

## **POSITION DESCRIPTION FOR THE COMMISSIONER FOR FINANCIAL ADVISERS**

### **LEGISLATIVE FRAMEWORK**

Section 79(1) of the Financial Advisers Act 2008 (“the Act”) requires that a position of a Commissioner for Financial Advisers (“Commissioner”) be established. The Act further requires that the Commissioner be a member of the Securities Commission [under section 11(3c) of the Securities Act 1978] and sets out the Commissioner’s functions. The Commissioner sits on the Securities Commission but has separate statutory functions set out in the Act. The Commissioner is appointed by the Governor-General on the recommendation of the Minister of Commerce.

The specific functions of the Commissioner for Financial Advisers include:

- appointing members of a Code Committee, which will be responsible for developing a professional code of conduct that will govern authorised financial advisers as well as be a basis for the discipline of the profession [section 80(a)];
- reviewing and recommending for approval, the draft Code of Conduct prepared by the Code Committee, and on an ongoing basis, proposing changes to the Code as required [section 80(b)];
- chairing the Disciplinary Committee [section 80(c)]; and
- carrying out any other functions imposed by legislation [section 80(d)].

This appointment is subject to the Commission’s enabling legislation and the Crown Entities Act 2004. Crown entity board members must reflect an ethos of public service and an understanding of the accountabilities and sensitivities that apply in the State sector.

### **BACKGROUND ON THE SECURITIES COMMISSION**

The Securities Commission (“the Commission”) is an independent Crown entity, in terms of the Crown Entities Act 2004, and is established under the Securities Act 1978. The Commission is New Zealand’s main statutory regulator for the securities and investment industry. Its purpose is to strengthen investor confidence and foster capital investment in New Zealand by promoting the efficiency, integrity and cost-effective regulation of the securities markets. Public awareness, international liaison, consumer protection, and the reduction of financial crime also fall within the Commission’s mandate.

Other legislation the Commission works with includes the Securities Markets Act 1988, the Financial Reporting Act 1993, the Securities Regulations 1983, the Securities Act (Contributory Mortgage) Regulations 1988, and the Securities (Fees) Regulations 1998. The Commission may also consider certain matters arising under the Corporations (Investigation and Management) Act 1989 (in particular, directions to “at risk” corporations and recommendations about statutory management).

The Financial Advisers Act 2008 establishes a new role for the Commission as the regulator for financial advisers.

The board of the Commission must have not less than 5, and not more than 11 members, of whom at least 1 must be a barrister or solicitor with at least 7 years’ practice. The board includes the Chair, and the Commissioner.

Appointments to the Commission are made by the Governor-General on the recommendation of the Minister of Commerce.

Further information on the Commission can be found at [www.seccom.govt.nz](http://www.seccom.govt.nz)

## **ACCOUNTABILITY**

The Commissioner is directly accountable to the Responsible Minister (Minister of Commerce) in respect of the Commissioner's statutory functions under section 80 of the Act, which are as follows:

- to appoint members of the code committee;
- to review and propose changes to a code of conduct for financial advisers;
- to chair the disciplinary committee; and
- to serve as a member of the Commission.

The Commissioner is accountable to the Responsible Minister (Minister of Commerce) for the collective duties of the Commission under sections 49-52 of the Crown Entities Act 2004. For compliance with the individual duties under sections 53 to 57 of the Crown Entities Act, the Commissioner is accountable to the Responsible Minister (Minister of Commerce) and to the Securities Commission.

The Commissioner is accountable to the Responsible Minister (Minister of Commerce), through the Chair of the Commission, in undertaking other duties under the Securities Act 1978 and the Commission's other enabling legislation.

## **SKILLS AND EXPERIENCE REQUIRED FOR THE POSITION**

In recommending a person for appointment as Commissioner for Financial Advisers, section 79(4) of the Act requires that the Responsible Minister (Minister of Commerce) not recommend a person for appointment unless that person is qualified for appointment, having regard to the functions and duties of the Securities Commission, whether under the Financial Advisers Act 2008 or any other enactment. To this end, the Act stipulates that a person is qualified for appointment by virtue of that person's knowledge of, or experience in, the financial adviser industry or any other industry, commerce, economics, law, accountancy, public administration, or securities. This is aligned with the requirements for membership of the Securities Commission under section 11(4) of the Securities Act 1978.

Further, the Crown Entities Act 2004 (CEA) provides that, in recommending a person for appointment as Commissioner for Financial Advisers, the Responsible Minister (the Minister of Commerce) must:

- appoint or recommend a person with the appropriate knowledge, skills and experience to assist the Securities Commission to achieve its objectives and perform its functions [CEA section 29(2)(a)]; and
- take into account the desirability of promoting diversity in the membership of Crown entities [CEA section 29(2)(b)].

In addition to the above requirements prescribed by statute, it would be ideal for the Commissioner for Financial Advisers to:

- have a good understanding of the economic, legal, financial, and regulatory issues critical to decision-making under the new regime for financial advisers;
- have legal experience, or experience in administrative and disciplinary procedures;
- be familiar with the various approaches taken by significant overseas jurisdictions in regulating financial advisers;
- have experience in, or understanding of, the public sector and working within the statutory environment;
- have a breadth of commercial experience, or extensive experience in a senior leadership and management role;
- have the ability to work effectively in a collegial, decision-making environment;

- have the ability to communicate effectively with stakeholders and the media, and manage key relationships with industry and the wider business community; and
- have the interest and enthusiasm needed to contribute effectively to the performance of the Securities Commission throughout their term of membership.

#### **TERM OF APPOINTMENT**

The Commissioner for Financial Advisers may be appointed for a term of up to five years, and may be reappointed. There should be no expectation of a reappointment.

Under the Crown Entities Act 2004, a member of a statutory entity continues in office despite the expiry of his/her term until the member is reappointed; or a successor is appointed; or the member is informed in writing, by the Minister of Commerce, that he/she is not to be reappointed and that no successor is to be appointed at that time.

#### **EXPECTATIONS OF THE ROLE**

The position is expected to be full time. The Commissioner has a statutory decision-making role within timeframes specified under the Financial Advisers Act 2008.

The Commissioner ***chairs the Disciplinary Committee***, which is tasked with considering complaints referred to it by the Securities Commission regarding authorised financial advisers, conducting disciplinary proceedings arising out of a complaint, and when necessary, imposing penalties as a result of disciplinary proceedings.

The Commissioner is also expected to ***establish a Code Committee***, and appoint or discharge its members. The Commissioner has the power to approve, or decline, the Code as proposed by the Code Committee, or require a revision if the Commissioner considers the draft Code inconsistent with the Act. It is the Commissioner's responsibility to recommend and seek the Minister's approval of the Code. To this end, the Commissioner may also propose changes to the Code, and is accordingly expected to be familiar with any issues in the financial adviser market.

As a ***member of the Securities Commission***, the Commissioner for Financial Advisers may be requested by the Chair of the Securities Commission to participate in any of the Commission's divisions<sup>1</sup> to deal with any matters, as appropriate, relating to the exercise of the Commission's functions.

#### **MEETINGS OF THE SECURITIES COMMISSION**

As a member of the Securities Commission, the Commissioner for Financial Advisers is expected to attend the Commission's regular monthly meeting, held on the third Thursday of each month, for about half a day. This meeting usually concludes by 1:00pm although the Commission may sometimes invite a guest for lunch to discuss matters of common interest. The afternoon is often devoted to committee or divisional meetings that may not involve all Commission members.

#### **REMUNERATION**

Fees and allowances are set at a rate specified by the Remuneration Authority. This is personal to the individual holding the position at any one time. The Remuneration Authority will determine remuneration for this role based on the recommended person's knowledge and experience as well as having regard to the position itself.

Annual leave and sick leave arrangements will be in accordance with the Commission's policies.

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<sup>1</sup> One of the features of the Securities Commission's operations is its ability to form "divisions", comprising a minimum of three members, to attend to most matters before the Commission.

## **REMOVAL**

As a member of an independent Crown entity, the Commissioner for Financial Advisers may be removed from office by the Governor-General at any time for just cause, on the advice of the Responsible Minister after consultation with the Attorney-General. "Just cause" in the Crown Entities Act 2004 includes misconduct, inability to perform the functions of the office, neglect of duty, or breach of any of the collective or individual duties (depending on the seriousness of the breach) of a statutory entity as indicated in sections 49-57 of the Crown Entities Act. In accordance with section 30(2) of the Crown Entities Act, a member may also become disqualified from holding office in circumstances, which include being an undischarged bankrupt, being prohibited from being a director under certain Companies Act 1993 provisions, or being convicted of certain offences.

The removal must be made by written notice to the Commissioner with a copy to the Securities Commission. The notice must state the reasons for the removal and the date on which the removal takes effect, which must not be earlier than the date on which the notice is received.

## **RESIGNATION**

The Commissioner for Financial Advisers may resign from office by giving written notice to that effect to the Responsible Minister (with a copy to the Commission). The resignation will take effect only upon the Minister's receipt of the notice, or at any later time which the Commissioner may specify.

## **DUTIES AS A MEMBER OF A STATUTORY ENTITY UNDER THE CROWN ENTITIES ACT 2004**

The Crown Entities Act 2004 provides a consistent framework for the establishment, governance and operation of Crown entities, and outlines accountability relationships between Crown entities, their board members, their responsible Ministers and the House of Representatives. The Crown Entities Act can be located on line <http://www.treasury.govt.nz/crownentities/>

The Crown Entities Act includes collective and individual duties of board members which are broadly as follows:

### ***Collective Duties of Board Members*** (sections 49 to 52)

The collective duties of board members are to ensure the entity acts consistently with its objectives, functions, its Statement of Intent, and Output Agreement and that the entity's functions are performed efficiently, effectively and consistently with the spirit of service to the public, and in a financially responsible manner.

### ***Individual Duties of Board Members*** (sections 53 to 57)

The duties of individual board members are to comply with the Crown Entities Act and the entity's Act; to act with honesty and integrity; act in good faith and not at the expense of the entity's interests; act with reasonable care, diligence and skill; and not to disclose or make use of information that otherwise would not be available to them.

### ***Declaration of Conflicts of Interest***

Members of a statutory entity must be aware of the importance of personal integrity and the need to declare conflicts of interest, either potential or actual.

A conflict of interest arises where a prospective or existing board member has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the Crown entity itself. A conflict of interest will not necessarily bar an appointment, although a serious conflict may mean a candidate is not suitable for appointment, or should resign if a significant and unmanageable conflict arises during the term of appointment.

In accordance with Section 31 of the Crown Entities Act, before a person is appointed to a statutory entity, the person must:

- consent in writing to being a member;
- certify that he/she is not disqualified from being a member; and
- disclose to the Minister the nature and extent (including monetary value if quantifiable) of all interests that the person has at that time, or is likely to have in matters relating to the statutory entity.

The following persons are disqualified from being a member of a statutory entity [section 30(2)]:

- a) a person who is an undischarged bankrupt;
- b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993;;
- c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
- d) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's -
  - (i) competence to manage his or her own affairs in relation to his or her property; or
  - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare;
- e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person;
- f) a member of Parliament;
- g) a person who is disqualified under another Act.