



**STATEMENT OF SUBSTANCE & PURPOSE ON**  
**TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION'S**  
**DRAFT PORTFOLIO MANAGER BY-LAWS, 2021**

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**BACKGROUND**

Upon the enactment of the Securities Act Chapter 83:02 (“the Securities Act”) in 2012, the Trinidad and Tobago Securities and Exchange Commission (“the Commission”) obtained the power to conduct compliance reviews of its registrants. In exercising this power, the Division of Compliance and Inspections (“C&I”) conducted compliance reviews of all registered Investment Advisers (“IAs”) registered as March 31, 2018. Of the reviews undertaken, staff of the Commission (“Staff”) found that some of these IAs were operating contrary to their registration status, and appeared instead to be carrying out broker-dealer (“BD”) activities, based upon the interpretation of what such activities entailed. Section 4 of the Securities Act provides as follows:

*“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; . . .”*

*“investment advice” means advice with respect to an investment in, or the purchase, sale or holding of, a security”;*

*“investment adviser” means a person engaging in, or holding himself out as engaging in, the business of providing investment advice,.”*

Having regard to the above definitions, Staff are of the view that only registered BDs are permitted to effect transactions on the account of others, while *registered IAs are permitted to only provide investment advice in respect of investment in, purchase, sale or holding of a security.*



Staff however, considered that it may be beneficial to the Securities Market to allow registered IAs to conduct some activities of a “portfolio manager”. Staff conducted research on legislative requirements in other jurisdictions and concluded that the business of a portfolio manager is not conceptualised within the categories of registrants under the Securities Act. To treat with this gap in the legislative framework, the Commission has adopted a two-tiered approach to address the issue:

1. Market guidance and a limited time exemption

In the short term, the Commission issued a Circular Letter in December 2019 to all registered IAs highlighting the activities that require registration as a BD. Further, IAs were informed that the Board may grant exemptions (upon application), on a case by case basis, from the requirement to register as a BD under section 51(1), to registered IAs who are conducting any one or a combination of the following (BD) activities:

- a. instructing a local or foreign broker dealer to effect transactions on behalf of the IA’s clients, based on the investment decision made by the client after consideration of the IA’s advice;
- b. having non-discretionary control of client portfolios and compensated via investment advisory or asset/portfolio management fees.

Registered IAs who are conducting the identified BD activities were given the following options: (1) cease and desist all BD activity, (2) seek exemption for activities outlined above, or (3) apply within 6 months for registration as a broker dealer. The interim regularization exemptions, if granted, are effective for a period of 18 months (which said period commenced on December 3<sup>rd</sup> 2019), or until the appropriate amendments are made to the Securities Legislation.

2. Creation of By-laws for Portfolio Manager

As a long-term measure to support Securities Market development, the Commission sought to develop a new sub-category of BD (portfolio manager), to regulate wealth/portfolio management activities. In accordance with section 148 of the Act, Staff are seeking to create a sub-category of BD, in the form of By-laws for the business of a Portfolio Manager.



These By-laws seek to establish, *inter alia*, the registration requirements, permitted activities, minimum capital requirements and conduct of business rules for portfolio managers.

Staff are of the view that these proposed By-laws are suitable for Trinidad and Tobago's Securities Market and are consistent with international best practice.

### **Legislative Requirements and steps taken to date**

Section 148 provides that the Minister of Finance may, on the recommendation of the Commission, make By-laws as set out in the provision. Section 149 requires that the Commission engage in public consultation prior to effecting a By-law. The Draft Portfolio Manager By-Laws ("these By-Laws") were issued for public comment on June 3<sup>rd</sup> 2020. The comments received were taken into consideration by Staff of the Commission and these By-Laws have been revised and are now being reissued for a further period of public consultation.

## **KEY POLICIES CONTAINED WITHIN THE PROPOSED PORTFOLIO MANAGER BY-LAWS 2021**

### **1. Introduction of a new Sub-Category of Broker-Dealer**

- i. A new sub-category of broker-dealer (a restricted broker-dealer) is introduced in these By-Laws and this person may carry on the business of a portfolio manager only.
- ii. Current broker-dealers can also be registered as a portfolio manager provided that they meet the requirements of a restricted broker-dealer.

### **2. Eligibility Requirements (including Capital Requirement)**

There is a two-tier capital requirement for restricted broker-dealers (portfolio manager):

- i. seventy-five thousand dollars, where a portfolio manager provides non-discretionary portfolio management services only; and
- ii. one hundred and twenty-five thousand dollars where a portfolio manager provides discretionary portfolio management services or a combination of discretionary or non-discretionary portfolio management services.



The following factors were taken into consideration in determining the capital requirement recommended in these By-laws:

- the Portfolio Manager will not be executing trades on behalf of clients and will therefore not be exposed to clearing and settlement risk from acting as an agent and not exposed to market risk from acting as a principal;
- These By-laws require portfolio managers to hold client assets at a third-party custodian, and holding and use of client funds by BDs are regulated by section 107 of the Act;
- Portfolio managers are not exposed to underwriting risk as are BDs who may conduct business as an underwriter; and
- Further, By-law 58 of the Securities (General) By-laws 2015 (“the General By-Laws”) requires segregation of client securities from those of a BD.

### **3. Permitted Activities**

The new sub-category of BD created in these By-Laws cannot exercise the full operational ambit of a BD registered under section 51 of the Act. As such, the activities being allowed under the restricted BD (portfolio manager) category are constrained to activities that are typically within the remit of a portfolio manager.

### **4. Continuous Disclosure**

These By-Laws create financial statement requirements similar to what is contained in the Securities Act and General By-laws.

### **5. Books and records**

These By-Laws create books and record keeping requirements similar to what is contained in the General By-laws for a BD.



## **OVERVIEW OF THE BY-LAWS**

**PART I** of these By-laws, comprising Clauses 1 to 5, outlines the connection with these By-laws to the Securities Act and the Securities (General) By-laws 2015. This Part also gives definitions for key terms that have not previously been defined in the securities legislation and which are pertinent to these By-laws, including definitions of “discretionary authority”, “investment management documents” and “portfolio manager”.

**PART II** of these By-laws, comprising Clauses 6 and 7, outlines the fiduciary duties of a portfolio manager and its senior officers, employees and delegates and the provision of information by the portfolio manager to the Commission.

**PART III** of these By-laws, comprising Clauses 8 to 10, outlines the registration requirements for portfolio managers, registration by the Commission and ongoing registration requirements.

**PART IV** of these By-laws, comprising Clause 11, covers the eligibility requirements for a portfolio manager and establishes the capital requirements and registration, renewal and reinstatement criteria.

**PART V** of these By-laws comprising Clause 12 covers the permitted activities of a portfolio manager.

**PART VI** of these By-laws comprises Clauses 13 to 17 and covers internal controls and the compliance function. Clause 13 outlines the duty of the portfolio manager to establish risk management, internal controls and a compliance function. Clauses 14 and 15 outline the duty of the portfolio manager to establish and maintain internal controls and processes, which are to be verified by an auditor at intervals determined by the portfolio manager having regard to its size and scope of operations. Clauses 16 and 17 outline the duty of the portfolio manager to maintain as far as possible a functional separation of operations where Clause 16 outlines functional separation of a group of companies and Clause 17 outlines internal functional separation.

**PART VII** of these By-laws, comprising Clauses 18 to 20, outlines the continuous disclosure obligations. Clauses 18 and 19 outline maintenance of financial statements. Clause 20 outlines the



duty of the portfolio manager to file with the Commission all other information or documents regarding a portfolio of client assets that is filed with, or delivered to another jurisdiction.

**PART VIII** of these By-laws comprises Clauses 21 and 22 and these outline Books and Records. Clause 21 outlines the general duty of a portfolio manager to keep and maintain records. Clause 22 outlines the duty of a portfolio manager to keep records that give an accurate view of the portfolio manager's holding of client assets, operations, financial position compliance, audit and other aspects of business.

**PART IX** of these By-laws, comprising Clauses 23 and 32, covers conflict of interest. Clauses 23 to 25 outlines the general duties regarding conflicts of interests. Clause 26 outlines general disclosure obligations. Clause 27 outlines proprietary trading and trading by officers and agents of the portfolio manager. Clause 28 outlines the duty of persons to recuse themselves from participation in meetings where a conflict of interest can arise. Clause 29 outlines rebates and soft commissions. Clause 30 outlines the underwriting function. Clauses 31 and 32 outline the general duty with respect to transactions with any related party of a portfolio manager.

**PART X** of these By-laws, comprising Clauses 33 to 49, covers conduct of business. Clauses 33 and 34 outline the general duty of care to clients and discharge of their duties. Clause 35 outlines the segregation of client assets. Clause 36 outlines the use of an independent custodian for the purposes of holding client securities and factors the Commission shall take into account in assessing independence. Clauses 37 to 39 outline investments with portfolio mandates. Clauses 40 and 41 outline guidance on best execution on transactions. Clause 42 outlines proprietary trading by a portfolio manager. Clause 43 outlines the fair allocation of orders of clients by the portfolio manager. Clause 44 outlines investment restrictions. Clauses 45 and 46 outline the need for an investment management agreement in writing with a client and what such an agreement shall contain. Clauses 47 and 48 outlines fees payable by clients. Clause 49 outlines a prohibition against the use of undue influence by a portfolio manager in an investment decision of a client.

**PART XI** of these By-laws, comprising Clauses 50 to 57, relates to outsourcing. Clauses 50 and 51 outline the outsourcing of functions. Clauses 52 and 53 outline the requirement to disclose



outsourcing arrangements to clients. Clause 54 outlines the duty of care with which the portfolio manager shall exercise when acting in the interest of the clients. Clause 55 outlines the due diligence in the selection of the outsourced third party. Clause 56 outlines the contents of the service agreement between a portfolio manager and a third party. Clause 57 outlines the performance assessment of the third party by the portfolio manager.

*NOTE - This Statement of Substance & Purpose accompanies the Draft Portfolio Manager By-Laws dated 22<sup>nd</sup> March 2021*



## **SCHEDULES TO THE BY-LAWS**

### **SCHEDULE I: Fee Schedule**





## **REFERENCES**

1. Securities Act Chap. 83:02;
2. Securities (General) By-Laws, 2015;