

MEMORANDUM OF UNDERSTANDING DATED NOVEMBER 5, 2009

BETWEEN

THE MINISTER OF FINANCE OF ONTARIO
(herein called the "Minister")

AND

THE ONTARIO SECURITIES COMMISSION
(herein called the "Commission")

A INTRODUCTION

1. The Commission is a statutory corporation without share capital and is comprised of members appointed by the Lieutenant Governor in Council. The Commission is an agent of Her Majesty in right of Ontario (section 3(12) of the *Securities Act*) and is classified by the Management Board of Cabinet (Management Board) as a Regulatory Agency with a governing board, and, for purposes of the Procurement Directive, as a "Other Included Entity".
2. Under the *Securities Act* and the *Commodity Futures Act* (the "Statutes"), the Commission is responsible for the administration of the Statutes and for discharging the powers and duties assigned to it under the Statutes and any other relevant legislation.
3. The mandate of the Commission under section 1.1 of the *Securities Act* and section 1.1 of the *Commodity Futures Act* is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in their integrity.
4. The *Securities Act* requires that every five years the Commission and the Minister shall enter into a memorandum of understanding setting out:
 - a. the respective roles and responsibilities of the Minister and the Chair of the Commission (the "Chief Executive Officer" or "Chair");
 - b. the accountability relationship between the Commission and the Minister;
 - c. the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
 - d. any other matters that the Minister may require.
5. The *Securities Act* further requires that the Commission shall promptly give the Minister or his/her designate (the "Minister") such information about its activities, operations and financial affairs as the Minister requests.
6. The Minister and the Chair are committed to a strong and independent Commission that is empowered to fulfill its statutory mandate efficiently and effectively and share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Commission and fulfilment of its statutory responsibilities.
7. The purpose of this Memorandum of Understanding ("Memorandum") is to clarify the operational roles, responsibilities and relationship between the Commission and the Minister and record their mutual understanding in respect of these matters.
8. The Memorandum does not affect, modify, limit or interfere with the responsibilities of the Minister, the Commission or the Chair under the Statutes or any other legislation. In the event of a conflict between the provisions of the Memorandum and the Statutes or such other legislation, the Statutes or such other legislation shall prevail.

B GUIDING PRINCIPLES

9. The parties agree that they will adhere to the principles set out below in their relationship.
10. The Minister recognizes that the Commission is a statutory entity and that the Commission, the Chair and the Executive Director of the Commission (the "Executive Director" or "Chief Administrative Officer") exercise powers and perform duties in accordance with their respective mandates under the Statutes and other relevant legislation. The

Commission's regulatory and adjudicative decisions must be made and be seen by the public to be made in an independent and impartial manner.

11. The Commission shall operate as an arm's-length agency of the Government of Ontario.
12. Commission staff are employees of the Commission and are accountable to the Chair and the Chief Administrative Officer ("CAO"). The Commission is a public body for purposes of the *Public Service of Ontario Act, 2006* (PSOA) and is subject to those parts of the PSOA that establish a conflict of interest framework, provisions relating to political activity, and the mechanisms for disclosures of wrongdoing in the public service. Employees of the Commission are public servants under the PSOA and are subject only to those provisions described above.
13. The Commission acknowledges that it is accountable to the Minister as set out in the Statutes in exercising its statutory mandate. The fundamental principle of accountability will be observed in the management, administration and operations of the Commission.
14. As an agency of the Government, the Commission agrees to abide by the management principles established by the Government of Ontario. These principles include ethical behaviour, accountability, excellence in management, wise use of public funds, high quality service to the public and fairness in the marketplace.
15. All members and employees will be subject to the Commission's Code of Conduct relating to conflicts of interest in connection with the conduct of the affairs of the Commission.
16. The parties to this Memorandum are committed to avoiding duplication of work or services.
17. The parties to this Memorandum recognize that the timely exchange of information and effective consultation when necessary are essential to discharging their respective responsibilities.
18. The Commission undertakes to report to, and share information with, the Minister as required by the Statutes and this Memorandum.

C ROLES AND RESPONSIBILITIES

The Minister

The Minister is accountable to the Legislature for the Commission's fulfilment of its mandate and its compliance with government policies, and for reporting to the Legislature on the affairs of the Commission. In addition to the rights and duties of the Minister as set out in the Statutes, the Minister is responsible for:

19. monitoring the activities of the Commission to ensure that its mandate is being fulfilled. To this end, the Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Commission, as provided in section 3.8(2) of the *Securities Act*;
20. reporting to Cabinet and the Legislature on the affairs of the Commission, including tabling reports in the Legislature as required. This includes the requirement that the Minister shall lay the Commission's annual report before the Assembly within one month of receiving the Commission's report;
21. reviewing the Commission's annual business plan and submitting the plan to Management Board, as required by the Agency Establishment and Accountability Directive, including pursuant to a request at any time by the Chair of Management Board to submit the Commission's business plan to Management Board for review;
22. as may be permitted, ensuring that the Commission is advised and consulted when significant new directions for the Commission are contemplated or when initiatives are taken to amend any legislation or regulations that affect the Commission;
23. ensuring that the Commission is aware of policy directions or decisions of the Government that may impact the Commission's business plan;
24. meeting with the Chair as necessary (at a minimum, once every quarter) to discuss issues relating to the effective discharge of the Commission's mandate and the need for services or support to be provided by the Ministry to the Commission;

25. making recommendations to Cabinet relating to the appointment and reappointment of the Chair, Vice-Chair(s) and Commission members pursuant to the process established by legislation or by Management Board, as applicable, following consultation with the Chair, as appropriate;
26. ensuring that members appointed to the Commission are aware of all policies, directives, guidelines and procedures for Cabinet appointees as applicable;
27. ensuring that the Commission is aware of all applicable Management Board Directives;
28. ensuring that the Commission receives such information and assistance as required or as requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives and this Memorandum;
29. appointing an advisory committee under section 143.12 of the *Securities Act*;
30. directing that a periodic review of the Commission be conducted and making subsequent recommendations to Management Board;
31. following consultations with the Chair, recommending to Management Board the elimination, consolidation or acquisition of the Commission and any change to the Commission's mandate that needs corresponding change to the Commission's constituting instrument; and
32. recommending to Management Board the powers to be given to the Commission when a change in the mandate of the Commission is being proposed.

The Chair and Board of Directors

The Chair acknowledges that accountability to the government means direct accountability to the Minister. The Board of Directors of the Commission (the "Board") acknowledges that accountability to the government means accountability to the Minister through the Chair. In addition to the rights and duties as set out in the Statutes, the Chair and the Board are responsible and accountable to the Minister for:

33. overseeing the management of the financial and other affairs of the Commission in accordance with its statutory mandate and business plan;
34. overseeing the provision of high quality regulatory services that protect the public interest and enhance public confidence in the regulated sectors;
35. overseeing management's identification of principal risks to the Commission's operations and the implementation of appropriate processes to manage these risks and ensuring that the Commission otherwise conducts itself in accordance with good governance practices; and
36. ensuring that stakeholders are consulted, as appropriate, on the Commission's goals, objectives and strategic direction.

Furthermore, the Chair is responsible and accountable to the Minister for:

37. providing any necessary orientation of new members of the Commission, ensuring that new members are made aware of the provisions on conflict of interest, ethical conduct and political activities set out in the Commission's Code of Conduct, and developing and maintaining an effective performance measurement system for evaluating Commission members in a manner consistent with best practices;
38. reviewing with the Minister the Commission's performance based results included in the Commission's statement of priorities on an annual basis;
39. ensuring that a report describing the performance achieved as against the objectives and targets set out in the Commission's statement of priorities is published on an annual basis;
40. 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, as well as being addressed at the next scheduled monthly work-in-progress meeting;
41. ensuring the Commission's compliance with applicable Management Board Directives;

42. ensuring the Commission's compliance with the *Archives and Recordkeeping Act, 2006*, S.O. 2006, chapter 34, Schedule A;
43. causing the Commission to prepare and deliver to the Minister the Commission's statement of priorities, annual report including financial statements and any other information about the Commission's activities, operations and financial affairs as the Minister requests;
44. causing the Commission to prepare, submit and review with the Minister its business plan for the current year and at least two years beyond following its adoption by the Commission;
45. ensuring that the Commission's business plan includes a system of performance measures and a report on the achievement of the objectives set out in the business plan;
46. acting as the Commission's primary spokesperson;
47. at the request of the Minister, preparing material, attending and/or making a presentation before Cabinet, the Legislature or Committees of either, on matters affecting or pertaining to the Commission;
48. notifying the Minister of upcoming vacancies in order-in-council appointments to the Commission and making recommendations to the Minister on persons appropriate to fill such vacancies;
49. providing the Commission with such information, assistance and advice as the Commission requires to meet its responsibilities under the Statutes and other relevant legislation;
50. reviewing board members' expenses and ensuring procedures are established for reviewing and approving board members' per diem claims; and
51. evaluating the performance of the CAO in consultation with the Board.

The Board of Directors

Furthermore, the Board is responsible and accountable to the Minister for:

52. subject to the approval of the Minister, making by-laws governing a variety of corporate matters, including:
 - a. the administration, management and conduct of the affairs of the Commission;
 - b. the appointment of an auditor;
 - c. the powers, functions and duties of the Chair, each Vice-Chair and officers employed by the Commission;
 - d. the remuneration and benefits of the Chair, each Vice-Chair and the other members of the Commission; and
 - e. the appointment, operation or dissolution of committees of the Board and the delegation of duties of the Board to such committees.

(For example, the Board has established the following standing committees: Audit and Finance Committee, Governance and Nominating Committee, and Human Resources and Compensation Committee.)

The Deputy Minister

The Deputy Minister is accountable to the Minister for the performance of the Ministry in providing administrative support to the Commission and for carrying out the roles and responsibilities assigned to him by the Minister, Management Board Directives and this Memorandum. In accordance with the PSOA (and applicable Government directives), the Deputy Minister may delegate any of the powers and duties assigned to him by law. The Deputy Minister is responsible for:

53. advising and assisting the Minister in discharging assigned ministerial responsibility with respect to the Commission;
54. monitoring the activities of the Commission on behalf of the Minister to ensure that its mandate is being fulfilled and that it is acting in accordance with applicable Government policies;
55. meeting with the Chair at least quarterly to discuss issues relating to the effective discharge of the Commission's mandate;

56. informing the Commission of all directives, guidelines, policies and decisions of the Ministry and Government that apply to or may affect the Commission;
57. ensuring that the Commission receives such information and assistance as required or requested to meet its responsibilities under the Statutes, other relevant legislation, applicable Management Board Directives, and this Memorandum; and
58. undertaking on behalf of the Minister assessments of whether or not the Commission is fulfilling its legislative mandate, identifying any need for corrective action and recommending to the Minister ways to resolve issues that have been identified.

The Chief Administrative Officer

The CAO of the Commission is responsible and accountable to the Chair for:

59. the development, implementation and ongoing monitoring of an effective performance measurement and management system for the Commission under the direction of the Chair. The performance measures relating to the Commission's goals and priorities once approved by the Commission and prior to June 30 each year, will be forwarded to the Minister for approval;
60. ensuring that the Commission provides high quality service to the public in carrying out its responsibilities and establishes a process for responding to and resolving complaints from the public. The Commission's process for responding to complaints about the quality of services is separate from any statutory provisions about re-consideration, appeals, etc. of the Commission's adjudicative or regulatory decisions;
61. ensuring the development and maintenance of the necessary information and reporting systems in support of the efficient functioning of the Commission;
62. keeping the Chair and the Board informed and up-to-date on program operations;
63. ensuring that documents and reports are prepared as requested by the Board including corporate plans and budgets, annual business plans and quarterly reports; and
64. ensuring that documentation and proper controls are maintained to support expenditures and keep track of material variances between projected and actual expenditures.

D FINANCIAL ARRANGEMENTS

65. The operations of the Commission are funded by fees collected from market participants and details regarding the Commission's authority with respect to the fees and revenue it collects are set out in section 3.4 of the *Securities Act*.
66. The Commission acknowledges that property and/or services ordered/purchased by the Commission are purchased by it for the use of the Crown in right of Ontario, and are not subject to the goods and services tax.

E REPORTING REQUIREMENTS

67. The Commission shall forward for the Minister's approval an annual business plan by July of each year.
68. The business plan shall meet the requirements set out in Schedule D of the Agency Establishment and Accountability Directive.
69. Within six months after the end of each fiscal year, the Commission shall deliver to the Minister an annual report on the affairs of the Commission for that fiscal year. Within one month of receiving the Commission's annual report, the Minister shall lay the report before the Assembly.
70. The annual report shall include the Commission's audited financial statements for the most recently completed financial year and the auditor's report thereon; a description of activities during the financial year reported on; a discussion of significant variances between actual and planned results and an explanation of actions to be taken, if any, to address these variances; a description of the Commission's corporate governance structure; and the names of the appointees to the Commission, including when each was first appointed and when the current term of appointment expires.
71. The Commission will ensure that all reports and other material set out in Appendix A, required to be submitted to the Minister are submitted in a timely manner, as outlined in the Appendix.

F AUDIT ARRANGEMENTS

- 72. Pursuant to the *Securities Act*, 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.
- 73. The Commission shall appoint one or more auditors licensed under the *Public Accountancy Act* or the Auditor General of Ontario to audit the financial statements of the Commission for each financial year.
- 74. The Chair shall provide the Minister with a copy of any report from an audit of the Commission conducted pursuant to paragraph 73 of this Memorandum. 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.
- 75. The Commission shall advise the Minister annually of any outstanding audit recommendations.

G ADMINISTRATIVE ARRANGEMENTS

- 76. The Commission may participate in government-wide shared services or arrangements, where applicable.
- 77. The Commission shall respond to access requests and privacy investigations and shall fulfill all requirements under the Freedom of Information and Protection of Privacy Act (FOIPPA) with support from the Ministry of Finance FOIPPA Co-ordinator.
- 78. The Commission will be subject to the following Management Board Directives, Operational Policy and Guidelines:
 - Agency Establishment and Accountability;
 - Enhancing Privacy: Computer Matching of Personal Information;
 - Freedom of Information and Privacy;
 - Government Appointees;
 - Management of Recorded Information;
 - Procurement;
 - Travel, Meal and Hospitality Expenses; and
 - Visual Identity.
- 79. Where the same matters dealt with in these Directives are the subject of provisions in the *Securities Act*, the regulations and the rules thereunder, the latter provisions will govern. For greater clarity, the provision under the heading "Remuneration" in the "Government Appointees" Directive that provides for remuneration of appointees is not applicable to the Commission by virtue of section 3.2 of the *Securities Act*.

H TIME PERIOD AND PROCESS FOR REVIEW AND AMENDMENT

- 80. This Memorandum, to be executed by the Minister and the Chair on behalf of the Commission, becomes effective when executed by the parties. It shall remain in effect for a period of five years from the date of signature unless earlier amended or replaced. If not earlier amended or replaced, this Memorandum must be reviewed before expiry and renewed or revised. It shall remain in effect until superseded by a new Memorandum of Understanding approved by Management Board and executed by the parties.
- 81. This Memorandum shall be reviewed upon the request of either party to it. This Memorandum must be either affirmed for continuance or revised upon the appointment of a new Minister or Chair.
- 82. The Minister is responsible for recommending to Management Board the approval of this Memorandum prior to execution by the parties. If this Memorandum is amended, the Minister shall submit a copy of the amended Memorandum to Management Board for approval.

IN WITNESS WHEREOF this Memorandum has been signed by the Minister and by the Chair of the Commission on behalf of the Commission.

Notices / News Releases

<u>"Dwight Duncan"</u>	<u>November 5, 2009</u>
The Honourable Dwight Duncan Minister of Finance	Date

<u>"W. David Wilson"</u>	<u>November 4, 2009</u>
W. David Wilson Chair Ontario Securities Commission	Date

Appendix "A"

Ontario Securities Commission

Statutory Reporting Requirements and Communications with the Minister of Finance

Reporting Required under the *Securities Act* and *Commodity Futures Act* (CFA)

The following is a list of statutory reporting requirements (Commission to the Minister):

- **Memorandum of Understanding with the Minister:** The Commission and the Minister shall enter into an Memorandum of Understanding every five years, beginning with the 1998-99 fiscal year. (*Securities Act*, s. 3.7(1))
- **Provision of Information to the Minister:** The Commission shall promptly give the Minister such information about its activities, operations and financial affairs as the Minister requests. (*Securities Act*, s. 3.8(1))
- **Annual Report and Audited Financial Statements:** Within six months after the end of each fiscal year (i.e. by September 30), the Commission shall deliver to the Minister an annual report, including the Commission's audited financial statements, on the affairs of the Commission for that fiscal year. (*Securities Act*, s. 3.10(1))
- **Statement of Priorities:** The Commission is to deliver its statement of priorities to the Minister within 90 days after the end of its financial year (i.e. by June 30). (*Securities Act*, s. 143.9(1))

Statutory Requirements for Ministerial Approval

- **Ministerial Approval of By-laws:** The Commission must deliver to the Minister a copy of every by-law passed by it for Ministerial approval. (*Securities Act*, s. 3.2(4))
- **Ministerial Approval of Short-term Borrowing:** The Minister must approve terms and conditions of any short-term (up to two years) borrowing by the Commission. (*Securities Act*, s. 3.3(2))
- **Ministerial Approval of Commission Regulations:** Concurrently with making a rule and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC under the *Securities Act* or by the Commission under subsection 143(3) of the *Securities Act* or subsection 65(3) of the CFA, that in the opinion of the Commission is necessary or advisable to effectively implement the rule. (*Securities Act*, s. 143(3)) (CFA, s. 65(3))
- **Ministerial Approval of Non-publication of Notice of Urgent Rule:** The Commission is not required to publish notice of a proposed rule if it believes there is an urgent need for the rule and without it there is substantial risk of material harm to investors or to the integrity of the capital markets, and if the Minister approves. (*Securities Act*, s. 143.2(5)) (CFA, s. 67(5))
- **Ministerial Approval of Rules:** The Commission must deliver to the Minister a copy of every rule made by it together with the following:
 - (1) A copy of the notices published under section 143.2, unless publication of notice was not required, and copies of all documents referred to in the notices.
 - (2) A summary of the representations made and other documents submitted in respect of the rule as proposed.
 - (3) All other material information that was considered by the Commission in connection with the making of the rule. (*Securities Act*, s. 143.3(1)) (CFA, s. 68(1))
- **Ministerial Approval of Agreements, Memoranda of Understanding, Arrangements:** The Commission must deliver to the Minister for approval every agreement, memorandum of understanding or arrangement between the Commission and,
 - (1) another securities or financial regulatory authority;
 - (2) any self-regulatory body or organization; or
 - (3) any jurisdiction. (*Securities Act*, s. 143.10(1)) (CFA, s. 74(1))

Other Communications

- **Business Plan:** The practice is to forward the Plan to the Ministry following Board approval in accordance with the Memorandum and the Agency Establishment and Accountability Directive.
- **Information Sharing:** 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 the *Securities Act*. In addition to the protocol, inquiries received by the Minister's office regarding a case in progress at the Commission 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.

Current Communications Protocol – Rules, Policies, Agreements, Memoranda of Understanding or Arrangements

1. Ministerial Approval of Rules

- The Commission must approve a proposed rule for publication for comment, following which the proposed rule will be published in the Bulletin. The minimum comment period is 90 days. (Note: Publication of notice of a proposed rule is not required in certain circumstances (see *Securities Act*, s. 143.2(5) and CFA, s. 67(5)). One of these is where the Commission believes there is an urgent need for the proposed rule and that, without it, there is a substantial risk of material harm to investors or the integrity of the capital markets. In these circumstances, the Commission must have prior approval of the Minister to make the rule without publication of notice.)
- If the Commission does not propose any material changes to the proposed rule after the comment period, the rule must go back to the Commission to be approved/made. It must then be delivered to the Minister for approval. A notice of the final rule must be published in the Bulletin.
- If material changes are made to the rule, then the Commission must approve its re-publication for further comment. The Ministry will be notified prior to any re-publication and provided with a copy of the changes to rule and the notice.
- Following any further comment period, the rule must be approved/made by the Commission. Once approved by the Commission, it will be sent to the Minister for approval and published in the Bulletin.
- Within 60 days after a rule is delivered to the Minister, the Minister may,
 - approve the rule,
 - reject the rule, or
 - return it to the Commission for further consideration.
- A rule that is approved by the Minister comes into force 15 days after it is approved unless there is a later day specified in the rule, in which case it comes into force on that later day.
- If the Minister does not approve a rule, reject it or return it to the Commission for further consideration, the rule comes into force:
 - if a day is specified in the rule that is at least 75 days after the rule is delivered to the Minister, then on that date;
 - if no date is specified, then on the 75th day after the rule is delivered to the Minister; or
 - if the date specified is within 75 days after the rule is delivered to the Minister, then on the 75th day after the rule is delivered to the Minister.

2. Policies

- There is no statutory requirement that policies be approved by the Minister. However, the Commission has adopted an informal practice of sending to the Ministry (for information purposes) a copy of every proposed and final policy.

3. Ministerial Approval of Agreements, Memoranda of Understanding or Arrangements

- The Commission must deliver to the Minister for approval and publish, subject to subsection 143.10(1.1), every agreement, memorandum of understanding or arrangement (MOU) between the Commission and,
 - another securities or financial regulatory authority;
 - any self-regulatory body or organization; or
 - any jurisdiction.
- If an MOU is required to be published, the Commission will provide the Minister with a copy of the proposed MOU together with a copy of the notice that will be published in the Bulletin.
- The Minister may approve or reject the MOU within 60 days after it is published in the Bulletin.
- If the Minister approves the MOU, it comes into effect on the date specified in the MOU, or if no date is specified, on the date approved. If the Minister does not approve or reject the MOU before the expiration of 60 days, the MOU comes into effect on the date specified in the MOU, or if no date is specified, on the expiry of the 60-day period.

4. Commission Regulations

- Concurrently with making a rule, and subject to the approval of the Minister, the Commission may make a regulation that amends or revokes any provision of a regulation made by the LGIC or by the Commission under section 143(3) of the *Securities Act* or section 65(2) of the CFA that in the opinion of the Commission is necessary or advisable to effectively implement the rule.
- The proposed regulation must be made by the Commission and sent to the Minister for final approval.

5. Other

- The Commission provides the Ministry with an overview of rule-making and MOU activity at the Commission on a regular basis.
- WIP meetings are scheduled on a regular basis.