



Public Access to Documents Filed with the TTSEC

The global financial crisis of 2008 underscored the need for greater emphasis on strengthening investor protection mechanisms by incorporating safety measures into securities regulatory frameworks.

The Securities Act 2012 (SA 2012) enables the Trinidad and Tobago Securities and Exchange Commission (TTSEC)) to protect investors through enhanced:

- (1) Information on disclosure requirements;
- (2) Regulation of institutions, firms, brokers and self-regulatory organisations;
- (3) Prevention of fraud; and
- (4) Sanctions for violations and enforcement action.

The TTSEC, as regulator of the securities market, is charged with the overall responsibility of providing protection to investors from unfair, improper or fraudulent practices; fostering a fair and efficient securities market; and implementing systems and procedures that can reduce systemic risks. One of the ways through which these objectives are achieved is by ensuring that all investors, whether large institutions or individual investors, have access to the same facts about an investment prior to purchasing it, and for the entire duration of time that it is held in their portfolio.

One means of accomplishing this, is through the fulfilment of the requirements under Section 33 of the SA 2012. This section ensures that information, which is critical to making informed investment decisions, particularly as it relates to reporting issuers¹, can be readily accessed.

In this article, we focus specifically on the provisions of Section 33; the types of documents that are available under this Section, and how these documents can be accessed by the public.

Provisions of Section 33

¹ The SA 2012 defines a reporting issuer as an issuer (a) that was immediately before the coming into force of this Act, a reporting issuer under the former act; (b) that is registered or is required to be registered under this Act as a reporting issuer; (c) any of whose securities are listed on a registered securities market; or (d) whose existence continues or who comes into existence following a takeover, business combination or other reorganization involving an exchange of securities in which one of the parties was a reporting issuer at the time of the transaction, but does not include a government entity or international agency.

Section 33 of the SA 2012 requires the Commission to ensure that all disclosures made by reporting issuers are available for public inspection. It stated that:

“(1)....., the Commission shall make all documents or instruments which are expressly required to be filed with it under this Act available for public inspection during the normal business hours of the Commission, subject to such conditions as the Commission may require....”

“(3)....., the Commission may also make all documents or instruments which are expressly required to be filed with it available to the public by posting such documents or such instruments to the Commission’s website....”

There are, however, some disclosures made by reporting issuers that the Commission is prohibited from sharing with the public. Section 33 (2) of the SA 2012 prohibits the Commission from sharing any document that is not in the public interest. According to Section 33 (2):

“The Commission shall not make any information in a document or instrument available for public inspection under subsection (1) if-

- (a) the Commission determines that the disclosure of the information would not be in the public interest;*
- (b) the court so directs; or*
- (c) the Commission determines*
 - i. a person whose information appears in the document or instrument would be unduly prejudiced by disclosure of the information; and*
 - ii. the privacy interest of the person outweighs the public interest in having the information disclosed”*

Documents available for public inspection under Section 33

A critical aspect of making informed investment decisions is the assessment of facts related to a reporting issuer at a particular point in time. Protection of the investor is another critical aspect of the Commission’s mandate. One of the most crucial disclosures that must be made to the Commission by reporting issuers is the material change disclosure. The absence of knowledge of a particular detail such as changes in capital structure or financial results can significantly alter the portrayal of a reporting issuer’s circumstances. Investors must therefore always be aware of these circumstances. The material change disclosure is listed under Section 64 of the SA 2012 and provides:

“.....where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall

(a) within three days of the occurrence of the material change, file with the Commission the required report disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer;

(b) forthwith, and in any event within seven days of the occurrence of the material change, publish a notice in such form as the Commission may require in two daily newspapers of general circulation.....

(c) within seven days of the occurrence of the material change file a copy of the notice published in paragraph (b) with the Commission”

What constitutes a material change²? Quite simply, any change or event that occurs in relation to the affairs of a reporting issuer that would reasonably be expected to impact an investor’s decision making. Under Section 4 of the SA 2012, a material change is defined as follows:

“(a) when used in relation to an issuer other than a collective investment scheme, a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity; or

(b) when used in relation to an issuer that is a collective investment scheme a change in the business, operations or affairs of the issuer, the disclosure of which would be considered important by a reasonable investor in determining whether to purchase, sell or transfer or continue to hold securities of the issuer, and includes a decision to implement such a change made by the directors of the issuer or the directors of the manager of the issuer or other persons acting in a similar capacity;”

Therefore, any change in the business, operations or assets of an issuer or collective investment scheme that would be considered important to an investor must be disclosed to the TTSEC and the investing public within three (3) days of its occurrence. These details can potentially change the circumstances of the reporting issuer and can therefore impact, or even alter, an investor’s decision in relation to a particular investment.

The TTSEC ensures investors have access to these disclosures by ensuring: (1) that the details of the events are submitted to it; (2) that the details are published in the newspaper and (3) that these submissions are made available on our corporate website³.

Material change disclosures are not the only documents that are required for submission under the SA 2012. In fact, Section 33 allows the TTSEC to make available any “document or instrument expressly required to be filed” under the legislation. These include:

- Financial statements;
- Prospectus documents; and
- Annual reports.

² For further reading on material changes see the Commission’s guidance at: <http://www.ttsec.org.tt/content/Material%20Change%20Guidance.pdf>

³ See : <http://www.ttsec.org.tt/filings.php?mid=138>

These documents are required from reporting issuers when taking products to market and are also required as part of reporting issuers' annual filing requirements under the SA 2012.

To inspect any of the documents filed with the TTSEC, a formal request must be made in writing to the Chief Executive Officer. The request is processed and should there be no contravention of the legislation, arrangements are made for the documents to be inspected on the TTSEC's premises.

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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:



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