidates. This profile shall be presented by the Chair to the Deputy Minister for consideration, comment and approval;
- (c) following consultation with the Chair, the Deputy Minister may designate a number of persons independent of the Commission (the “independent panellists”) to assist the Governance Committee in the selection of candidates to be recommended to the Minister for appointment to the Commission. The number of independent panellists so selected should not exceed the number of Members then comprising the Governance Committee;
- (d) the Governance Committee shall commence the search process having regard to the skill set and qualifications approved by the Deputy Minister;
- (e) all nominations proposed shall be reviewed by the Governance Committee, the independent panellists and the Chair, some or all of whom shall interview the candidates. The Governance Committee, in consultation with the independent panellists, the Deputy Minister and the Chair, shall select that number of candidates which, including those Members proposed for re-appointment, shall be not less than one and one-half times the total number of Members to be appointed and re-appointed; and
- (f) not later than 60 days prior to the date of expiry of the relevant terms, the Chair will advise the Minister of the names of the candidates recommended for appointment or re-appointment, their relative ranking by the Governance Committee and the concurrence, as applicable, of the independent panellists, the Deputy Minister and the Chair, and shall provide to the Minister their profiles and any other relevant information the Minister may request.

**B. Appointment of Chair**

- (1) Although the Chair is appointed by Order in Council issued by the Lieutenant Governor in Council, it is important that the Governance Committee play a central role in the selection of candidates to recommend to the Minister for appointment as Chair.
- (2) Once the Governance Committee becomes aware that the position of Chair has or will soon become vacant, the Governance Committee shall offer to meet with the Minister to decide on a process to be followed to select a successor and will keep the Members informed about this process.
- (3) Upon appointment as Chair, the individual shall enter into an employment agreement with the Commission on such terms as have been agreed to by the Commission. The remuneration for the Chair shall be set by the Commission, subject to the approval of the Minister.

**C. Appointment of Vice-chair**

- (1) Although a Vice-chair is appointed by Order in Council issued by the Lieutenant Governor in Council, it is important that the Governance Committee play a central role in the selection of candidates to recommend to the Minister for appointment as Vice-chair.
- (2) The Chair may, from time to time, advise the Members of the desire to appoint one or more individuals to the position of Vice-chair. The Chair shall propose candidates for appointment to such position. The Governance Committee shall, in consultation with the Chair, review the qualifications of all candidates and make recommendations regarding same to the Minister for appointment as a Vice-chair.
- (3) Upon appointment as a Vice-chair, the individual shall enter into an employment agreement with the Commission on such terms as have been agreed to by the Commission. The remuneration for each Vice-chair shall be set by the Commission, subject to the approval of the Minister.

**D. Orientation Program for new Members**

- (1) As soon as practicable following the appointment of a new Member, the Chair shall ensure that such new Member receives such information covering the operation of the Commission and the duties and responsibilities of Members of the Commission as is necessary and as may be reasonably requested by such new Member. Such information shall include a copy of relevant excerpts from the Act in the orientation materials, a copy of the Act, bylaws of the Commission, this policy, minutes of the previous two meetings of the Members, Commission organization chart, all relevant policies of the Commission, any decision release guidelines and the Members' compensation policy. In addition, the Chair will arrange for the new Member to meet with Senior Management for the purpose of receiving a briefing on the areas for which such individuals are responsible at the Commission.
- (2) Members are encouraged to attend, with the prior approval of the Chair, appropriate courses or programs offered by educational or other qualified institutions or obtain educational materials which are relevant to their duties and responsibilities as Members. The cost of attending such courses or programs and obtaining such educational materials shall be borne by the Commission.

**V. EVALUATION PROCESS**

**A. Evaluation of Chair and CEO**

- (1) In January of each year, the Chair shall provide the Human Resources Committee with a written self evaluation of his or her performance as Chair and CEO against the previous year's objectives, together with the Chair's proposed objectives for the upcoming year.
- (2) At its March meeting, the Human Resources Committee will discuss the Chair's performance and his or her proposed objectives for the upcoming year.

- (3) At the March meeting of the Commission, the Human Resources Committee will report to the Members on its assessment of the Chair's performance and his or her objectives set for the upcoming year.
- (4) The Human Resources Committee will present its recommendation for the Chair's compensation package for the upcoming year to the Members at the April meeting of the Commission.

**B. Evaluation of Vice-chair**

- (1) In January of each year, each Vice-chair shall provide the Human Resources Committee with a written self-evaluation of his or her performance against the previous year's objectives, together with each Vice-chair's proposed objectives for the upcoming year.
- (2) At its March meeting, the Human Resources Committee will discuss each Vice-chair's performance and his or her proposed objectives for the upcoming year. At this meeting, the Chair shall provide the Human Resources Committee with his or her assessment of the performance of each Vice-chair.
- (3) At the March meeting of the Commission, the Human Resources Committee will report to the Members on its assessment of each Vice-chair's performance and his or her objectives set for the upcoming year.
- (4) The Human Resources Committee will present its recommendation for each Vice-chair's compensation package for the current year to the Members at the April meeting of the Commission.

**C. Evaluation of Members**

- (1) In December of each year, the chair of the Governance Committee will ask all Members to make comments to assist in the annual evaluation of Independent Members, committees of Members and this policy using the questionnaire prepared by the Governance Committee.
- (2) The chair of the Governance Committee will arrange to summarize the input of all Independent Members on an anonymous basis and report to the Governance Committee at its March meeting. The Governance Committee will consider this information and will review the compensation package for Members for the upcoming year. The Governance Committee will report to the Members at the March meeting of the Commission on the Governance Committee's assessment of the Independent Members' performance and any recommendations in connection thereto and the effectiveness of the committees of Members in the previous year. The Governance Committee will present its recommendations for the Members' compensation package for the upcoming year.

## **VI. COMMITTEES OF THE MEMBERS**

The Members may, from time to time, establish committees of Members and shall determine the terms of reference for any such committee established.

The terms of reference for the Audit Committee, the Human Resources Committee and the Governance Committee are attached as Appendix "A", Appendix "B" and Appendix "C" respectively.

## **VII. STANDARD OF CONDUCT**

The highest ethical standards are expected of the Members and of all Senior Management and staff of the Commission.

The Members are expected to comply with the Conflict of Interest Policy and all Senior Management and staff are expected to comply with the Conflict of Interest Policy and other staff policies.

## **VIII. STRATEGIC PLAN, ANNUAL BUSINESS PLAN AND OPERATING BUDGET**

### **A. Strategic Plan**

- (1) Senior Management has the responsibility to develop for the Members' consideration and approval a Strategic Plan on a timely basis each year. The Strategic Plan shall cover a period of three years and shall outline the Commission's broad objectives and priorities in all functional areas over such time period.
- (2) In developing the Strategic Plan, Senior Management shall give the Members the opportunity to give substantive input at the development stage of the Strategic Plan. Accordingly, Senior Management will present to the Members, for their approval, not later than at the September meeting of the Commission each year, a reasonable time line and process for development of the Strategic Plan.

### **B. Business Plan and Operating Budget**

- (1) Senior Management has the responsibility to develop for the Members' consideration and approval an annual Business Plan and Operating Budget which is derived from the Strategic Plan. The Business Plan and Operating Budget shall cover a period of one year and shall outline in reasonable detail the Commission's proposed operations for the next fiscal year and the means by which the Commission will conduct such proposed operations, including projected financial performance.
- (2) The Business Plan and Operating Budget shall be presented to the Members for their consideration and approval not later than at the February meeting of Commission.
- (3) At the May meeting of the Commission, the Chair shall report to the Members on the operational performance of the Commission in the previous fiscal year with specific reference to the Strategic Plan and Business Plan of the Commission for such fiscal year.

