

# ONTARIO SECURITIES COMMISSION BY-LAW NO. 1

A By-law relating generally to the conduct of the affairs of the Ontario Securities Commission (the "**Commission**")

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**BE IT ENACTED** as a By-law of the Commission as follows:

## ARTICLE 1 – INTERPRETATION

1.1 **Definitions.** In this By-law, unless the context otherwise requires:

"Acts" means the CFA, OSA, and SCA, as applicable;

"Adjudicator" means an adjudicator of the Tribunal;

"appoint" includes "elect" and vice versa;

"Board" means the board of directors of the Commission;

"Board Director" means a member of the Board, including the Chair and the Chief Executive Officer;

"By-laws" means this By-law and all other By-laws of the Commission from time to time in effect;

"CFA" means the *Commodity Futures Act*, RSO 1990, c C.20;

"Chair" means the Board Director designated by the Lieutenant Governor in Council as Chair of the Commission;

"Chief Adjudicator" means the Chief Adjudicator of the Tribunal. The Chief Adjudicator is an Adjudicator for the purpose of this By-law;

"Chief Executive Officer" or "CEO" means the individual appointed by the Lieutenant Governor in Council for the first two years after the Effective Date (as defined in section 11.1) or the Board after the first two years after the Effective Date, as applicable, to be the Chief Executive Officer of the Commission;

"Commission" means the Ontario Securities Commission continued as a corporation without share capital under the name Ontario Securities Commission in English and Commission des valeurs mobilières de l'Ontario in French;

"Corporate Secretary" means the individual appointed by the Board to be the Corporate Secretary pursuant to section 6.4;

"Crown" means Her Majesty in right of the Province of Ontario;

"Director" has the meaning set out in the OSA;

"employee" means any staff member of the Commission, including a probationary or temporary staff member, but does not include Adjudicators, Board Directors (other than the Chief Executive Officer), or special employee;

"Minister" shall have the meaning ascribed thereto in subsection 1(1) of the OSA;

"Officer" means the Chief Adjudicator, the Corporate Secretary, the Chief Executive Officer, and such officers as the Chief Executive Officer may appoint from time to time from among the Commission's employees;

"OSA" means the *Securities Act*, RSO 1990, c S.5;

"Regulation" means any regulation made by the Lieutenant Governor in Council pursuant to the Acts.

"SCA" means the *Securities Commission Act*, 2021;

"signing officer" means, in relation to any instrument, any person authorized to sign the same on behalf of the Commission by or pursuant to section 2.4;

"special employee" means any person employed on a fixed term contract by, or seconded to, the Commission; and

"Tribunal" means the Capital Markets Tribunal established as a division of the Commission under section 25 of the SCA.

Unless defined above, all terms that are contained in this By-law and which are defined in the Acts shall have the meanings given to such terms in the Acts. Words importing the singular number include the plural and vice versa, and words importing a person include an individual, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, a body corporate and a natural person in his capacity as trustee, executor, administrator or other legal representative.

- 1.2 **Hearings.** Subject to sections 6.3 and 6.4, nothing in this By-law shall affect or govern procedures at hearings of the Commission or the Tribunal.
- 1.3 **Internal Affairs.** This By-law relates to the internal affairs of the Commission, and, without prejudice to any right or remedy arising at law without regard to the provisions of this By-law, no failure by any Board Director, Adjudicator, employee or special employee to comply with any provision of this By-law shall affect the validity of any action taken by the Commission or give rise to any rights or remedies by any person.

## ARTICLE 2 – AFFAIRS OF THE COMMISSION

- 2.1 **Head Office.** The head office of the Commission shall be at such location in the Province of Ontario as the Board may from time to time determine by resolution.
- 2.2 **Fiscal Year.** The fiscal year of the Commission shall end on March 31 in each year.
- 2.3 **Corporate Seal.** The seal of the Commission shall be that adopted by the Board from time to time by resolution, but any authorized agreement or other

instrument on behalf of the Commission is not invalidated simply because it does not have attached thereto the corporate seal.

- 2.4 **Execution of Instruments.** Except as otherwise required or permitted by the Acts or Regulations, documents requiring execution by the Commission may be signed on behalf of the Commission by the Chair, the Chief Executive Officer, Chief Administrative Officer, Executive Director, any two Board Directors or any two other persons authorized for such purpose by resolution of the Board. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument.
- 2.5 **Counterparts Permitted.** Any notice, resolution, requisition, statement, or other document required or permitted to be executed by more than one person, for the purposes of the Acts or any Regulation.
- 2.6 **Banking Arrangements.** The banking business of the Commission shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize. The Board shall have power to authorize expenditures on behalf of the Commission, from time to time, and to make expenditures for the purpose of furthering the objects of the Commission.

## ARTICLE 3 – BOARD OF DIRECTORS

- 3.1 **Powers and Duties.** Subject to the Acts and any Regulation, the Board shall manage or supervise the management of the Commission's affairs, other than matters relating to the Tribunal's adjudicative functions.
- 3.2 **Composition and Appointment.** The Board Directors shall be appointed in accordance with the SCA and the Regulations. The Board shall consist of at least

three and not more than eleven Board Directors, together with the CEO pursuant to section 6.2 for a total of up to twelve Board Directors.

## ARTICLE 4 – BOARD MEETINGS

4.1 **Calling of Meetings.** Meetings of the Board shall be held from time to time at such time and at such place as the Board or the Chair may determine.

4.2 **Notice of Meeting.**

(a) Notice of the time and place of any regular or special meeting of the Board shall be given electronically in writing to each Board Director not less than 72 hours (excluding Saturdays, Sundays and statutory holidays) before the time when the meeting is to be held. A Board Director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the Board and attendance of a Board Director at a meeting of the Board is a waiver of notice of the meeting.

(b) Notwithstanding subsection 4.2(a), the notice requirement shall not apply in the event of an emergency, in which case the Chair shall give as much prior notice by any method of telecommunications as is practicable. An "emergency" means an unusual or sudden circumstance that requires a meeting to be held without delay as determined by the Chair, or as defined by resolution of the Board. Waiver of notice contemplated by subsection 4.2(a) shall not be required for an emergency meeting for the meeting to be a validly constituted meeting as long as a quorum of the Board is present at the emergency meeting.

(c) The accidental omission to give any notice to any Board Director or Officer or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

- 4.3 **Adjourned Meeting.** Notice of an adjourned meeting of the Board is not required to be given to Board Directors present at the original meeting if the time and place of the adjourned meeting is announced at the original meeting.
- 4.4 **Regular Meetings.** The Board may fix a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings shall be sent to each Board Director forthwith after being passed, but no other notice shall be required for any such regular meeting.
- 4.5 **Quorum.** A majority of the appointed Board Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The Chair shall be included in the determination of quorum. Notwithstanding vacancies, a quorum of Board Directors may exercise all the powers of the Board.
- 4.6 **Conduct of Meetings.** Meetings shall be conducted in accordance with this By-law and any procedural guidelines adopted by the Board from time to time.
- 4.7 **Votes to Govern.** At all meetings of the Board, every question shall be decided by a majority of the votes cast on the question. Each Board Director shall be entitled to one vote. In case of an equality of votes, the chair of the meeting shall not be entitled to a second or casting vote and the motion shall be defeated.
- 4.8 **Action by the Board.** The powers of the Board may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing approved by all the Board Directors entitled to vote on that resolution at a meeting of the Board.
- 4.9 **Remote Participation in Meetings.** Meetings of the Board and Board committees shall be held entirely in person where possible. Subject to the determination of the meeting chair, a meeting may be held entirely or simultaneously by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A Board Director participating in such a meeting by such means shall be deemed to be present at that meeting.

- 4.10 **Validity of Actions.** No act or proceeding of any Board Director, of the Board or of any committee of the Board shall be deemed invalid or ineffective solely by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding.

## ARTICLE 5 – BOARD COMMITTEES

- 5.1 **Formation of Committees.** The Board may by resolution form one or more committees of the Board and specify the purpose, procedures and responsibilities of any such committee.
- 5.2 **Appointment of Committee Members and Committee Chairs.** At the recommendation of the Chair, for each Board committee the Board may by resolution appoint Board Directors as committee members and designate one member as committee chair.
- 5.3 **Powers of Committees.**
- (a) Board committees shall study, review, and make recommendations to the Board on any matter as directed by the Board.
  - (b) No Board committee shall have the power to act for the Board or exercise any of the Board's powers unless otherwise specified in the By-laws or the Board committee's responsibilities as authorized by the Board.
  - (c) Except as directed by the Board, each committee may establish such procedures as it sees fit governing the time, place and method for holding its meetings and the conduct of business at such meetings.
- 5.4 **Transaction of Business.** The powers of a Board committee may be exercised at a meeting at which a quorum is present or by resolution in writing approved by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Decisions of a Board committee shall be reported to the Board at its next regular or special meeting.



- 5.5 **Dissolution of Committees.** The Board may by resolution dissolve any committee of the Board.
- 5.6 **Advisory Bodies.** The Board may from time to time appoint such advisory bodies as it may determine, and may by resolution specify the purposes, procedures and responsibilities of any such advisory body.
- 5.7 **Procedure.** Unless otherwise determined by the Board, each committee and advisory body shall fix its quorum, which shall be not less than two members.

## ARTICLE 6 – OFFICERS

- 6.1 **Chair.** The Lieutenant Governor in Council shall, on the recommendation of the Minister, designate a Board Director as Chair. The Chair shall have such powers, functions and duties as are set forth in the Acts and Regulations, and shall carry out such other functions and duties as are assigned to the Chair from time to time by the Board.
- 6.2 **Chief Executive Officer.** The Chief Executive Officer is the chief executive officer of the Commission and shall report to the Board. Subject to the Acts and Regulations and to the authority of the Board and the Chair, the Chief Executive Officer shall be responsible for the management and administration of the Commission, other than matters relating to the Tribunal's adjudicative functions. The Chief Executive Officer shall have such powers, functions and duties as are set forth in the Acts and Regulations, and shall carry out such other functions and duties as are assigned to the Chief Executive Officer from time to time by the Board. The Chief Executive Officer shall be a Board Director.
- 6.3 **Chief Adjudicator.** The Lieutenant Governor in Council shall, on the recommendation of the Minister, designate a Chief Adjudicator from among the appointed Adjudicators. The Chief Adjudicator shall supervise and direct the operations of the Tribunal. The Chief Adjudicator shall comply with the Board's administrative directions except with respect to matters related to the Tribunal's

adjudicative functions. The Chief Adjudicator may, in writing, delegate a power conferred on or a duty given to the Chief Adjudicator under the Acts to an employee of the Commission assigned to assist the Tribunal in the performance of its functions.

6.4 **Corporate Secretary.** The Board shall appoint a Corporate Secretary from among the employees of the Commission in consultation with the CEO and the Chief Adjudicator. The Corporate Secretary shall report to the CEO and separately to the Chief Adjudicator for matters relating to the Tribunal's adjudicative functions. The Corporate Secretary shall carry out such other functions and duties as are assigned to the Corporate Secretary from time to time by the Chair, the CEO, the Chief Adjudicator, or the Board. The Corporate Secretary shall, unless otherwise determined by the Board:

- (a) attend and be the secretary of all meetings of the Board and of committees of the Board (or arrange for another employee or special employee to so act), and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings at such meetings;
- (b) give or cause to be given, as and when instructed, all notices to Board Directors, Officers, auditors and members of committees of the Board;
- (c) be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Commission and of all books, papers, records, documents and instruments belonging to the Commission, except when some other person has been appointed for that purpose;
- (d) be permitted to accept service of all notices and other documents on behalf of the Commission; and
- (e) be permitted to certify any decision of the Commission or certify any document of the Commission to be a true copy thereof.

- 6.5 **Assistants.** Subject to the Acts and Regulations, any of the powers and duties of an Officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board or the Chief Executive Officer otherwise directs.
- 6.6 **Appointment.** Subject to the requirements and restrictions of the Acts, the Regulations, and this By-Law, the Chief Executive Officer may: designate the offices of the Commission; appoint Officers from among employees of the Commission; specify their duties; and delegate to them the powers to manage the affairs of the Commission, except for the Corporate Secretary.
- 6.7 **Remuneration.** The remuneration of the Chief Executive Officer shall be set by the Lieutenant Governor in Council for the first two years after the Effective Date and by the Board after the first two years after the Effective Date, as applicable, from time to time. The terms of employment and remuneration of the Corporate Secretary and Officers appointed by the Chief Executive Officer shall be determined by the Chief Executive Officer.
- 6.8 **Agents and Attorneys.** The Commission, by or under the authority of the Board, shall have power from time to time to appoint agents or attorneys for the Commission with such powers of management, administration or otherwise (including the power to sub-delegate) as may be thought fit, subject to the provisions of the Acts and Regulations.

## ARTICLE 7 – PROTECTION OF BOARD DIRECTORS, OFFICERS AND OTHERS

- 7.1 **Indemnity.**
- (a) Subject to any limitations contained in the Acts, the Commission shall indemnify and hold harmless a Board Director, Officer, or Adjudicator, a former Board Director, Adjudicator, member of the Commission, or Officer, or a person who acts or acted at the Commission's request as director or officer of a body corporate of which the Commission is or was a shareholder or creditor (each, an "Indemnitee"), against any and all legal fees and

disbursements and other expenses (an "Expense" or collectively, the "Expenses") reasonably sustained or incurred by the Indemnitee in defending any action or other proceeding (a "Claim" or collectively, the "Claims") against them in connection with their being or having been a Board Director, member of the Commission, Adjudicator, or Officer of the Commission or a director or officer of such body corporate, but this indemnity does not apply with respect to Expenses:

- i. arising from any circumstances for which coverage is provided under an insurance policy or claims fund to the extent the Indemnitee is indemnified or covered under such policy or fund;
  - ii. incurred by the Indemnitee in connection with any Claim(s) arising out of circumstances in which the Indemnitee did not, honestly and in good faith, with a view to the best interests of the Commission, and in the performance or intended performance of the Indemnitee's duties as a current or former Board Director, Officer, Adjudicator, or member of the Commission, or a person who acts or acted at the Commission's request as director or officer of a body corporate of which the Commission is or was a shareholder or creditor, as applicable, act or refrain from acting;
  - iii. incurred by the Indemnitee in connection with any Claim(s) where the Indemnitee was judged by a court or other competent authority to have committed any fault or omitted to do anything that the Indemnitee ought to have done; or
  - iv. incurred by the Indemnitee in connection with any Claim(s) arising out of a criminal or administrative proceeding that is enforced by monetary penalty where the Indemnitee did not have reasonable grounds for believing the Indemnitee's conduct was lawful.
- (b) In order to be entitled to indemnification hereunder, the Indemnitee must comply with the following terms and conditions:

- (i) the Indemnitee shall agree to be represented by legal counsel chosen by the Commission, unless in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing the Indemnitee, and, where it is such legal counsel's opinion that a conflict of interest prevents their representing the Indemnitee, the Indemnitee will be entitled, subject to the Commission's prior written approval, to retain legal counsel of the Indemnitee's choice, and the fees and expenses of the Indemnitee's counsel incurred in the Indemnitee's representation shall be costs to which this indemnity extends;
  - (ii) the expenses incurred by the Indemnitee in investigating, defending, or appealing any Claim(s) shall, at the Indemnitee's request, be paid by the Commission as may be appropriate to enable the Indemnity to properly investigate, defend, or appeal such Claim(s), with the understanding that if it is ultimately determined that the Indemnitee is not entitled to be indemnified hereunder, the Indemnitee shall immediately repay such amount(s) so paid, which shall become payable as a debt due to the Commission; and
  - (iii) the Indemnitee agrees to pay to the Commission all amounts the Indemnitee receives as a recovery or reimbursement of any Claim which has been previously indemnified by the Commission hereunder.
- (c) The indemnity in this section 7.1 shall apply only to Claim(s) that are referable to the period during which the Indemnitee is or was a Board Director, Officer, Adjudicator, or member of the Commission, or a person who acts or acted at the Commission's request as director or officer of a body corporate of which the Commission is or was a shareholder or creditor, and of which notice is received by the Commission during or after such period.

- 7.2 **Proceedings.** In the event any proceeding is instituted involving any person in respect of which indemnification is sought pursuant to section 7.1 and a court of competent jurisdiction subsequently finds that indemnification is not available under section 7.1, the person shall be responsible for reimbursing the Commission for all costs, charges and expenses incurred by the Commission in defending the claims on behalf of the person.
- 7.3 **Insurance.** Subject to the Acts, the Commission may purchase and maintain insurance for the benefit of any person referred to in section 7.1, or other persons, against such liabilities and in such amounts as the Board may from time to time determine.

## ARTICLE 8 – REFUND OF FEES

- 8.1 **Refunds of Fees.** If a fee has been paid to the Commission under the Act under any other statute, or under any regulations made thereunder, any Director, or person acting in that capacity by appointment of the Commission, may approve the refund of the whole or any part of such fee, as such Director considers fair and reasonable in the circumstances, and each such approved refund shall be made by the Commission.

## ARTICLE 9 – AUDITORS

- 9.1 **Auditors.** Subject to the Act, the Board shall annually appoint one or more auditors to hold office and, if an appointment is not so made, the auditor in office shall continue in office until a successor is appointed. The remuneration of an auditor so appointed shall be fixed by the Board.

## ARTICLE 10 – AMENDMENT OF BY-LAWS

- 10.1 **Amendment of By-laws.** Subject to section 10 of the SCA, this By-law of the Commission may be repealed or amended by by-law, on the approval of the Board and the Minister. The repeal or amendment of this By-law does not have any impact on actions taken under the authority of this By-law before it was repealed or amended.

## ARTICLE 11 – EFFECTIVE DATE

- 11.1 **Effective Date.** This By-law shall come into force on proclamation of the SCA (the “**Effective Date**”). It supersedes and replaces By-law #1 made by the Commission as at January 18, 1998. Except as expressly provided herein, this By-law does not have any impact on actions taken under the authority of the prior By-law, including any appointments made under it, prior to the Effective Date.

ADOPTED by the Board on the 4<sup>th</sup> day of January, 2022.