

Memorandum of Understanding

Between

Minister of Finance

and

Ontario Securities Commission

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1. Purpose

- a. The purposes of this Memorandum of Understanding are to:
 - Establish the accountability relationships between the Minister of Finance and the Ontario Securities Commission;
 - Clarify the roles and responsibilities of the Minister of Finance, the Chair, the CEO, the Board, the Chief Adjudicator, the Adjudicators, and the Deputy Minister of Finance; and
 - Clarify the operational, administrative, financial, auditing, communications and reporting arrangements between the Commission and the Ministry of Finance that support the accountability requirements within a framework which recognizes that the Commission makes independent regulatory decisions.
- b. This MOU should be read together with the Acts and other related legislation. This MOU does not affect, modify, or limit the powers of the Commission as set out under any act, regulation or rule, or interfere with the responsibilities of any of its parties as established by law. In case of a conflict between this MOU and any act, regulation or rule, the act, regulation, or rule prevails.
- c. This MOU replaces the Memorandum of Understanding between the Parties dated April 3, 2023.

2. Definitions and Interpretation

In this MOU:

- a. “AAD” means the Treasury Board/Management Board of Cabinet Agencies and Appointments Directive;
- b. “Acts” mean the *Securities Commission Act, 2021*, the *Securities Act* and the *Commodity Futures Act*;
- c. “Adjudicators” mean the individuals appointed as adjudicators to the Tribunal pursuant to the SCA;
- d. “Annual Report” means the annual report referred to in article 10.2 of this MOU;
- e. “Applicable Directives” means the Government and TB/MBC directives, policies, standards and guidelines that apply to the Commission, as may be amended or replaced from time to time, which are listed in Appendix 3 to this MOU;
- f. “Appointee” means a member appointed to the Commission by the Lieutenant Governor in Council, but does not mean an individual employed or appointed by the Commission as staff;
- g. “Board” means the board of directors of the Commission;
- h. “Business Plan” means the annual business plan described in article 10.1 of this MOU;

- i. “CA” means the Chief Adjudicator of the Commission, designated as such pursuant to the SCA;
- j. “CEO” means the Chief Executive Officer of the Commission;
- k. “CFA” means the *Commodity Futures Act*, RSO 1990, c C.20;
- l. “Chair” means the Chair of the Commission;
- m. “Commission” means the Ontario Securities Commission;
- n. “Deputy Minister” means the Deputy Minister of the Ministry of Finance;
- o. “Director” has the meaning given to it in the *Securities Act*;
- p. “Executive Council Act” means the *Executive Council Act*, RSO 1990, c E.25;
- q. “Fees” means fees, levies, and other charges as may be established by a rule of the Commission;
- r. “FIPPA” means the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31;
- s. “Fiscal Year” means the 12 month financial reporting period beginning April 1 and ending March 31 of the following year;
- t. “Government” means the Government of Ontario;
- u. “Legislative Assembly” means the Legislative Assembly of the Government of Ontario;
- v. “MBC” means the Management Board of Cabinet;
- w. “Minister” means the Minister of Finance or such other person who may be designated from time to time as the Minister responsible for the Act in accordance with the *Executive Council Act*;
- x. “Ministry” means the Ministry of Finance or any successor to the Ministry;
- y. “MOU” means this Memorandum of Understanding signed by the Minister and the Chair;
- z. “OPS” means the Ontario Public Service;
- aa. “Parties” means the parties to this MOU;
- bb. “President of Treasury Board” means the President of Treasury Board or such other person who may be designated from time to time under the *Executive Council Act*;
- cc. “Province” means the Province of Ontario;
- dd. “PSOA” means the *Public Service of Ontario Act, 2006*, SO 2006, c 35, Sched. A;
- ee. “SCA” means the *Securities Commission Act, 2021*, SO 2021, c. 8, Sched. 9;
- ff. “*Securities Act*” means the *Securities Act*, RSO 1990, c S.5;
- gg. “Statement of Priorities” means the document which sets out the Commission’s priorities in connection with the administration of the Acts;
- hh. “TBS” means the Treasury Board Secretariat;

- ii. "TB/MBC" means the Treasury Board/Management Board of Cabinet;
- jj. "Tribunal" means the Capital Markets Tribunal, established as a division of the Commission under section 25 of the SCA.

Reference to Legislation as Amended

Any reference in this MOU to all or any part of any statute or regulation shall, unless otherwise expressly stated, be a reference to that statute or regulation or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

3. Commission's Legal Authority and Mandate

- a. The legal authority of the Commission is set out in the Acts. The Commission also exercises powers and authority under the *Business Corporations Act*, RSO 1990 c.B.16 and the *Corporations Act*, RSO 1990 c C.38.
- b. The Commission is responsible for the administration of the Acts and for discharging the powers and duties assigned to it under the Acts and any other relevant legislation.
- c. The mandate of the Commission is to provide protection to investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital and commodity futures markets and confidence in those markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk.

4. Agency Type and Public Body Status

- a. The Commission is a self-funded board governed provincial agency under the AAD, and, for purposes of the Procurement Directive, is an "Other Included Entity".
- b. The Commission is prescribed as a public body in Ontario Regulation 146/10 made under PSOA.

5. Corporate Status and Crown Agency Status

- a. The Commission is continued under the SCA as a corporation without share capital.
- b. The Commission has the capacity, rights, powers, and privileges of a natural person, subject to the limitations placed upon it under the Acts and/or limitations imposed by Treasury Board/Management Board of Cabinet.
- c. The Commission is an agent of the Crown in right of Ontario and is a Crown agency (as that term is defined in the Crown Agency Act).

- d. Unless otherwise stated, the Commission is not subject to the Business Corporations Act, the Corporations Act, or the Corporations Information Act, except as otherwise provided in the Acts.

6. Guiding Principles

The Parties agree that they will adhere to the principles set out below in their relationship:

- a. The Minister recognizes that the Commission is a statutory body and that the Commission, the Chair, the Board, the CEO and the Chief Adjudicator exercise powers and perform duties in accordance with their respective mandates under the Acts and other relevant legislation.
- b. The regulatory decisions of the Commission must be made and be seen by the public to be made in an independent and impartial manner.
- c. The Commission shall operate as an arm's-length agency of the Government.
- d. The Parties acknowledge and agree:
 - i. The Government, through the Ministry, is responsible for setting the policy direction for the regulation of capital markets in Ontario and for the legislative framework implementing such policy;
 - ii. The Commission plays a meaningful role in the development of the policies of the Government for the regulation of capital markets in Ontario, as well as in the implementation of those policies; and
 - iii. Ministry and Commission staff will participate in working groups as appropriate and will schedule work in progress meetings on a regular basis.
- e. The Board is accountable, through the Minister, to the Legislative Assembly in exercising its mandate. Accountability is a fundamental principle to be observed in the management, administration, and operations of the Commission.
- f. As an agency of the Government, the Commission conducts itself according to the management principles and policy priorities of the Government. The management principles include ethical behaviour, accountability, excellence in management, wise use of public funds, high quality service to the public and fairness in the marketplace, and openness and transparency to the extent allowed under the law.
- g. The Minister, the Chair, the Board, the CEO, and the Chief Adjudicator are committed to a strong and independent Commission that is empowered to fulfill its statutory mandate efficiently and effectively. They share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient and effective administration of the Commission and the fulfillment of its statutory mandate.
- h. The Minister, the Chair, the Board, the CEO and the Chief Adjudicator recognize the independence of the Tribunal in making adjudicative decisions and orders, and further recognize the need for the Tribunal's adjudicative decisions and orders to be made, and to be seen by the public to be made, in an independent and impartial manner.

- i. The Commission and the Ministry agree to avoid duplication of work or services wherever possible.
- j. The Commission and the Ministry recognize that the timely exchange of information and effective consultation are essential to discharging their respective responsibilities.
- k. The Commission and the Ministry will work together in a mutually respectful manner.
- l. The Commission shall conduct its affairs and operations with a focus on ensuring the best interest of Ontario taxpayers and citizens are considered.
- m. The Commission shall conduct its affairs with a focus on ensuring red tape burden reduction is a priority for all internal and external processes.

7. Accountability Relationships

7.1 MINISTER

The Minister is accountable:

- a. To Cabinet, its committees and the Legislative Assembly for the Commission's fulfilment of its mandate and its compliance with applicable Government policies, and for reporting to the Legislative Assembly on the Commission's affairs;
- b. For reporting and responding to TB/MBC on the Commission's performance and compliance with Applicable Directives and operational policies; and
- c. To Cabinet for the performance of the Commission and its compliance with Applicable Directives, Government's operational policies and broad policy directions.

7.2 CHAIR

The Chair, acting on behalf of the Board, is accountable to the Minister:

- a. For the Commission's performance in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to the Chair by the Acts and other relevant legislation, the Commission's by-laws, this MOU, and Applicable Directives;
- b. For reporting as requested, on the Commission's activities;
- c. For ensuring that significant policy initiatives undertaken by the Commission, and other matters relating to its operations that would be of importance to the Minister are brought to the attention of the Minister in a timely fashion; and
- d. For confirming the Commission's compliance with legislation, directives and accounting and financial policies.

7.3 BOARD OF DIRECTORS

The Board is accountable, through the Chair, to the Minister:

- a. For the oversight and governance of the Commission, other than matters relating to the Tribunal's adjudicative functions;
- b. For oversight of the goals, objectives and strategic directions for the Commission to achieve its mandate;
- c. For the oversight of the Commission's performance in fulfilling its mandate and adhering to its statutory mandate; and
- d. For carrying out the roles and responsibilities assigned to the Board by the Acts, other relevant legislation, the Commission's by-laws, this MOU and Applicable Directives.

7.4 DEPUTY MINISTER

The Deputy Minister is accountable:

- a. To the Secretary of the Cabinet and the Minister for the performance of the Ministry in providing administrative and organizational support to the Commission, if any, and for carrying out the roles and responsibilities assigned to the Deputy Minister by the Minister, this MOU and Applicable Directives; and
- b. For attesting to TB/MBC on the Commission's compliance with Applicable Directives.

7.5 CHIEF EXECUTIVE OFFICER

The CEO is accountable to the Board with respect to the CEO's management and administration responsibilities, the details of which are set out at section 8.4.

In addition to this accountability, during the first two years after subsection 13(1) of the SCA comes into force, the CEO, as an Appointee, is also accountable to the Minister.

7.6 CHIEF ADJUDICATOR

The Chief Adjudicator is accountable:

- a. To the Minister for the Tribunal's performance in exercising the jurisdiction assigned to it by the Acts, including:
 - i. For reporting to the Minister, as requested, on the Tribunal's adjudicative activities, provided that such reporting shall not include discussion or exchanging of confidential information about current, past or future proceedings before the Tribunal;
 - ii. For ensuring timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Tribunal; and

- b. To the Chair of the Board for the Tribunal's performance in fulfilling the Board's administrative directions.

8. Roles and Responsibilities

8.1 MINISTER

The Minister is responsible for:

- a. Reporting and responding to Cabinet, its committees and the Legislative Assembly on the affairs of the Commission;
- b. Reporting and responding to TB/MBC on the Commission's performance and on the Commission's compliance with Applicable Directives and the Government's operational policies and policy directions;
- c. Reviewing the advice or recommendation of the Chair on candidates for appointment or reappointment to the Board;
- d. Reviewing the advice or recommendation of the Chief Adjudicator on candidates for appointment or reappointment to the Tribunal;
- e. Making recommendations to Cabinet and the Lieutenant Governor in Council for appointments and reappointments to the Board and Tribunal, pursuant to the process for Board and Tribunal appointments established by legislation and/or by MBC through the AAD;
- f. When appropriate or necessary, taking action or directing the Board to take corrective action with respect to the Commission's administration or operations;
- g. Determining at any time the need for a review or audit of the Commission, directing the Chair to undertake reviews of the Commission on a periodic basis, and recommending to TB/MBC any change(s) to the governance or administration of the Commission resulting from any such review or audit;
- h. Recommending to TB/MBC, where required, the merger, any change to the mandate, or dissolution of the Commission;
- i. Recommending to TB/MBC the powers to be given to, or revoked from, the Commission when a change to the Commission's mandate is being proposed;
- j. Reviewing a by-law or rule proposed by the Commission and approving the by-law or rule, rejecting it or returning it to the Commission for further consideration;
- k. Receiving and reviewing the Commission's Annual Report and approving the report within 60 calendar days of receiving it;
- l. Tabling the Annual Report within 30 calendar days of approving it;
- m. Receiving, reviewing and approving the Commission's Business Plan, including the annual Statement of Priorities;

- n. Outlining any high-level expectations, key commitments and performance priorities for the Commission at the beginning of the business planning cycle through the Commission mandate letter;
- o. Requiring the Commission, in writing, to study and make recommendations in respect of any matter of a general nature under or affecting a statute, regulation or rule that governs Ontario's capital markets and to consider making a rule in respect of a matter specified by the Minister pursuant to section 143.7 of the *Securities Act* and section 72 of the CFA;
- p. Meeting with the Chair and/or CEO to discuss issues relating to the fulfilment of the Commission's mandate;
- q. Informing the Chair and/or CEO of the Government's priorities and policy directions for the Commission;
- r. Consulting, where appropriate, with the Chair and CEO on significant new directions or when the Government is considering regulatory or legislative changes for the Acts;
- s. Developing the MOU with the Commission, as well as any amendments to it, and signing the MOU into effect after it has been signed by the Chair; and
- t. Working with the Chair and CEO to ensure the Commission has appropriate measures and mechanisms related to the performance of the Commission in place.

8.2 CHAIR

The Chair is responsible for:

- a. Providing leadership to the Commission by working with the Board to set and approve the goals, objectives and strategic directions within its mandate;
- b. Providing leadership to the Board and ensuring that the Board carries out its responsibilities for decisions regarding the Commission;
- c. Chairing Board meetings, including the management of the agenda for Board meetings by working with the Board and the CEO;
- d. Subject to the oversight and recommendations of the Board, monitoring the activities and performance of the Commission and, in conjunction with the CEO, as appropriate, regularly reporting to the Minister as requested, and within agreed upon timelines, including an annual letter confirming the Commission's substantial compliance with all applicable legislation, directives, and accounting and financial policies;
- e. In conjunction with the CEO, as appropriate, informing the Minister, in a timely manner, of significant or contentious matters regarding the Commission that are likely to be of interest to the Minister in the exercise of their responsibilities, or that are likely to be raised in the legislature or the media. Such communications shall not include discussion or exchanging of confidential information about current, past or future investigations, cases or proceedings before staff of the Commission, the Tribunal or the courts;

- f. Providing orientation to the Board with regard to the mandate of the Commission, as well as the Government's priorities and policy directions for the Commission;
- g. Ensuring that the Board is advised and informed, as appropriate, about any consultations or communications with the Minister or the Ministry;
- h. Keeping the Minister informed of upcoming appointment vacancies and communicating the recommendations of the Chair on candidates for appointment or re-appointment to the Board;
- i. Exercising any powers and duties in the capacity as the designated head of the institution for the FIPPA purposes;
- j. Complying with information requests made by the Minister or the Deputy Minister in a timely manner;
- k. Developing the MOU with the Minister and with Board approval, signing the MOU on behalf of the Commission;
- l. Establishing a Memorandum of Understanding between the Board and the Tribunal;
- m. Working with the Chief Adjudicator to ensure integration of the Tribunal's contribution of necessary information into the Commission's Business Plan and Annual Report;
- n. Submitting the Commission's Business Plan, budget, Annual Report and financial reports, on behalf of the Commission, to the Minister in accordance with the timelines specified in the Acts, Applicable Directives and Appendix 1 of this MOU;
- o. Cooperating with any review or audit of the Commission directed by the Minister or TB/MBC; providing both the Minister and the President of Treasury Board with a copy of every audit report, a copy of the Commission's response to each report, and any recommendation in the report; and advising the Minister annually on any outstanding audit recommendations;
- p. Reviewing and approving claims for per diems and travel expenses for the Board;
- q. Ensuring that conflict of interest rules that the Commission is required to follow, as set out in Ontario Regulation 381/07 made under PSOA, are in place for Appointees and employees of the Commission;
- r. Fulfilling the role of ethics executive for government appointees on the Board of Directors, promoting ethical conduct and ensuring that those individuals are informed of their responsibilities under PSOA and familiar with the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Commission;
- s. In conjunction with the CEO as appropriate, ensuring timely communications with the Minister regarding any issues or events that may reasonably be expected to concern the Minister in the exercise of the Minister's responsibilities relating to the Commission;
- t. In conjunction with the CEO, as appropriate, consulting with the Minister in advance regarding any activity which may reasonably have an impact on the government and

Ministry's policies, directives or procedures, or on the Commission's mandate, powers or responsibilities;

- u. Ensuring an appropriate framework for compliance with legislative and TB/MBC policy obligations is in place; and
- v. Overseeing the provision of high quality regulatory services that foster competitiveness and innovation in Ontario's capital markets, while protecting investors, fostering fair, efficient and competitive capital markets and enhancing confidence in capital markets, fostering capital formation, and contributing to the stability of the financial system and the reduction of systemic risk.

8.3 BOARD OF DIRECTORS

The Board is responsible for:

- a. Setting and approving the goals, objectives, and strategic directions for the Commission, in accordance with the Commission's mandate as set out in the Acts, this MOU, the Minister's agency mandate letter, and Government policies as appropriate;
- b. Overseeing the management of the affairs of the Commission so as to fulfil its mandate;
- c. Subject to the approval of the Minister and pursuant to the Acts, making by-laws governing a variety of corporate matters;
- d. Governing the affairs of the Commission within its mandate as set out in the Acts, the Business Plan, and the policy directions established by the Minister;
- e. Overseeing the implementation of actions that support the goals, objectives and strategic directions of the Commission;
- f. Directing the development of, and approving, the Business Plan for submission to the Minister within the timelines agreed upon with the Ministry or in this MOU and in compliance with the AAD;
- g. Directing the preparation of, and approving, the Commission's Annual Report for submission to the Minister for approval within the timelines established by the AAD;
- h. Monitoring the Commission's activities to ensure they are consistent with the Business Plan and Board-approved budget;
- i. Approving and overseeing the implementation of the Commission's regulatory initiatives and priorities, making rules that have the force of law and adopting policies that influence the behaviour of capital market participants;
- j. Supervising the CEO to ensure that operational decisions are consistent with the Business Plan and ensuring that the Commission operates within its approved budget and within all applicable legislation;
- k. Ensuring that the Commission has controls and processes in place to ensure the Commission uses funds with integrity and honesty, and only in accordance with the

Acts, based on the principle of value for money, and in compliance with applicable legislation and directives;

- l. Ensuring that the Commission is governed in an effective and efficient manner according to accepted business and financial practices, and in compliance with applicable by-laws and policies, Applicable Directives and this MOU;
- m. Establishing appropriate Board committees and oversight mechanisms for the effective management, governance and accountability of the Board;
- n. Approving the MOU, and any amendments to the MOU, in a timely manner and authorizing the Chair to sign the MOU, or any amendments to the MOU, on behalf of the Commission;
- o. Approving the Commission's reports and reviews that may be requested by the Minister for submission to the Minister within agreed upon timelines;
- p. Directing the development of an appropriate risk management framework and a risk management plan and arranging for risk-based reviews and audits of the Commission as needed;
- q. Establishing and overseeing performance measures, targets and management systems for monitoring and assessing the Commission's performance;
- r. Directing corrective action to address improper functioning or operations of the Commission, if needed;
- s. Cooperating with and sharing any relevant information on any risk-based or periodic review directed by the Minister or TB/MBC;
- t. Ensuring that stakeholders are consulted, as appropriate, on the Commission's goals, objectives and strategic directions, and on any potential rulemaking or policy initiative by the Commission that will have an impact on Ontario's capital markets;
- u. Providing proactive advice to the Minister, through the Chair, on issues within or affecting the Commission's mandate and operations;
- t. Appointing the CEO to the Commission after the first two years after the SCA comes into force;
- u. Setting performance objectives for the CEO during the first two years after the SCA comes into force (noting that the CEO will be an Appointee during that period and remuneration will be set by the Lieutenant Governor in Council). Thereafter, the Board will set both the CEO's performance objectives and remuneration terms linked to these objectives. In determining the remuneration terms the Board will give due weight to the proper management and use of public resources;
- v. Evaluating the performance of the CEO pursuant to performance criteria established by the Board;
- w. Overseeing the proper exercise of any powers and duties delegated by the Board to the CEO or assigned by the Board to a Director; and

- x. Overseeing the development of rules in accordance with the process and the requirements set out in the Acts and the scope of rule-making authority set out in the Acts and related legislation.

8.4 CHIEF EXECUTIVE OFFICER

The CEO is responsible for:

- a. Managing the day-to-day regulatory, operational, financial, analytical and administrative affairs of the Commission in accordance with the mandate of the Commission, the Acts, regulations and rules thereunder, TB/MBC and government directives, accepted business and financial practices and this MOU;
- b. Serving as the regulatory decision-maker on behalf of the Commission, if delegated as such by the Board;
- c. Serving as a Board member, if the Commission's by-laws so provide;
- d. Carrying out effective public relations and communications for the Commission, other than for activities of the Tribunal, as its chief spokesperson;
- e. Representing the Commission and assuming a leadership role in national regulatory bodies and organizations to help identify and address regulatory priorities, and overseeing the Commission's initiatives with other regulators, including the Canadian Securities Administrators, Heads of Regulatory Agencies, the Bank of Canada and the Office of the Superintendent of Financial Institutions;
- f. Representing the Commission and assuming a leadership role in international regulatory bodies and organizations to help identify and address international regulatory priorities, and overseeing the Commission's initiatives with international regulators, including the International Organization of Securities Commissions (IOSCO);
- g. Leading and managing the Commission, ensuring both a high level of employee morale and the highest ethical standards of honesty, integrity and fairness;
- h. Exercising any powers and duties delegated to the CEO by the Board or assigned to the CEO by the Acts or regulations thereunder;
- i. Advising the Chair on the requirements of and the Commission's compliance with the AAD, as well as other TB/MBC and government directives and policies, and Commission by-laws and rules and policies, including annually attesting to the Chair on the Commission's compliance with mandatory requirements;
- j. Overseeing the management of the financial and other affairs of the Commission in accordance with its statutory mandate and Business Plan;
- k. Establishing policies and procedures so that the Commission's funds, and any funds administered by the Commission or the CEO are used with integrity and honesty;
- l. Providing leadership and management to the Commission's staff, including human and financial resources management, in accordance with the Minister-approved annual Business

Plan, accepted business and financial practices and standards, the Acts, legislative requirements and Applicable Directives;

- m. Establishing and applying a financial management framework for the Commission in accordance with applicable Minister of Finance/Treasury Board controllership directives, policies and guidelines;
- n. Translating the goals, objectives and strategic directions of the Board into operational plans and activities in accordance with the Minister-approved annual Business Plan;
- o. Keeping the Board and the Chair informed of the implementation of policy and the operations of the Commission;
- p. Establishing and applying the Commission's risk management framework and risk management plan, as directed by the Board;
- q. Establishing a governance and risk oversight framework for the Commission to support the Board in fulfilling its responsibilities, including compliance with all applicable legislation, directives, policies, procedures and guidelines;
- r. Carrying out in-year monitoring of the Commission's performance and reporting on results to the Board;
- s. On behalf of the Commission, or in their capacity as statutory decision-maker, where appropriate, informing the Minister and Deputy Minister, in a timely manner, of significant or contentious matters regarding the Commission that are likely to be of interest to the Minister and Deputy Minister in the exercise of their responsibilities, or that are likely to be raised in the Legislature or media. Such communications shall not include discussion or exchanging of confidential information about current, past or future cases or proceedings before staff of the Commission, the Tribunal or the courts;
- t. Providing advice to the Minister and Deputy Minister, and on behalf of the Board or the Commission, on policy matters related to Ontario's capital markets;
- u. Seeking support and advice from the Ministry, as appropriate, on Commission's management issues;
- v. Ensuring that regular updates on rule-making activity are provided to the Ministry, including proposed rules in development but not yet posted for public consultation;
- w. Consulting with the Deputy Minister as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC and government directives and Ministry policies;
- x. Cooperating with a periodic review directed by the Minister or TB/MBC;
- y. Fulfilling the role of ethics executive for Commission employees, other than those who work exclusively for the Tribunal;
- z. Preparing the Commission's Annual Report, Statement of Priorities, budget and annual Business Plan for review by the Board;
- aa. Preparing financial statements and reports for approval by the Board;

- bb. Ensuring appropriate management systems are in place (financial, information, technology, human resources) for the effective administration of the Commission;
- cc. Attesting to the compliance of the Commission with applicable directives and policies and supporting the Chair in providing the statement of compliance of the Commission;
- dd. Establishing and applying control processes and systems to ensure that the Commission operates within its approved Business Plan;
- ee. Supporting the Chair in meeting their responsibilities, including compliance with all applicable legislation, directives, policies, procedures and guidelines;
- ff. Keeping the Ministry and the Chair advised on issues or events that may reasonably concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities; and
- gg. Undertaking timely risk-based reviews of the Commission's management and operations.

8.5 CHIEF ADJUDICATOR

The Chief Adjudicator is responsible for:

- a. Directing the affairs of the Tribunal so as to fulfill its mandate in accordance with the Acts;
- b. Overseeing the Tribunal Adjudicators and assigning hearings based on, among other things, the particular experience, expertise and availability of Adjudicators and the nature of the issues that will be involved in the hearing;
- c. Supervising and directing the operations of the Tribunal;
- d. Providing guidance to Commission staff assigned to the Tribunal as necessary in carrying out their duties to support the Tribunal, including supervising the Secretary regarding the affairs of the Tribunal;
- e. Ensuring communications to the Minister shall not include discussion or exchanging of confidential information about current, past or future proceedings before the Tribunal;
- f. Ensuring that there is a timely, effective and efficient caseload management system to resolve matters that come before the Tribunal;
- g. Establishing a Memorandum of Understanding between the Tribunal and the Board and an Operations Protocol with the CEO to provide for resource sharing and operational support;
- h. Developing and implementing operational protocols to promote coherence, consistency and quality in decisions rendered by Adjudicators in a manner that recognizes the independence of Adjudicators in rendering adjudicative decisions;
- i. Reviewing and approving claims for per diems and travel expenses for Adjudicators;
- j. Ensuring timely communications with the Minister regarding any issues or events that may concern, or can reasonably be expected to concern, the Minister in the exercise of the Minister's responsibilities relating to the Tribunal;
- k. Developing a performance measurement system for the Tribunal, including targets, for assessing the Tribunal's performance;

- l. Monitoring and evaluating the performance of the Tribunal, including the performance of Adjudicators, as appropriate and in a manner consistent with best practices for Ontario's adjudicative agencies;
- m. Identifying the required skills, experience and resources required for the Tribunal to meet its responsibilities under the Acts;
- n. Working with the Ministry to oversee the recruitment of Adjudicators and providing recommendations to the Minister on appointments and reappointments, as applicable, that respect and promote the principles of equity, diversity, inclusion, quality and merit;
- o. Preparing, for submission to the Board, information related to the Tribunal's activities to be included in the Commission's Annual Report and Annual Business Plan;
- p. Developing, for submission to the Board, a proposed annual budget containing the estimated amounts required to fund the proper operation of the Tribunal, to be included as part of the Commission's annual business planning process;
- q. Reporting to the Board with respect to operational and administrative matters of the Tribunal, excluding matters related to adjudicative functions;
- r. Directing that corrective action be taken relating to the Tribunal's operations, if needed;
- s. Ensuring an appropriate framework is in place for Adjudicators and staff assigned to support the Tribunal to receive adequate orientation and training with respect to the operations of the Tribunal and their particular responsibilities;
- t. Ensuring a process for responding to and resolving complaints from the public and the Tribunal's clients is in place;
- u. Carrying out effective public communications and relations for the Tribunal as its chief spokesperson;
- v. Where reasonably practicable and legally permissible, Chairing panels for cases that are of major significance, have a high public impact or a significant impact on procedural or substantive jurisprudence, are complex or high profile, or which involve new or novel considerations of law or policy;
- w. Cooperating with any review or audit of the Tribunal directed by the Minister, Auditor General or TB/MBC;
- x. Overseeing the proper exercise of any powers and duties delegated by the CA to an employee of the Commission assigned to assist the Tribunal in the performance of its functions;
- y. Developing and maintaining the Tribunal's rules of practice and procedure in accordance with the Acts, the *Statutory Powers Procedure Act* and other applicable law; and
- z. Fulfilling the role of ethics executive for Adjudicators and Commission employees who work exclusively for the Tribunal.

8.6 DEPUTY MINISTER

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister in fulfilling ministerial responsibilities for the Commission, including informing the Minister of policy direction, policies and priorities of relevance to the Commission's mandate;
- b. Providing advice and assistance to the Minister on the direction and development of Government policy for the regulation of capital markets in Ontario and on the legislative framework implementing such policy;
- c. Monitoring the activities of the Commission on behalf of the Minister to ensure that its mandate is being fulfilled, its performance is satisfactory, and it is acting in accordance with all applicable legislation and all Applicable Directives;
- d. Facilitating regular briefings and consultations between the Chair and the Minister, and between the Ministry staff and the agency staff as needed;
- e. Undertaking, on behalf of the Minister, assessments of the operation of the Commission and whether or not it is fulfilling its legislative mandate, including mandate reviews required under the AAD, and identifying any need for corrective action and recommending to the Minister ways to resolve any issues that have been identified;
- f. Supporting the Minister in reviewing the performance targets, measures and results of the Commission;
- g. Advising the Minister on the requirements of the AAD and other Applicable Directives that apply to the Commission;
- h. Ensuring adequate, ongoing oversight of the Commission, including appropriate reporting and coordination;
- i. Attesting to TB/MBC on the Commission's compliance with the mandatory accountability requirements set out in legislation, the AAD, other Applicable Directives, the Government's operational policies and policy directions based on the annual letter of compliance from the Commission's Chair to the Minister;
- j. Ensuring that the Ministry and the Commission have the capacity and systems in place for ongoing risk-based management, including appropriate oversight of the Commission;
- k. Reviewing and assessing the Commission's Business Plan and other reports, and advising the Minister on matters submitted to the Minister for review or approval;
- l. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Commission or any of its programs, or changes to the management framework or operations of the Commission, and undertaking or cooperating with such reviews as may be directed by the Minister or TB/MBC;
- m. Ensuring that the Commission receives such information and assistance as required or requested to meet its responsibilities under the Acts, other relevant legislation, regulations and rules, Applicable Directives, and this MOU;

- n. Meeting with the Chair, CEO or CA as often as needed or as directed by the Minister to discuss matters of mutual importance and issues relating to the effective discharge of the Commission's mandate and the efficient operation of the Commission;
- o. Consulting with the Chair, the CEO, and where applicable, the CA on policy development as appropriate;
- p. Ensuring that, when the Ministry is notified of changes to TB/MBC directives that may apply to the Commission, or of changes to Applicable Directives and policy directions, the Commission is made aware of these changes;
- q. Ensuring that the Commission has an appropriate risk management framework and a risk management plan in place for managing risks that the Commission may encounter in meeting its program or service-delivery objectives;
- r. Undertaking timely risk-based reviews of the Commission, its management or operations, as may be directed by the Minister or TB/MBC;
- s. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category;
- t. Undertaking reviews of the Commission as may be directed by the Minister;
- u. Cooperating with any review of the Commission as directed by the Minister or TB/MBC;
- v. Monitoring the Commission on behalf of the Minister while respecting the Commission's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time;
- w. Informing both the Chair and the CEO, in writing, of new government directives and any exceptions to, or exemptions in whole or in part from TB/MBC directives, government policies, or Ministry administrative policies; and
- x. When required, submitting a report to the Secretary of TB/MBC on the wind-up of the Commission, following the disposition of any assets, completion of any outstanding responsibilities by the Commission, and the termination of any appointments.

9. Ethical Framework

- a. The Chair shall act as the ethics executive for appointed Board members, for purposes of PSOA and compliance with the Commission's ethical conduct policy.
- b. The CEO shall act as the ethics executive for Commission employees, other than those who work exclusively for the Tribunal, for purposes of PSOA and compliance with the Commission's ethical conduct policy.
- c. The Chief Adjudicator shall act as ethics executive for Adjudicators and employees who work exclusively for the Tribunal, for purposes of PSOA and compliance with the Commission's ethical conduct policy.
- d. For avoidance of doubt and pursuant to subsection 58(1) paragraph 2 of PSOA, if no conflict of interest rules are approved and published by the Conflict of Interest Commissioner under

section 59 or 60 of PSOA for the Commission, the conflict of interest rules prescribed under clause 71 (1) (a) (which includes those set out in Ontario Regulation 381/07 made under PSOA) apply to the public servant or former public servant, with necessary modifications.

- e. For avoidance of doubt, the Board, the Chair, the CEO, the Chief Adjudicator, Adjudicators, and Commission employees shall not use any information gained as a result of their appointment to or employment with the Commission for personal gain or benefit.
- f. The Chair, the CEO and the Chief Adjudicator, as ethics executives, are responsible for ensuring that the Board, Adjudicators and Commission employees are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Commission.

10. Reporting Requirements

10.1 BUSINESS PLAN

- a. The Chair shall provide the Minister with the Commission's Business Plan for approval, annually, at least one month before the start of the Commission's fiscal year. The Business Plan shall cover, at a minimum, the Commission's next three fiscal years.
- b. The Board shall ensure that the Commission's Business Plan:
 - i. Includes a system of performance measures for the Commission and a system of reporting on the achievement of objectives set out in the Business Plan;
 - ii. Includes a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information in accordance with the requirements of the AAD;
 - iii. Sets out projected revenues of the Commission and their sources;
 - iv. Sets out capital and operating expenditures of the Commission;
 - v. Sets out how the Commission's activities are aligned with any Government and Ministry policy objectives provided to the Commission; and
 - vi. Reflects and incorporates the operational requirements of the Tribunal.
- c. The Board shall ensure that the Commission's Business Plan meets the requirements of the AAD, applicable legislation and any other requirements set out in this MOU.
- d. Prior to submitting the Business Plan to the Minister, the Commission shall first submit its Business Plan to the Ministry's Chief Administrative Officer or designated equivalent at least three months before the start of the Commission's fiscal year. Senior Commission employees and senior Ministry staff shall discuss the contents of the Business Plan in respect of the alignment of the Commission's key initiatives, as identified in the Business Plan, with the Government's policy directions, performance standards, and the plan's compliance with the AAD.

- e. Ministry staff shall exercise due diligence in their review of the Commission's Business Plan prior to making any recommendation for approval by the Minister. Ministry staff may request additional information and analysis from the Commission, as necessary, for the purpose of this review.
- f. The Minister will review the Commission's Business Plan and will promptly advise the Chair whether or not they concur with the directions proposed by the Commission. The Board will reconsider the Business Plan accordingly if required based on the Minister's comments and direction. A Business Plan is only to be considered valid once the Minister has approved the plan and the approval has been expressed in writing.
- g. In addition, the Minister or TB/MBC may require the Board to submit the Commission's Business Plan to TB/MBC for review at any time.
- h. The Chair, through the CEO, will ensure that the Commission's Minister-approved Business Plan is made available to the public in an accessible format on the Commission's website in compliance with AAD requirements.
- i. The Commission shall include a Statement of Priorities in its Business Plan. The Statement of Priorities shall set out the proposed priorities of the Commission in connection with its responsibilities under the Acts and related legislation, and the rules and regulations thereunder. The Commission shall consult with the Ministry and with participants in capital markets on its proposed Statement of Priorities.

10.2 ANNUAL REPORT

- a. The Chair, on behalf of the Board, is responsible for ensuring that the Commission's Annual Report, including its audited financial statements, is prepared and submitted to the Minister for approval, and following approval is publicly posted, in accordance with the requirements set out in the AAD and the SCA.
- b. The Chair, through the CEO, shall ensure that the Annual Report fulfils any requirements set out in Applicable Directives and this MOU.
- c. The Annual Report shall include details regarding the amount of monetary sanctions or payments to settle enforcement proceedings collected by the Commission in the fiscal year, the total amount of those sanctions or payments that has been allocated pursuant to subsection 19(2) of the SCA and the purposes as enumerated in section 19(2)(b) of the SCA for which the allocated funds have been expended.
- d. Ministry staff shall exercise due diligence in their review of the Annual Report prior to making any recommendation for approval by the Minister. Ministry staff may request reasonable additional information and analysis from the Commission, as necessary, for the purpose of this review.
- e. The Minister will receive and review the Commission's Annual Report to confirm adherence with AAD requirements and will approve the report within 60 calendar days after the day of receipt.

- f. The Minister will, within 30 calendar days of approval, table the report in the Legislative Assembly.
- g. The Chair, through the CEO, will ensure that the Annual Report is publicly posted in an accessible format, in both official languages, on the Commission's website after the report has been tabled in the Legislature and within 30 calendar days of Minister approval.
- h. When distributing the Annual Reports, digital formats and channels for distribution must be used unless otherwise required (e.g., by directive, legislation).

10.3 RULE-MAKING

- a. The Commission shall provide the Ministry with regular and timely overviews of the Commission's rule-making activity, specifying:
 - i. Rules with the Minister for review and decision, pursuant to section 143.3 of the *Securities Act* and section 68 of the CFA;
 - ii. Rules that have completed their public consultation period and are expected to be delivered for the Minister's review and decision;
 - iii. Rules published for public comment, pursuant to section 143.2 of the *Securities Act* and section 67 of the CFA; and
 - iv. Rules expected to be published for public comment within the next 180 days.
- b. The Commission shall, in deciding upon the need for a proposed rule, consider the purposes of the Statute under which the rule would be made, along with, where applicable, the qualitative and quantitative analysis of the anticipated costs and benefits.
- c. At least 30 days prior to the proposed date of publication of a proposed rule for public comment, unless the rule is urgent, the Commission shall provide the Ministry with a draft of the proposed rule and supporting information including: a summary of the reasons for making the rule, a summary of consultation, if any, undertaken during the development of the rule prior to its publication for comment, and a summary of the impact of the expected rule.
- d. If any material amendment is subsequently made to the proposed rule, the Commission shall as soon as practicable provide the Ministry with a copy of the amended rule and a reason for the amendment, including any stakeholder feedback that led to the amendment.
- e. At the request of the Minister and/or the Deputy Minister, the Chair and CEO shall make a presentation on the proposed rule.
- f. The Ministry may provide the Commission with written questions, comments and suggested revisions in respect of a proposed rule. The Ministry shall provide its questions, comments and suggested changes within 30 days of receiving a copy of the proposed rule and supporting information, unless the Ministry requires additional time to review the proposed rule, in which case the Ministry shall inform the Commission of when the Ministry will be able to provide the Commission with its questions, comments

and suggested revisions. The Commission shall respond to the Ministry's questions and comments and consider the Ministry's suggested revisions to the proposed rule.

- g. Subject to article 10.3.d, in the case of a rule other than a Fee rule or an urgent rule, the Commission may publish the proposed rule for public comment if, after 30 days have elapsed from the delivery to the Ministry of the draft proposed rule and supporting information, the Minister or the Deputy Minister has not objected to the draft of the proposed rule or the Ministry has not requested additional time to review the proposed rule.
- h. In the case of a Fee rule, the Commission shall not publish the proposed rule for public comment without consulting with the Deputy Minister or the Minister.
- i. If the Commission makes any material changes to the rule after the public comment period such that a notice of the proposed changes is required under subsection 143.2(7) of the *Securities Act* or subsection 67(7) of the CFA, the Commission shall, at least two weeks prior to the proposed date of publication of the revised rule for public comment, notify the Ministry of the proposed date of publication for the second comment period and provide the Ministry with a copy of the draft changes to the rule and the notice.
- j. The Commission shall, when delivering a rule to the Minister in accordance with section 143.3 of the *Securities Act* or section 68 of the CFA, provide the Minister with details of the Commission's response to the significant issues and concerns brought to the attention of the Commission during the comment periods.
- k. The Commission shall, in its notice of consultations concerning a proposed rule, acknowledge that the Minister's statutory period for review and approval of the rule is 60 days.
- l. In the case of an urgent rule, the preceding provisions of article 10.3 do not apply.

10.4 OTHER REPORTS

The Chair is responsible, on behalf of the Board for:

- a. Ensuring that the reports and documents set out in Appendix 1 to this MOU are submitted for review and approval by the Minister and, where applicable, subsequently published in a timely manner, in accordance with any timelines prescribed by the Acts, a regulation, the AAD or otherwise set out in Appendix 1; and
- b. Supplying specific data and other information, at the request of the Minister or the Deputy Minister, that may be required from time to time for the purpose of the Ministry's administration.

11. Public Posting Requirements

- a. The Commission, through the Chair acting on behalf of the Board, will ensure that the following approved governance documents are posted in an accessible format, in both official languages, on the Commission's website within the specified timelines:

- This MOU – 30 calendar days of signing by the Parties;
 - The Commission’s mandate letter – no later than the corresponding Business Plan;
 - Business Plan – 30 calendar days of Minister’s approval; and
 - Annual Report – 30 calendar days of Minister’s approval (the report must first be tabled in the Legislature).
- b. Posted governance documents should not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets or scientific information, information that would prejudice the financial or commercial interests of the Commission in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the Commission.
 - c. The Commission, through the Chair acting on behalf of the Board, will ensure that the expense information for Appointees, the CEO and senior management that report to the CEO is posted on the Commission website, in accordance with the requirements of the *Travel, Meal and Hospitality Expenses Directive*.
 - d. The Commission, through the Chair on behalf of the Board, will ensure that rules and proposed rules are published in accordance with the Acts.
 - e. The Commission, through the Chair acting on behalf of the Board, will ensure that any other applicable public posting requirements are met.

12. Communications and Issues Management

- a. The Parties recognize that the timely exchange of information on the operations and administration of the Commission is essential for the Minister to meet their responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Commission. The Parties also recognize that it is essential for the Chair, on behalf of the Board, and the CEO, to be kept informed of Government initiatives and policy directions that may affect the Commission's mandate and functions.
- b. Despite any other provision of this MOU, communications shall not include discussion or exchanging of confidential information between Commission personnel and the Minister, Deputy Minister or Ministry staff about current, past or future investigations, cases or proceedings before the Commission, including the Tribunal, or the courts.
- c. The Ministry of Finance and the Commission have established an information sharing protocol under which the Commission does not share information relating to securities regulatory investigations or proceedings except in accordance with the protocol and applicable legislation. In addition to the protocol, inquiries received by the Minister's office regarding investigations, cases or proceedings before the Commission or the courts are re-directed to the Commission. Any response made by the Minister's office to the inquiring party will indicate that the inquiry has been forwarded to the Commission and that the Minister cannot interfere with an enforcement investigation or proceeding.

- d. The Chair, or the CEO on the Chair's behalf, will keep the Minister advised, in a timely manner, of all planned events, significant developments or issues in Ontario's capital markets and any contentious matters, that may concern or could be reasonably expected to concern the Minister in the exercise of the Minister's responsibilities.
- e. The Minister will consult with the Chair and the CEO in a timely manner, as appropriate, on Government policy initiatives, directives and legislation being considered by the Government that may impact on the Commission's mandate or functions, or would otherwise have a significant impact on the Commission.
- f. The Minister, the Chair and the CEO will consult with each other on significant public communication strategies and publications. They will keep each other informed as appropriate of the results of stakeholder and other public consultations and discussions.
- g. The Minister, the Chair and the CEO will meet at least annually, or as requested by the Minister, the Chair or the CEO, to discuss issues relating to the fulfillment of the Commission's mandate.
- h. The Minister and the CA will meet at least annually, or as requested by either the Minister or the CA, to discuss issues relating to the fulfillment of the Tribunal's mandate.
- i. The Deputy Minister, or the Deputy Minister's representative, and the CEO will meet as requested by either party, to discuss issues of mutual interest to the Ministry and the Commission, and issues relating to the delivery of the Commission's mandate and the efficient operation of the Commission. The Deputy Minister and the CEO shall provide timely information and advice to each other concerning significant matters affecting the Commission's management or operations.
- j. Senior Ministry staff and senior Commission employees shall meet, as requested by either party, to exchange information and collaborate on policy development and implementation.

13. Administrative Arrangements

13.1 APPLICABLE DIRECTIVES

- a. The Chair, on behalf of the Board, is responsible for ensuring that the Commission operates in accordance with all Applicable Directives, as well as applicable Ministry financial and administrative policies and procedures.
- b. When the Ministry is notified of amendments or additions to the Applicable Directives, the Ministry will inform the Commission in a timely manner.
- c. When the Commission requests a list of all Applicable Directives, Ministry staff shall provide a full comprehensive list of the most recent versions in a timely manner.
- d. The Commission's mandate may require the inclusion of alcohol in providing hospitality as part of its business practices due to the importance of consultation and collaboration with national and international regulatory partners. Such hospitality is commonly offered by domestic and international regulatory partners, and it is integral to the Commission's

business as it is required, from time to time, to host those partners at meetings and events in Ontario. It is expected that the agency would, where appropriate, provide alcohol for those events. The inclusion of alcohol on a reciprocal basis would enable the agency to:

- cultivate an environment that fosters relationship building and consultation at these events with other leading regulators;
- for the purpose of retention and continued participation, recognize the contributions of individuals who provide advice on committees or speak at conferences hosted by the agency at their own expense; and
- align with the customs and expectations of national and international guests that the agency hosts.

Any such expenses shall be in compliance with and receive prior approval from the appropriate authority according to the Travel, Meal and Hospitality Expenses Directive.

13.2 ADMINISTRATIVE AND ORGANIZATIONAL SUPPORT SERVICES

- a. The Commission will be responsible for all administrative services including human resource support services, financial, administration and payroll processing, training, staff development and information technology development and operations support.
- b. The Commission may participate in Government-wide shared services or administrative arrangements, where appropriate.
- c. The Commission is responsible for the provision of its own legal services but may, where mutually agreed upon in accordance with a memorandum of understanding established between the Commission and the Ministry of the Attorney General ("MAG"), use legal services provided by MAG.

13.3 MEMORANDUM OF UNDERSTANDING BETWEEN THE CHAIR AND CHIEF ADJUDICATOR

- a. The Chair and the Chief Adjudicator shall enter into a Memorandum of Understanding that sets out the accountability and reporting relationship with respect to the Tribunal and the Board.
- b. The Chief Adjudicator and the CEO will enter into an Operations Protocol that will provide for resource sharing and operational support between the Tribunal and the rest of the Commission.
- c. The Memorandum of Understanding will include:
 - i. Leading principles to inform and guide the working relationship between the Tribunal and the Board;
 - ii. The accountability relationship between the Chief Adjudicator, the Chair and the Board;
 - iii. The reporting requirements between the Tribunal and the Board;
 - iv. Financial arrangements between the Tribunal and the Board;

- v. Information sharing protocols between the Tribunal and the rest of the Commission, including protocols governing education and training;
- vi. Confirmation that the Chief Adjudicator and the CEO will enter into the Operations Protocol;
- vii. Service standards expected for the Tribunal; and
- viii. Any other arrangements or protocols that the Chair and Chief Adjudicator may require that ensure the adjudicative independence of the Tribunal and avoid conflicts of interest.

13.4 AGREEMENTS WITH THIRD PARTIES

- a. The Commission shall promptly provide the Ministry with a copy of every agreement, memorandum of understanding or arrangement between the Commission and,
 - i. another securities or financial regulatory authority;
 - ii. any self-regulatory body or organization; or
 - iii. any jurisdiction.
- b. Despite paragraph a, the Commission is not required to provide an agreement, memorandum of understanding or arrangement if the principal purpose of the agreement, memorandum of understanding or arrangement relates to the provision of products or services, the sharing of costs or the temporary transfer of an employee.

13.5 CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

- a. The Board is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records.
- b. The Board, through the Chair, is responsible for ensuring that the appropriate oversight framework is in place in order to ensure that the Commission complies with all Government legislation, regulations, directives and policies related to information and records management.
- c. The Board shall protect the legal, financial and other interests of the Commission by implementing reasonable measures to ensure the ongoing viability, integrity, preservation and security of all official records in its custody or control, including records created, commissioned or acquired by the Commission. This includes, but is not limited to, all electronic records, such as emails, information posted on the Commission's website(s), database data sets, and all records stored on personal computers and shared drives.
- d. The Chair is responsible for ensuring measures are implemented requiring the Commission's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies and programs.

- e. The Chair is responsible for ensuring that the Commission complies with the *Archives and Recordkeeping Act, 2006*, SO 2006, Chapter 34, Schedule A.

13.6 INTELLECTUAL PROPERTY

- a. The Chair is responsible for ensuring that the legal, financial and other interests of the Government related to intellectual property are protected in any contract that the Commission may enter into with a third-party that involves the creation of intellectual property.

13.7 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- a. The Chair and the Minister acknowledge that the Commission is a designated institution bound to follow the requirements set out in FIPPA in relation to the collection, retention, security, use, access, disclosure, distribution and disposal of records.
- b. The Chair is the institution head for the purposes of FIPPA.

13.8 SERVICE STANDARDS

- a. The CEO shall ensure that the Commission delivers its services at a quality standard that adheres to the principles of the OPS Service Directive.
- b. The Commission shall establish a formal process for responding to complaints about the quality of services received from members of the public and stakeholders that is consistent, as appropriate, with the Government's service quality standards.
- c. The Commission's process for responding to complaints about the quality of services is separate from any statutory provisions about re-consideration or appeals of the Commission's regulatory decisions.
- d. The Commission's Business Plan will include performance standards and measures for client service and for responding to complaints received from members of the public and stakeholders about the quality of services received from the Commission.
- e. The Commission shall comply with the *French Language Services Act* and the *Accessibility for Ontarians with Disabilities Act, 2005*.

13.9 PROCUREMENT ARRANGEMENTS

- a. The Commission is considered an "Other Included Entity" under the Procurement Directive and shall comply with its applicable obligations.
- b. Any relevant by-laws made by the Commission shall be in accordance with the Commission's status as an "Other Included Entity" under the Procurement Directive.
- c. Any procurement policy established by the Commission shall be in compliance with the principles and applicable requirements of the Procurement Directive.

13.10 INFORMATION AND INFORMATION TECHNOLOGY (I&IT)

- a. The Commission is responsible for establishing internal I&IT policies and standards that align with OPS I&IT directives, policies and standards, where applicable, and reflect the Commission's governance structure.
- b. The Commission is responsible for the provision of its own information technology (IT) services. The Commission is responsible for telephony services, hardware, software, IT business continuity and disaster recovery planning, cybersecurity, and IT-related staff training.
- c. The Commission does not use the OPS IT infrastructure, telephony or IT services, with the exception of data centre facilities and services as may be agreed with the Ministry of Public and Business Service Delivery or an OPS I&IT cluster.
- d. The Commission effectively governs technical architecture, applies corporate risk oversight to its IT services and adheres to OPS project management frameworks and methodologies, where applicable. Standing and steering committees are established for all projects, as appropriate, in the opinion of the Chair and CEO or their delegate.

14. Financial Arrangements

14.1 GENERAL

- a. All financial procedures for the Commission shall be in accordance with approved financial management by-laws of the Commission, applicable TB/MBC, Government and Ministry directives and policies, and any applicable legislation.
- b. The Commission shall not borrow or invest funds unless the borrowing or investing is authorized by a by-law, approved by the Minister in accordance with the SCA.
- c. Pursuant to Section 28 of the *Financial Administration Act*, the Commission shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that would increase, directly or indirectly, the indebtedness or contingent liabilities of the Government without the written approval of the Minister or delegate or as otherwise permitted under the *Financial Administration Act*.
- d. The Commission will maintain, in a manner consistent with generally accepted accounting principles, proper and complete financial records.

14.2 FUNDING

- a. The operations of the Commission are funded by Fees collected from market participants. Details regarding the Commission's authority with respect to the Fees and revenue it collects are set out in sections 18 and 19 of the SCA. It is anticipated that borrowing by the Commission to offset an unfunded or unexpected expense will

eventually be recovered by the Commission through Fees collected from Ontario's capital markets participants as set forth in the Commission's budget.

- b. The Commission may budget over a multi-year cycle.
- c. The Ministry acknowledges that the Commission will use various Fees to fund its oversight of Ontario's capital markets.
- d. Rules governing Fees should reflect the budgeted expenses and expenditures of regulation and the reasonable cost of the Commission's operations.
- e. Fees shall be examined regularly and should be adjusted as appropriate based on any unanticipated surplus or deficit during the Commission's budget cycle and subject to funding of any contingency reserve amount provided for in the Commission's budget.

14.3 FINANCIAL REPORTS

- a. The Chair, on behalf of the Board, will provide to the Minister audited annual financial statements for the Commission and will include them as part of the Commission's Annual Report. The statements will be provided in a format that is in accordance with the accounting policies issued by the Province's Office of the Provincial Controller Division and will include such other information as prescribed.
- b. The Commission will submit its salary information to the Minister and/or the President of the Treasury Board, through the Ministry, in accordance with the *Public Sector Salary Disclosure Act, 1996*.

14.4 TAXATION STATUS: HARMONIZED SALES TAX (HST)

- a. The Commission is responsible for complying with its obligations as a supplier under the federal *Excise Tax Act* to collect and remit HST in respect of any taxable supplies made by it.
- b. The Commission is responsible for paying HST where applicable, in accordance with the federal *Excise Tax Act*.
- c. The Commission is listed on Schedule "A" of the Canada-Ontario Reciprocal Taxation Agreement. Under the Canada-Ontario Reciprocal Taxation Agreement, the Commission is entitled to claim HST government rebates in respect of any HST paid by the agency to suppliers, subject to any restrictions specified by Finance Canada.
- d. The Commission will not claim an HST government rebate in respect of tax for which it has claimed a refund, input tax credit or other rebate under the *Excise Tax Act (Canada)*.
- e. The Commission is responsible for providing the Ministry or the Canada Revenue Agency, upon request, with any information necessary to determine the amount of an HST rebate.

15. Audit and Review Arrangements

15.1 AUDITS

- a. The Commission is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division of Treasury Board Secretariat.
- b. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Corporate Audit Committee.
- c. The Chair, on behalf of the Board, may request an external audit of the financial transactions or management controls of the Commission, at the Commission's expense.
- d. Regardless of any previous or annual external audit, the Minister may direct that the Commission be audited at any time.
- e. The Chair, the rest of the Board, the CEO and the Chief Adjudicator shall cooperate in any audit of the Commission.
- f. The Commission shall promptly provide a copy of every report from any audit referred to above to the Minister. The Commission shall also provide a copy of its response to the audit report and any recommendations therein. The Commission shall advise the Minister annually on any outstanding audit recommendations.

15.2 FINANCIAL STATEMENTS

- a. Pursuant to the SCA the Commission shall prepare financial statements according to generally accepted accounting principles. The financial statements must present the financial position, results of operations and changes in the financial position of the Commission for its most recently completed financial year.
- b. The Commission shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* or the Auditor General of Ontario to audit the financial statements of the Commission for each financial year.
- c. The Chair shall provide the Minister with a copy of any report from an audit of the Commission conducted pursuant to paragraph 15.2(b) of this MOU. The Chair shall have an opportunity to comment on any audit report that is submitted to the Minister or Management Board prior to such submission.

15.3 OTHER REVIEWS

- a. The Commission is subject to periodic review initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Commission that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the Commission.

- b. In requiring a periodic review, the Minister or TB/MBC shall determine the timing and responsibility for conducting the review, the roles of the Chair, the rest of the Board, the CEO and the Deputy Minister, and how any other persons or entities are involved.
- c. A mandate review of the Commission will be conducted at least once every six years.
- d. The Minister will consult the Chair, on behalf of the Board, as appropriate during any such review.
- e. The Chair, the rest of the Board and the CEO will cooperate in any review.
- f. In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations for change that are developed from the results of the review regarding the Commission to TB/MBC for consideration.

16. Appointments

16.1 APPOINTMENTS

- a. The Chair is designated by the Lieutenant Governor in Council on the recommendation of the Minister for the term specified by the Lieutenant Governor in Council, which must not exceed his or her term as a director.
- b. The Board shall be composed of between 3 and 11 individuals appointed by the Lieutenant Governor in Council on the recommendation of the Minister, together with the CEO if the Commission's by-laws so provide, for a total of up to 12 individuals.
- c. The CEO for the first two years after the SCA comes into force shall be appointed by the Lieutenant Governor in Council. After two years, the Board of Directors shall appoint a CEO.
- d. The Chief Adjudicator is designated by the Lieutenant Governor in Council on the recommendation of the Minister for the term specified by the Lieutenant Governor in Council, which must not exceed their term as an adjudicator.
- e. Adjudicators to the Tribunal shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister.
- f. The Tribunal shall be composed of at least nine adjudicators as set out in the SCA.

16.2 REMUNERATION

- a. Remuneration for the Chair and the rest of the Board shall be fixed by the Lieutenant Governor in Council.
- b. Remuneration and expenses for the CEO during the first two years after the SCA comes into force shall be fixed by the Lieutenant Governor in Council. After two years, the Board shall set the CEO's remuneration.
- c. Remuneration and expenses for Adjudicators, including the Chief Adjudicator, shall be fixed by the Lieutenant Governor in Council.

- d. The Board, including the Chair, and the Adjudicators, including the CA, shall be reimbursed for reasonable expenses incurred in carrying out their duties in accordance with the *Travel, Meal and Hospitality Expenses Directive*.
- e. Travel expenses of Appointees must comply with the *Travel, Meal and Hospitality Expenses Directive*.

16.3 COMMISSION EMPLOYEES

- a. Commission employees are accountable to the CEO and delegates of the CEO. Employees of the Commission are public servants under the PSOA.
- b. The Commission is a public body for the purposes of the PSOA and public servants who work at the Commission are subject to those parts of the PSOA that establish a conflict of interest framework, provisions relating to political activity, and the mechanisms for wrongdoing in the public service.

17. Risk Management, Liability Protection and Insurance

17.1 RISK MANAGEMENT

- a. The Commission is to evaluate and manage risk in accordance with the requirements of the AAD.
- b. The Commission shall ensure that the risks it faces are dealt with in an appropriate manner.

17.2 IMMUNITY

- a. Pursuant to the SCA, no proceeding, including a court, administrative or arbitral proceeding shall be commenced against the Commission, any current or former director or employee of the Commission or any current or former CEO or Adjudicator for any act done in good faith in the exercise or performance, or intended exercise or performance, of the person's powers, duties or functions under the Acts or any other Act or for any alleged neglect or default in the exercise or performance of those powers, duties or functions.

17.3 INSURANCE

- a. The Commission is not covered under the Province's Protection Program and will purchase appropriate insurance including but not limited to Commercial General Liability insurance. The Commission will, upon request, provide the Ministry with proof of such insurance.

18. Effective Date, Duration and Periodic Review of the MOU

- a. This MOU becomes effective on the date it is signed by the Minister as the last party to execute it and continues in effect until it is revoked or replaced by a subsequent MOU signed by the Parties.
- b. Within six months of a change in the Minister or Chair, the Parties must either affirm by letter that this MOU will continue in force without a review (and attach the signed letter to the MOU); or agree to a new MOU.
- c. Either the Minister or the Chair, on behalf of the Board, may initiate a review of this MOU by written request to the other.
- d. If either of the Parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after written approval of the Parties.
- e. A full review and replacement of this MOU will be conducted promptly in the event of a significant change to the Commission's mandate, powers or governance structure as a result of an amendment to any of the Acts or any other applicable legislation.
- f. At a minimum, this MOU will be reviewed at least once every 5 years, or upon change in Chair or Minister, to ensure it is current and consistent with Government expectations.

Signatures

“Peter Bethlenfalvy”

August 22, 2023

Minister of Finance

Date

“Kevan Cowan”

July 26, 2023

Chair, Ontario Securities Commission

Date

Appendix 1: Summary of Key Reporting Requirements

REPORT/ DOCUMENTS	RESPONSIBLE OFFICIALS	DUE DATE
Business Plan a. Prepares b. Approves Provides to Minister	a. CEO (prepares) b. Board (approves) c. Chair (provides to Minister)	Submitted annually within three (3) months prior to the Commission's fiscal year end
Annual Report a. Prepares b. Approves c. Provides to Minister	a. CEO (prepares) b. Board (approves) c. Chair (provides to Minister)	Submitted annually 120 calendar days after the Commission's fiscal year end
Audited Financial Statements Annual Financial Reports	a. CEO (prepares) b. Board (approves financial reports)	Annually
Memorandum of Understanding	a. Board (approves) b. Chair (signs and provides to Minister)	Reviewed at least once every 5 years or upon change in Chair or Minister
Public Sector Salary Disclosure (PSSD)	a. CEO (provides to Minister)	Annually
Attestation of Compliance with Legislation and Applicable Directives	a. Chair attests b. Chair (provides letter to Minister)	Annually
Procurement Activity Report	a. CEO (provides to Deputy Minister)	Annually
Audit Reports	a. Chair (provides to Minister)	Within 7 days of the release of the report

<p>Outstanding Audit Recommendations</p>	<p>a. Chair (provides to Minister)</p>	<p>Annually</p>
<p>All By-Laws</p>	<p>a. Board (approves) b. Chair (provides to Minister)</p>	<p>Immediately after the by-law is passed by the Commission</p>
<p>Any other reports as required by legislation or Applicable Directives</p>	<p>a. Submit to the responsible Minister, with a copy to the Minister of Finance as appropriate</p>	<p>As required</p>

Appendix 2: Applicable Legislation*

Legislation applicable to the Commission includes:

- Accessibility for Ontarians with Disability Act, 2005, S.O. 2005, c.11
- Archives and Recordkeeping Act, 2006, S.O. 2006, c. 34, Sched. A
- Broader Public Sector Accountability Act, 2010, S.O. 2010, c.25
- Broader Public Sector Executive Compensation Act, 2014, S.O. 2014, c. 13, Sched. 1
- Business Corporations Act, R.S.O. 1990 c. B.16
- Commodity Futures Act, R.S.O. 1990, c. C. 20
- Emergency Management and Civil Protection Act, R.S.O. 1990, c.E.9
- Financial Administration Act, R.S.O. 1990, c. F.12
- Freedom of Information and Protection of Privacy Act, R.S.O. 1990, F. 31
- French Language Services Act, R.S.O. 1990, c. F.32
- Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020, S.O. 2020, c.5, Sched. 3
- Occupational Health and Safety Act, R.S.O.1990, c.0.1
- Pay Equity Act, R.S.O. 1990, c. P.7
- Protecting a Sustainable Public Sector for Future Generations Act, 2019, S.O. 2019, c.12
- Public Sector Expenses Review Act, 2009, S.O. 2009, c.20
- Public Sector Salary Disclosure Act, 1996, S.O. 1996, c.1, Sched. A
- Public Service of Ontario Act, 2006, c. 35, Sched. A
- Securities Act, R.S.O. 1990, c.S.5
- Securities Commission Act, 2021, S.O. 2021, c.8, Sched 9
- Statutory Powers Procedure Act, R.S.O. 1990, c.S.22
- Tribunal Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sched. 60

*Please note: this is not an exhaustive list

Appendix 3: Applicable Directives*

1. The following TB/MBC and Government Directives apply to the Commission:

- Accounting Advice Directive
- Advertising Content Directive
- Agencies and Appointments Directive
- Broader Public Sector Compensation Information Directive
- Communications in French Directive
- Corporate Policy on Protection of Personal Information
- Corporate Policy on Recordkeeping, Access and Privacy
- Delegation of Authority Key Directive
- Digital and Data Directive
- Disclosure of Wrongdoing Directive
- Enterprise Risk Management Directive
- Financial Records Retention Policy
- Governance and Management of Information and Data Assets Directive
- Internal Audit Directive
- Internal Control Policy
- MBC Realty Directive
- Ontario Public Service (OPS) Procurement Directive (Note: the Commission is considered an "Other Included Entity" under this directive)
- Perquisites Directive
- Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services
- Travel, Meal and Hospitality Expenses Directive (the Commission received special status for international travel under this Directive)
- Visual Identity Directive

*Please note: this list is as of November 5, 2021 and may change from time to time

1. The Commission is responsible for complying with all directives to which it is subject, irrespective of whether it is included on the list above.
2. The Ministry will inform the Commission of amendments or additions to directives, policies and guidelines that apply to the Commission.

3. Where the matters dealt with in these directives are the subject of provisions of the *Securities Act*, the SCA and the CFA, the regulations and the rules thereunder, the latter provisions will govern.