



Investment Advisers vs. Broker-Dealers (Part 2)

In a previous article, the Trinidad and Tobago Securities and Exchange Commission (“TTSEC”) explained the distinct role and function of Investment Advisers’ in the securities market of Trinidad and Tobago (In case you missed it, visit www.ttsec.org.tt). In this week’s article, we conclude with Broker-Dealers.

Similar to other securities regulators, the TTSEC views the dividing line between the activities performed by Broker-Dealers and Investment Advisers, as very essential for the proper functioning of the securities market.

Regulatory Definition

In accordance with Section 4 of the Securities Act, 2012 (“SA 2012”):

“Broker-Dealer” means a person engaging in, or holding himself out as engaging in, the business of— (a) effecting transactions in securities for the account of others; (b) buying or selling securities for his own account and who holds himself out at all normal times, as willing to buy and sell securities at prices specified by him; or (c) such other activities as may be prescribed.

Entities which perform the function of a Broker-Dealer as defined by the SA 2012, are required to be registered under Section 51(1) of the SA 2012. As at December 2019, there were thirty-five (35) registered Broker-Dealers. Broker-Dealers either register in the business classes of:

- **Agent** (arranging a trade between third party buyers and sellers);
- **Principal** (purchasing or selling for its proprietary book); and/or
- **Underwriter** (providing services in connection with the distribution of securities).

Some Broker-Dealers register in a combination of the aforementioned business classes. As at December 2019, over **50 percent** of Broker-Dealers were collectively registered in all three (3) business classes.

The data collected from the TTSEC's Micro-Macro Prudential Reporting Framework ("MMRF") showed that as at December 2019, **42.9 percent** and **31.4 percent** of Broker-Dealers were associated with a non-banking financial group and banking group, respectively; whilst the remaining **25.7 percent** were independent companies. A listing of registered Broker-Dealers can be accessed via our corporate website at www.ttsec.org.tt.

Business Activities

Given the definition above, a Broker-Dealer is permitted to:

- receive transaction-based compensation and share in Broker-Dealer compensation;
- participate in securities transactions at key points in the chain of distribution, including asset/portfolio management on behalf of clients;
- instruct a local or foreign Broker-Dealer to effect transactions on behalf of the Investment Adviser's clients, based on the investment decision made by the client after consideration of the Investment Adviser's advice; and
- have discretionary or non-discretionary control of client portfolios and compensation via investment advisory or asset/portfolio management fees.

Some activities performed by Broker-Dealers include: Repurchase Agreement Selling, Collective Investment Schemes and Wealth Management, as well as Discretionary and Non-Discretionary Trading. Based on the business activities performed by Broker-Dealers, the income recorded on the entity's income statement is mainly income earned from: Interest and Dividends, Brokerage and Commission, fees from Underwriting and Portfolio Management activities.

Registration Requirements

In accordance with By-law 18 of the Securities (General) By-laws, 2015 ("the By-laws"), every applicant for registration, renewal or reinstatement to conduct the business activities of a Broker-Dealer shall:

- a. be a company incorporated in Trinidad and Tobago or incorporated in any other designated foreign jurisdiction and registered in Trinidad and Tobago as an external company under the Companies Act;
- b. have as its primary business an activity for which registration is required under Section 51(1)(a) of the SA 2012;
- c. not have direct or indirect interests which may conflict with, or be likely to affect the conduct and integrity of its business as a Broker-Dealer;
- d. satisfy the minimum capital requirements applicable to its class of business, as set forth in By-law 27(1) of the By-laws;

- e. have at least two (2) brokering representatives in its employ registered under By-law 21 of the By-laws, who each have at least three years' securities related work experience as well as other stipulated qualifications;
- f. pay the relevant fee, which is TT\$25,000.00 for the company and TT\$2,000.00 for each representative at the present time; and
- g. meet the 'fit and proper' requirements as stipulated in the legislation and TTSEC's policies.

A person registered as a Broker-Dealer is deemed to be registered as an Investment Adviser. A Broker-Dealer may perform the activities of an Underwriter provided that the applicant:

- a. has in its employ at least one (1) underwriting representative registered under By-law 21 of the By-laws;
- b. pays the relevant fee, which is \$30,000.00 for the company and TT\$2,000.00 for each representative at the present time; and
- c. meets any other conditions that may be required by the TTSEC.

Continuous Disclosure and Filing Obligations

Broker-Dealers are required to file with the TTSEC the following:

- **Interim and Audited Financial Statements**
- **MMRF Forms**
- **Quarterly Confirmation of Capital Requirements**
- **Conflict of Interest Rule Statement**
- **Renewal of Registration**
- **Notification of Changes**
- **Trading Reports**

Surveillance of the Securities Market and Regulatory Response

The TTSEC has conducted compliance reviews in accordance with Section 89 of the SA 2012, of all Investment Advisers registered with the Commission. Based on these reviews, it was discovered that some Investment Advisers were conducting business activities that are approved to be conducted only by registered Broker-Dealers. To address this issue, in December 2019, the TTSEC issued a Circular Letter to Investment Advisers giving guidance and instructions which set out timelines within which the relevant Investment Advisers were required to do one of the following:

- a. immediately cease carrying out the activities that were outside of their approved remits, i.e., those approved for registered Broker-Dealers;
- b. pending legislative amendments that are in train, apply to the Commission for an exemption from the need to register as a Broker-Dealer for a prescribed period; or
- c. immediately seek registration as a Broker-Dealer.

The Investment Advisers that have been impacted by this regulatory intervention are responding appropriately and the Commission expects that this issue will be resolved satisfactorily within the short to medium term.

While the TTSEC is committed to fostering the development of our securities industry, the responsibility of the Commission to ensure that market actors continue to act within the prescribed legislative framework is, of course, paramount. In instances where entities, deliberately or inadvertently, engage in activity outside of this framework, the TTSEC will take the necessary actions, within regulatory and legislative constraints, to ensure that investors' interests are protected and that these practices are discouraged. In this regard, we continue to encourage Investment Advisers that have not yet responded to our Circular Letter to do so without further delay. The TTSEC will continue to give guidance to registered Investment Advisers, as it reviews its regulatory framework, in an effort to encourage growth in the securities market.

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For more information, please visit our corporate website, www.ttsec.org.tt.
You may also visit our Investor Education website at www.investucatett.com or
connect with us via any of our social media handles below:



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