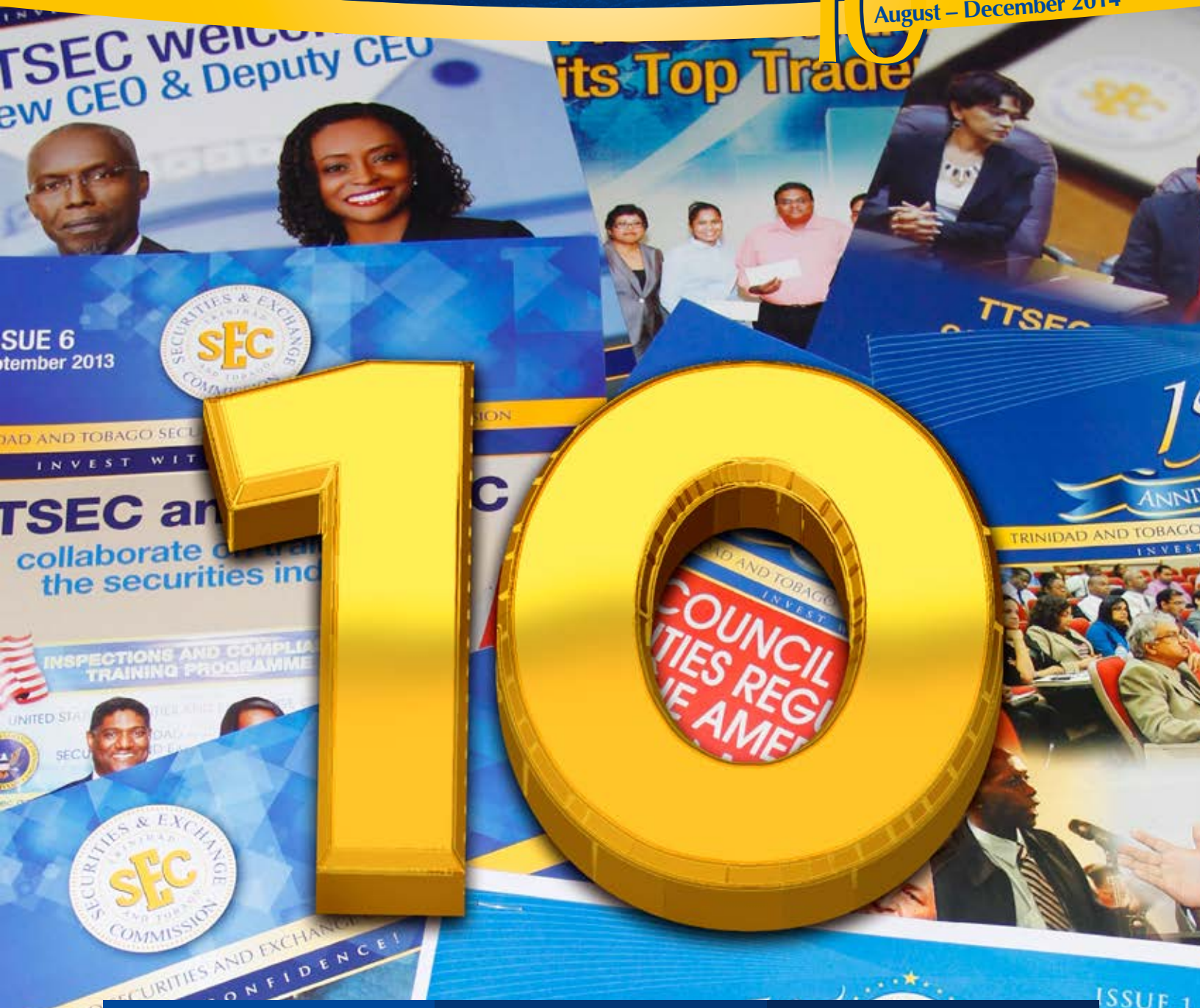
TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

INVEST WITH CONFIDENCE!

10th ISSUE
August – December 2014



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FOREWORD

Dear Valued Stakeholder,

In 2012, the Commission decided to publish a quarterly communiqué with the intention of communicating with stakeholders, market actors and investors. That inaugural issue was launched in May 2012 in commemoration of the Commission's 15th anniversary. This issue, covering the period August to December 2014 is the tenth issue of the newsletter. I must congratulate the Division of Corporate Communications, Education and Information for producing the newsletter and to all the Divisions for consistently contributing articles and essential information.

In this issue, you will find Greetings from the CEO, Mr. Iton and articles on our MoU Signing with the Stock Exchange, the launch of our regional investor education series, public availability of documents, market misconduct, an introduction to our new General Counsel, an AML/CFT update and other pertinent information pieces.

As we approach the end of the year, I extend best wishes for a happy holiday and a prosperous and productive 2015.

I thank you for taking the time to read this issue and I hope that you find the information presented herein, useful.

Patrick K. Watson
Chairman

WHO WE ARE AND WHAT WE DO

Who are we?

The Trinidad and Tobago Securities and Exchange Commission (the Commission) was established as a body corporate, by virtue of the Securities Industry Act of 1995. It is an autonomous agency whose primary roles are the protection of investors and fostering the orderly growth and development of the local capital market.

Our Vision

To be an effective regulator fostering confidence in the securities industry.

Our Mission

To protect investors, promote and enable the growth and development of the securities industry by nurturing fair, efficient and transparent securities markets and mitigating systemic risk.

Greetings from the Chief Executive Officer

In Issue # 9 of this communiqué, I cited the three (3) universal objectives of securities regulation as:

i. Protecting investors
ii. Ensuring that markets are fair, efficient and transparent
iii. Reducing systemic risk

At the recently concluded 39th Annual IOSCO Conference held in Rio de Janeiro, Brazil under the theme "Market-Based Financing for Global Economic Growth: A forward looking approach", Mr. Greg Medcraft, Chairman of Australian Securities and Investments Commission, who was re-elected as Chairman of IOSCO, discussed the role of regulators. He affirmed that "regulators must ensure that markets work fairly and efficiently to supply capital to the economy in order to foster economic growth and development, which ultimately improve the standard of living of citizens in the jurisdiction." The above was my attempt to paraphrase Mr. Medcraft's actual words: the essence of which I believe was properly captured. At the end of the day, our work as regulators must ultimately redound to the benefit of our citizens.

The Securities (Amendment) Act, 2014

On September 10, 2014, the Securities (Amendment) Act was assented to by His Excellency, The President of the Republic of Trinidad and Tobago. This is a very important development since it essentially finalises the core legislation which governs the securities industry. However, there is still much work to be done. The Securities (General) By-Laws 2014 are still to be laid in Parliament, subject to negative resolution. These would replace the 1997 By Laws. Thereafter, all existing By-Laws and Guidelines would have to be updated in order to be consistent with the consolidated Securities Act, 2012. We commit to keep our registrants and the public informed of our schedule to complete this body of work in 2015.

On a very sad note, the Commission mourns the loss of one of its longest serving staff members, Mrs. Carol Noel, who departed this earthly life on November 18, 2014. Carol contributed more than sixteen (16) years of service to the Commission: first, as Information Technology Specialist, then as Lead Technician, Projects and finally in her most recent position as Director (Ag.), Information Management.

In this time of grief, we remain comforted by the fact that we had the opportunity to be blessed with the warmth of Carol's personality and her kindness. Our prayers and thoughts go out to her family and all those who are affected by her untimely passing.

In closing, I use this medium to wish our registrants, the investing public and my colleagues at the TTSEC, a joyful and blessed Christmas and bountiful and prosperous 2015.

C. Wainwright Ston

Chief Executive Officer

Meet our new General Counsel

Ms. Rachel Simms-Sealy assumed duty in the contract position of General Counsel/Corporate Secretary on August 11, 2014 for a three (3) year period. Our new General Counsel/Corporate Secretary is an Attorney-at-Law specialising in banking, corporate finance, trusts and corporate law and has previously worked with a regional financial group, a leading law firm and a state enterprise in Trinidad and Tobago. She has also been a part-time lecturer in the Department of Management Studies at The University of the West Indies for the last four years and holds a Bachelor of Laws degree from The University of the West Indies, a Legal Education Certificate from the Sir Hugh Wooding Law School and a Master of Laws from the University of Toronto.

The General Counsel/Corporate Secretary at the Trinidad and Tobago Securities and Exchange Commission has overall responsibility for the establishment of the Commission's policy on legal matters and serves as the Chief Legal Advisor to the Board on all legal matters and services performed within, and/or involving the Commission.

TTSEC signs MoU with the Stock Exchange

On Wednesday October 22 at its Dundonald Street, Port of Spain office, the TTSEC formalised a Memorandum of Understanding (MoU) with the Trinidad and Tobago Stock Exchange Limited (TTSE). This MoU was drafted based on the desire of both entities to solidify the relationship of the regulator (TTSEC) and the self-regulatory organisation (TTSE) with a view to liaising and/or collaborating meaningfully with each other to achieve joint goals and/or initiatives regarding the regulation and the development of the capital market of our twin-island Republic.

It is expected that this MoU will further facilitate the cooperation

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TTSEC's Chairman, Professor Patrick Watson (right) and Peter Clarke, Chairman, Trinidad and Tobago Stock Exchange Limited formalise the MoU. Looking on are Michelle Persad, CEO of the Trinidad and Tobago Stock Exchange Limited and C. Wainwright Iton, TTSEC's CEO.

of the TTSEC and the TTSE in the achievement of joint development initiatives for Trinidad and Tobago's securities industry and by extension its capital market. This MoU also encouraged the development of a formal committee comprising members of both entities which meets quarterly to treat with matters relating to and affecting both parties and the securities market. A "working group" within each institution was also established to facilitate the ease with which the two parties interact.

This is the fifth agreement that the TTSEC has signed and formalised over the past eighteen months. In June 2013, the TTSEC became a Full Signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) and on January 06, 2014, an MoU with the Central Bank of Trinidad and Tobago was formalised. Both agreements represent a common understanding by the two authorities about how they will consult, cooperate, and exchange information for regulatory enforcement purposes. On January 08, 2014, a Protocol between the Commission and the Securities Dealers Association of Trinidad and Tobago was signed and on April 09, 2014, an MMoU for the Exchange of Information and Cooperation and Consultation with the Caribbean Group of Securities Regulators came into force. This latter agreement aims to facilitate mutual cooperation in the conduct of the regulatory and supervisory functions under the relevant securities laws, regulations and rules in the respective jurisdictions, including specific initiatives, between jurisdictions that will require such co-operation and collaboration.

As the nation's securities regulator, the TTSEC is committed to ensuring that the securities market remains fair, efficient and transparent in an environment where investors can invest with confidence.

Here is some more information about the TTSE:

The TTSE was established in 1981 as part of the general policy to formalise Trinidad and Tobago's securities industry and was incorporated in April, 1997 under the Companies Act. The TTSE, along with its wholly owned subsidiary, the Trinidad and Tobago Central Depository are, to date, the two Self-Regulatory Organizations registered by the TTSEC to operate in our country's securities industry.

Compliance of registrants with Anti-Money Laundering and the Combatting the Financing of Terrorism ("AML/CFT") Laws and Other AML/CFT Guidance - Part 2

The Commission is the Supervisory Authority responsible for ensuring that Broker-Dealers, Underwriters and Investment Advisers comply with laws related to Anti-Money Laundering /Combatting the Financing of Terrorism ("AML/CFT"). In an article in the 8th issue of this communiqué, guidance was provided to registrants on the broad areas that inspection staff will assess during an on-site inspection which will determine the registrant's compliance with the AML/CFT provisions. Since then, additional legislation was assented to, addressing pertinent AML/CFT matters, to assist the Supervisory Authority in fulfilling its mandate. In this article, we will highlight specific areas of the revised legislation and guidelines for implementing a proper AML/CFT risk management system, and our observations thus far in the conduct of the AML/CFT onsite inspections.

The following Acts/Guidelines, which grant wider powers to the Commission (and other Supervisory Authorities) are used in the conduct and assessment of on-site inspections:

1. Anti-Terrorism Act (ATA) 2011 as amended
2. Miscellaneous Provisions Act No 15 of 2014 (POCA, ATA, FIU)
3. Financial Intelligence Unit Regulations (FIU) 2011, including issued guidelines
4. Financial Obligations Regulations (FORs) 2010
5. Proceeds of Crime Act (POCA) 2000
6. Securities and Exchange Commission AML/CFT Guidelines 2012

At present, the Commission is conducting scheduled AML/CFT on-site inspections, the results of which will be used as the basis for an AML/CFT National Risk Assessment which is scheduled to be conducted by the Caribbean Financial Action Task Force (CFATF) in January 2015.

In general, the legislation identifies areas specific to the development and implementation of AML/CFT Compliance programmes and the required knowledge, education, training and experience that a Compliance Officer should possess.

Compliance Programmes

Part II, Regulation 3 of the FORs 2010 ("the Act") outlines the *Training Obligations and Compliance Programme of the Firm or Listed Business.*

The Compliance Programme, should be appropriate for the respective listed businesses and should be designed to include policies, procedures and controls for customer due diligence (CDD) matters, identification and reporting of suspicious activity, the adoption of a risk based approach to testing and monitoring of financial activities. The Compliance Programme must also be approved by the Board of Directors and a compliance audit must be conducted by a suitably qualified auditor. (Regulation 10, FORs 2010)

Part III of the FORs 2010, Regulations 11-23, gives further detail of the specific areas that should be addressed in drafting the Compliance Programme and the implementation of such a programme. These areas include identification procedures for beneficial owners and representative applicants, politically exposed persons (PEPs), trust fiduciaries,

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correspondent banking, and shell banks. The Commission's current AML/CFT 2012 guidelines, which are due to be updated to reflect the changes in the new legislation, give further guidance on establishing systems for AML/CFT.

Registrants are reminded that specific attention and detail are required when collecting information from customers as outlined in the legislation and guidelines. This detail must be incorporated into the firm's Compliance Programme policy document and implemented into the relevant operational processes of the firm.

In conducting our on-site inspections thus far, we have seen instances where customer due diligence (CDD) may or may not be conducted for one-off transactions over $90,000, as required by the FORs 2010 and where beneficial owners are not specifically identified. Firms are required to identify and verify the identity of the owner of any new accounts and perform retroactive due diligence (RDD) on accounts which are currently held. The identification of a PEP and enhanced due diligence (EDD) also seem to be areas of ambiguity and close attention must be paid to the definition of a PEP in the FORs Regulation 20 (1). The Commission's current AML/CFT 2012 Guidelines further state that 'PEPs would entail a more detailed examination into their backgrounds, reputations and financial history. EDD measures together with the monitoring of transactions for unusual or suspicious patterns are crucial to identify and verify the source of funds of PEPs. In the case of foreign PEPs, market actors should consult with the FIU and other sources that identify corrupt or fraudulent persons in order to determine the risk profile of the PEP."

Registrants are also required to develop policies and implement systems to identify and report suspicious transactions and suspicious activities. Regulation 12 (4) of the FORs states that *"where a firm or listed business having monitored transactions undertaken in the course of a business relationship, knows or has reasonable grounds to believe that suspicious activities or suspicious transactions have taken place, these activities or transactions shall be reported to the FIU in accordance with the Act."* In conducting our on-site inspections, some registrants have expressed discomfort with transactions. However, there is little evidence that EDD or monitoring systems were put in place to determine whether the transactions should be reported as a suspicious activity. The FIU has also provided detailed guidance on the reporting of suspicious transactions and PEPs on their website.

Compliance Officer

The Act stipulates that the Compliance Officer should be at a managerial level (i.e. a senior level) within the organisational structure of the firm. Regulation 4 of the Act outlines the functions of the Compliance Officer, who should be trained in accordance with Regulation 6. The Compliance Officer is charged with the responsibility for ensuring that adequate procedures and controls are implemented in accordance with the Compliance Programme. **While it is the ultimate responsibility of the Board of Directors to ensure that the firm is AML/CFT compliant, it is the primary responsibility of the Compliance Officer to coordinate and monitor the compliance programme, receive suspicious transaction reports, maintain records and function as the liaison with the Financial Intelligence Unit (FIU).** (Regulation 4 (1) FORs). It should also be noted that the identity of the Compliance Officer should be treated with the strictest of confidence by members of staff of the institution or business. (Regulation 4 (3) FORs).

In conducting our on-site inspections, the Commission has observed that Compliance Officers may not always possess the authority or level of influence required to implement AML/CFT measures. While the position is approved in principle by the Supervisory Authority (having examined the specific criteria for approving same), the Compliance Officer is expected to have the required authority to change policy, implement systems and give directives to staff about compliance practices.

The training component of the AML/CFT function is an integral part of the Compliance Programme and the Compliance Officer should be adequately and continually trained. **The firms should make arrangements for the training of the directors and all members of staff to equip them with the necessary tools to perform their obligations under the AML/CFT legislation as outlined above.** It is also important for the officer to understand the techniques for identifying any suspicious transactions (FORs Regulation 6). This training should be at all levels relevant to AML/CFT.

The Commission, as the Supervisory Authority, remains committed to ensuring that all registrants have a deep appreciation and full understanding of the AML/CFT requirements and the importance of implementing the relevant systems of internal controls. The Commission's Compliance and Inspections Division will continue further detailed communication through upcoming outreach sessions and during their on-site visits.

Foreign individuals/firms now have the ability to provide investment advice and or brokerage services locally

The Securities Amendment Act, 2014 ("the Amended Act") was assented to by the President of the Republic of Trinidad and Tobago on September 10, 2014. These amendments serve to clarify certain tenets of the Securities Act, 2012 ("SA 2012") and to modify others which may have hindered, instead of fostered growth in the nation's capital markets. This article will focus specifically on the amendments made to sections 4(5) and (6) of the SA 2012 which deal with "the location of trade and investment advice".

Prior to the amendments, the provisions of sections 4(5) and (6) of the SA 2012 deemed that any foreign Broker-Dealer or Investment Adviser conducting transactions or providing advice to a person in Trinidad and Tobago, was providing his service in Trinidad and Tobago regardless of:

- whether the person in Trinidad and Tobago solicited the services of the foreign Broker-Dealer or Investment Adviser; or
- the medium used to obtain those services.

Further, the provisions of section 51 of the SA 2012 state that no person shall carry on business as a broker-dealer, investment adviser, or underwriter unless the person is registered with the Commission. By extension, sections 4(5) and (6) of the SA 2012 therefore imposed restrictions on foreign persons with respect to these persons being able to conduct securities-related business, such as providing investment advice and brokerage services, to persons in Trinidad and Tobago, unless these foreign persons were registered with the Commission in accordance with section 51 of the SA 2012.

Under the SA 2012 therefore, foreign persons were not allowed to provide investment advice, solicit or negotiate business in furtherance of a purchase or sale of a security, by way of mail or courier, telephone, facsimile, internet webpage or electronic correspondence with any individual and/or entity in Trinidad and Tobago regardless of whether or not the individual/entity solicited the services of the foreign person. In other words, if an investor in Trinidad and Tobago requested the services of a foreign broker-dealer and did so via the telephone or internet, then that foreign broker-dealer needed to be registered with the Commission. This was impractical to administer especially in cases where local broker-dealers or investment advisers were seeking to maintain established business relationships with their foreign counterparts.

Given the difficulties mentioned above, sections 4(5) and 4(6) of the SA 2012 were amended. The amendments to these sections, now included in sections 4(5), (6) and (6A) of the Amended Act, allow broker-dealers, investment advisers, underwriters (or their equivalent) that are registered with the relevant regulatory bodies in their home jurisdictions, to conduct business in Trinidad and Tobago under certain circumstances. These circumstances are outlined at section 4(6A) of the Amended Act which states:

"Notwithstanding subsections (5) and (6) a broker dealer, investment adviser or its equivalent registered under the securities laws of a designated foreign jurisdiction may solicit from and effect transactions with or on behalf of-

a) a registrant registered under section 51(1) of this Act; or
b) a foreign person where –
  i. In the case of an individual, the individual is temporarily present in Trinidad and Tobago;
  ii. In the case of an entity, the entity has a branch office located in Trinidad and Tobago;
  iii. The foreign broker dealer, investment adviser or underwriter has a pre-existing relationship with the foreign person before the person entered Trinidad and Tobago; and
  iv. Any advice provided or transactions effected are in relation to foreign securities."

These amendments have now given foreign individuals/firms the ability to provide investment advice and or brokerage services via mail, courier, facsimile, internet webpage or electronic correspondence to registrants registered under section 51(1) of the Amended Act or to foreign persons present in Trinidad and Tobago.

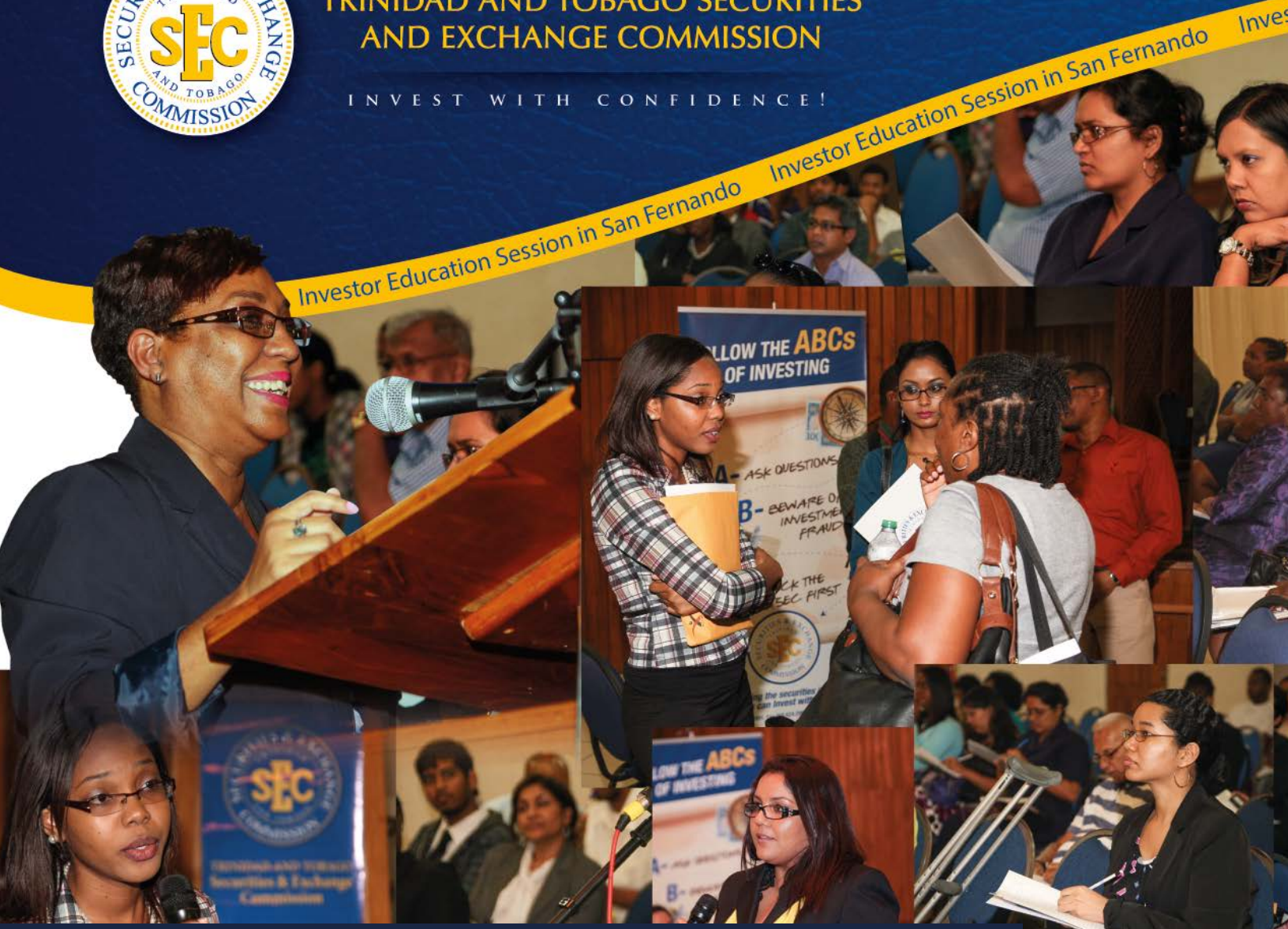
If however these foreign individuals/firms wish to engage the wider population of Trinidad and Tobago, then they must first seek registration with the Commission as either a broker dealer, investment adviser or underwriter. Further, the provisions of sections 4(6) of the Amended Act, now clarify that where persons in Trinidad and Tobago contact foreign broker-dealers, investment advisers, underwriters or their equivalent on their own volition, then those foreign entities will not be deemed to be conducting business in Trinidad and Tobago for which registration under section 51(1) is required.

Mr. Francis Songie (left) President of the Lions Club of Santa Cruz poses with members of the TTSEC's Investor Education team (l-r) Arlene Stephen, Kavena Ramsoobhag and Diké Noel.

TTSEC partners with Lions Club

On Saturday October 25, the TTSEC partnered with the Lions Club of Santa Cruz to conduct an investor education session for its members. This session featured a presentation and Q&A segment with the Club's members. On hand to participate in this presentation were Arlene Stephen, Director, Corporate Communications, Education and Information; Kavena Ramsoobhag, Senior Financial Research Officer, PR&P and Diké Noel, Senior Communications Officer. The Commission always embraces the opportunity to partner with NGOs, CBOs, FBOs and other organisations in order to educate and empower their members so that they can become wiser consumers of financial services.

If you are a member of an organisation or entity and will like to receive a presentation from us, we invite you to write to **ccei@ttsec.org.tt** *or call us at* **624 2991 ext 1259.**



TTSEC hosts free Investor Education Session in San Fernando

One of the functions of the Commission as stipulated in the Securities Act, 2012 is to *"educate and promote an understanding by the public of the securities industry and the benefits, risks and liabilities associated with investing in securities."* In light of this, the Division of Corporate Communications, Education and Information (CCEI) has continued to adopt varied approaches to improve and further develop its Investor Education Programme. The idea of conducting regional investor education sessions was therefore conceived against this backdrop. It is expected that these regional sessions will be held in North, East, Central and South Trinidad as well as on the sister isle of Tobago. The inaugural regional investor education session was held on October 8, 2014 at the auditorium of the San Fernando City Corporation.

This session, which attracted 75 attendees, included a presentation and discussion from Arlene Stephen, TTSEC's Director, Corporate Communications, Education and Information; a presentation from Nicola Vickles of the Trinidad and Tobago Stock Exchange Limited and an interactive discussion with drama group Mark De

Moment Limited. A Question and Answer session was also incorporated and this was led by Kavena Ramsoobhag, Senior Financial Research Officer, Policy Research and Planning Division at the Commission.

These "regional" sessions are intended to provide information on the various investment instruments available in Trinidad and Tobago; investor rights and responsibilities, fraudulent investment schemes (scams) and the ways to avoid them. It is expected that at the end of each session, persons will be more knowledgeable about the local securities market and stock exchange and will be more educated and empowered to make informed financial decisions.

In the upcoming calendar year, the Commission intends to conduct the second "regional" investor in North Trinidad and then proceed to other areas. This second session is expected to be dual pronged: i.e. it will comprise a matinee session with senior secondary school students from Port of Spain and environs and an evening session with adults who work and reside in the vicinity of the capital city.

Public Availability of Documents

The financial crisis of 2008 underscored the need for greater emphasis to be placed on strengthening investor protection mechanisms built into securities regulatory frameworks across the globe.

The recently amended Securities Act 2012 ('SA 2012') therefore focuses on strengthening the Commission's ability to protect investors through enhanced:

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

The Commission, as the nation's securities market regulator, 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 risk. 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 method 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 issuers[1], can be readily accessed.

In this article, we will highlight the provisions of Section 33, the types of documents that are available under this Section and how these documents can be retrieved by the public.

Provisions of Section 33

Section 33 of the Act requires the Commission to ensure that all disclosures made by reporting issuers are available for public inspection. It provides:
"(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 Act 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 surrounding 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**

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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 change[2] ? 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 would be considered a material change. 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;"

This therefore means that 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 Commission 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 Commission ensures that investors have access to these disclosures by ensuring: (1) that the details of the events are submitted to the Commission; (2) that the details are published in the newspaper and (3) that these submissions are made available on the Commissions website[3].

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

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

These documents are required from reporting issuers when taking products to market: they are also required as part of reporting issuers' annual filing requirements under the Act.

To inspect any of the documents filed with the Commission, a formal request must be made in writing to the Chief Executive Officer. The request is processed internally by the relevant department and should there be no contravention of the legislation, arrangements will be made for the documents to be inspected on the Commission's premises. The following contact details are to be used when making requests:

The Chief Executive Officer
Trinidad and Tobago Securities
and Exchange Commission
57-59 Dundonald Street, Port of Spain, Trinidad, WI
Phone: (868) 624-2991 Fax: (868) 624-2995
Email: ttsec@ttsec.org.tt

In subsequent issues, we will continue to highlight different aspects of the SA 2012, its associated By-Laws and other guidelines as we continue to protect the investor and develop a securities market in which we all have confidence.

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.

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

An Insight into Market Misconduct – Part II

In Part I of this series, we identified two main categories of market misconduct: illegal insider trading and market manipulation. This article, the second in the series, delves deeper into the phenomenon of market manipulation by highlighting some key manifestations of such illicit behaviour within the securities markets. We also examine the burgeoning issue of price rigging in securities markets, as well as activities that are wilfully intended to create false trading volumes and artificial prices. The final article in this three-part series will conclude the discussions on market manipulation by addressing the use of fraudulent or deceptive devices, dissemination of misleading information and excessive trading in securities.

Why are markets manipulated?

Market manipulators seek to distort the natural forces of demand and supply and thereby profit or avoid a loss from artificial movements in the price and volume of securities. Manipulative behaviours may move security prices either up or down so that the perpetrators may derive a benefit from prices that do not reflect the true economic value of the security.

The underlying motivation behind such actions vary, but may generally be captured in one of the following broad categories:

(i) **Transactions related –** manipulators benefit from moving prices in a direction that will result in capital gains in the securities held, such as, pushing up the price of securities in which they hold long positions or driving down the price of securities in which they hold short positions (A long position is the ownership of an asset, such as a security, giving the investor the right to transfer ownership to someone else by sale or by giftwhile a short position has to do with stock shares that an individual has sold short and has not recovered as at a particular date);

(ii) **Contract, Deal or Correlated-Market related –** manipulators benefit when a security's price moves in a direction that is favourable in relation to another position held in a contract, deal or correlated market for that security. For example, where a long position is held in a futures contract, a manipulator may seek to push up the price of the underlying security in the equities market; and

(iii) **Reporting related –** manipulators benefit from impacting prices of securities held in portfolios under their management. For example, pushing up the prices of securities held within the portfolio will inflate the reported value of the overall portfolio to relevant stakeholders.

While no securities market is immune to manipulation, market manipulators frequently target emerging markets, which are often plagued by illiquidity, lower investor sophistication and asymmetrical information. These conditions prove ideal for misleading and misinforming investors and engaging in trading activity intended to trick other market participants.

How are markets manipulated?

Perpetrators of market manipulation offences employ several techniques in the hope of achieving illicit gains. The techniques used to manipulate markets tend to vary based on the specific market's state of development.

The following is a non-exhaustive list of some of the more commonly reported techniques through which market manipulators create false or misleading appearances of trading activity and distort the prices of securities:

1. **Matched Orders and other Pre-arranged Trades**

This occurs when counterparties to a trade collude by entering *buy and sell* orders that are paired in terms of price, time stamp and volume such that they attain similar queue priority and trade with each other. These types of transactions are considered manipulative where there is no economic benefit to be gained from the trade, thereby giving a false impression of activity in the security, or where the transactions are merely executed to transfer securities between related parties.

2. **Wash Sales**

This occurs when trades are executed on an Exchange but there is no change in the beneficial ownership of the securities traded, thereby relaying a false impression of market activity in that security.

3. **Spoofing**

This occurs when a large *buy/(sell)* order is entered on one side of the market as a ruse to encourage other market participants to enter other buy/(sell) orders on that side of the market. The activity of the other market participants bids up/(down) the price of the security. The first buy/(sell) order is then cancelled, and another sell/(buy) order is subsequently placed on the opposite side of the market. The manipulator will therefore benefit

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from having used the initial transaction to influence a movement in the price of the security in his/her favour, such that the final transaction would be profitable.

4. **Marking-the-Close**

This involves executing *buy and sell* orders right before the close of the stock market in an attempt to impact the closing price of the security. These transactions may be intended to improve the valuation of portfolios at the close of market or send false signals to the market with respect to the expected movement in the price of the security, thereby artificially increasing or decreasing the price of the security.

5. **Cornering the Market**

This occurs when a large portion of a security is acquired, with the intent of manipulating its price. The active purchasing bids up the price of the security and attracts demand from other investors, thereby compounding the effect on its price. The manipulator then benefits from selling the security at the higher, artificially created price.

How does the Securities Act, 2012 ("the SA 2012") deter market manipulation?

The list of manipulative behaviours shown above, occur in both developed and emerging markets worldwide. In drafting the SA 2012, the Trinidad and Tobago Securities and Exchange Commission ("the Commission") incorporated provisions to deter such manipulative behaviours. Sections 91, 92 and 94 are the specific provisions in the SA 2012 which address the issues of false trading activity and the creation and maintenance of artificial prices.

Section 91(1) forbids persons from either directly or indirectly causing or engaging in transactions that create a false or misleading appearance of trading activity, while 91(2) prohibits transactions that create or maintain an artificial price in a security. Further, Section 91(3) prohibits purchases and sales of securities where beneficial ownership does not change and orders matched by price and volume, with the underlying intent of misleading the market.

Section 92 of the SA 2012 addresses the issue of price rigging. More specifically, section 92(1) prohibits persons from entering into transactions wherein the beneficial ownership does not change, and where there is an underlying intention to impact or maintain an artificial price in the security. Section 92(2), on the other hand, forbids persons from utilizing any fictitious or artificial devices with a similar underlying intention.

The provisions of Section 94 of the SA 2012 are similar in that they prohibit persons from entering into transactions that they know or reasonably ought to know, will result in or lead to a misleading appearance of trading activity or the creation of an artificial price in a security.

The SA 2012 differs from its preceding legislation in that the burden of proof has shifted from the regulator to the accused.

Where a person's trading behaviour is presumed to be manipulative, said person is required to prove their actions were not done with the intention of creating a false or misleading appearance of activity or creating or maintaining an artificial price.

In instances where the person is found to be in breach of the aforementioned provisions, **Section 99 of the SA 2012 states that said person is liable on conviction on indictment to a fine of $2 million and imprisonment for five years. Further Section 156A of the SA 2012, as amended on September 10, 2014, grants the Commission the power to impose an administrative fine of up to $500,000 for such breaches.**

How does the Commission identify manipulative behaviours?

While the legislative provisions outlined above, equip the Commission with the legal power to investigate and penalise occurrences of market manipulation offences, these laws are complimented by the active surveillance efforts of the staff in identifying same.

This is achieved via routine and causal reviews of trading activity on the Trinidad and Tobago Stock Exchange Limited ("the Stock Exchange"). Daily and periodic reports are generated and thoroughly examined for trading irregularities. Tips, complaints and referrals are also considered in investigating suspicious trends in trading activity.

In identifying manipulative behaviours, the staff of the Commission usually seek to identify the following types of activity, which may trigger further examination or the launch of a formal investigation:

1. Unusual trading activity which may appear to have no economic basis;
2. Trading activity involving no apparent change in beneficial ownership; and
3. Irregular short/medium/long term buying and selling activity by a specific account or by a specific client via several accounts.

The above list is by no means exhaustive. Trading patterns on the Stock Exchange are considered in the context of the total information available about a particular security, such as, the issuer's financial performance, material news and events related to the issuer or economy, as well as any relevant corporate actions.

For more information on this issue, please send an email to **ccei@ttsec.org.tt** or contact the Division of Market Regulation and Surveillance at **624 2991.**

Enforcement Pursuant to Section 150 of the Securities Act 2012

The Commission has a mandate, by virtue of the provisions of The Securities Act 2012 as amended ('the Act"), to provide protection to investors from unfair, improper or fraudulent practices, foster fair and efficient securities markets and instill greater confidence in the securities industry in Trinidad and Tobago.

Our enforcement programme is ultimately responsible for the enforcement of local securities laws and consequently employs appropriate, but vigorous criminal, civil, and regulatory tools to enforce these laws. The Legal Advisory and Enforcement Division is the Division which spearheads this programme and recommends the commencement of investigations of securities law violations by the Commission.

Section 150 (1), of the Act empowers the Commission to appoint a person to conduct investigations which it considers expedient to:

(a) ascertain whether any person has contravened, is contravening or is about to contravene the Act.
(b) assist in the administration of securities laws or the regulation and supervision of the securities industry in another jurisdiction.

When a person is appointed by the Commission pursuant to Section 150(1) of the Act, the subsequent investigation is conducted in a highly confidential manner in order to determine whether any securities law has been violated. **Facts are investigated to the fullest extent possible through formal and informal inquiry, witnesses are interviewed, brokerage records are examined and trading data is reviewed. The investigation team may also employ other methods that it may deem necessary to execute this function.**

Section 150 (2) further empowers the investigator with the authority, subject to constitutional limitations, to compel the disclosure of information. Under this provision, the investigator is authorised to examine and enquire into, among other things, trades, communication, loans, borrowings payments, assets, liabilities and other undertakings. Constitutional limitations require that the investigation is authorised by law and undertaken for a legitimate purpose; the information sought therefore must be relevant; the demand for information ought to be specific and not unreasonably burdensome; and the information which is being sought, must not be privileged.

With a formal order of investigation, the investigator may either compel a person, by written notice pursuant to Section 151 (1) (b) to produce books, records or other documents which are relevant to the investigation or may proceed pursuant to Section 150 (4) and enter the place of business of any person or entity and examine any such books, records or other documents. However, such entry can, , only take place during normal business hours, with the consent of the occupier or an order of the country's High Court.

Following an investigation, pursuant to Section 150 (6), the investigator will present his/her findings, with recommendations, to the Commission for its review. The Commission therefore has direct prosecutorial authority to enforce securities legislation and as such can authorise its staff to bring an administrative action against the alleged offender or file a case in the Civil Court.

Pursuant to Section 150 (7) of the Act, the Commission may also publish a report or other information concerning any investigation. Should the Commission decide to pursue this option, it must first *"provide a person against whom an adverse finding is to be made with fourteen days notice of the findings and an opportunity to be heard in person or by counsel".* If the publication is likely to cause a person to receive adverse publicity, where practicable, the Commission ought to provide such person *"with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication".*

Common violations that may lead to investigations by the Commission include;

- **Misrepresentation or omission of important information about securities;**
- **Manipulating the market prices of securities ;**
- **Stealing customer's funds or securities;**
- **Violating broker-dealers' responsibility to treat customers fairly;**
- **Insider trading (violating a trust relationship by trading on material, non-public information about a security);**
- **Selling unregistered securities.**

For more information about this function and other functions of the Commission, we encourage you to visit our **website www.ttsec.org.tt** or send an email to **ccei@ttsec.org.tt**

TTSEC participates in 39th Annual IOSCO Conference

The 39th Annual Conference of the International Organization of Securities Commissions (IOSCO) was held in Rio de Janeiro, Brazil from September 28 to October 2, under the theme "Market-Based Financing for Global Economic Growth: a forward looking approach". This 2014 Annual Conference attracted approximately 600 participants including Caribbean Group of Securities Regulators (CGSR) members and provided the opportunity for IOSCO members to meet and discuss important issues related to world securities and futures markets.

Some of the main outcomes of the IOSCO Board meeting, which was convened on September 30 and October 01 included:

-Capacity Building: **IOSCO remains committed to supporting emerging market members in growing their economies and implementing global standards through capacity building. The Capacity Building Resource Committee's main objective is to mobilise resources from IOSCO members as well as from philanthropic foundations and other public sector sources for the delivery of capacity building priorities identified by the Growth and Emerging Markets (GEM) Committee.** The IOSCO General Secretariat is in the process of formalising a provisional institutional framework for establishing a five (5) year pilot phase for developing Regional Capacity Building Hubs (Pilot Hubs), which are intended to deliver capacity building activities within the growth and emerging market regions. It is expected that these capacity building activities will include the development and delivery of seminars, workshops and other training activities hosted by IOSCO members.

-Long Term Financing: The Task Force on Long Term Financing presented the key findings of their report which examined recent examples of capital market solutions in developed and emerging markets which have contributed to the financing of small and medium-sized enterprises (SMEs) and infrastructure projects. The market-based financing solution which was highlighted, focused on four market segments: equity capital markets, debt capital markets, securitization and pooled investment vehicles.

-Enhanced Multilateral Memorandum of Understanding (EMMoU): In May 2013, the Screening Group (SG) began discussions on the best approach to identify a new standard which will improve upon the existing MMoU. **In order to foster greater cooperation between signatories, the SG concluded that it was necessary to raise the bar in terms of baseline MMoU standards without compromising on the principles which have made the MMoU such a valuable tool for cooperation and enforcement of securities laws and regulations for IOSCO and its members.** The main impetus behind the efforts to enhance the MMoU are as follows:

i. *Enhancements must be aspirational, yet achievable*
ii. *Enhancements must be immediately accessible, for those who are capable*
iii. *The EMMoU should build upon the current MMoU, in both fundamental and innovative ways.*

The Board further agreed that the transition period from the current MMoU to the EMMoU may be approximately ten (10) years with different timeframes for different provisions. The main challenge is to propose solutions which will be acceptable to those who are able to rapidly sign the EMMoU without hindering collaboration under the current MMoU, for those signatories who might not be able to comply with all of the enhanced requirements.

One of the contentious issues has been the new minimum requirement for EMMoU signatories to be able to freeze assets on behalf of other signatories. Of particular concern are the issues surrounding the existence of significant legal impediments which can hinder the ability to comply with this requirement in the short term. However, alternatives are being explored such as implementing a robust requirement for members to assist a requesting authority to the fullest extent possible.

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On Thursday 8th May 2014, TTSEC was re-elected as the second representative of the Inter-American Regional Committee (IARC). This role secured the TTSEC's position on the newly constituted IOSCO Board (2014-2016) during the IOSCO Annual Conference. The Board also re-elected Mr. Greg Medcraft as Chairman of the Board and Mr. Howard Wetson, Chair of the Ontario Securities Commission, as the Board's Vice Chair. After his re-election, Mr. Medcraft stated that he remains committed to working with the Board *"with a clear focus on our work in building trust and confidence in the global markets we regulate".*

The 40th Annual IOSCO Conference is scheduled for 14th-18th June 2015 and will be hosted by the Financial Conduct Authority in London, UK.

TTSEC's Deputy CEO, Lystra Lucillio and Arlene Stephen, Director, Corporate Communications, Education and Information flank the visitors from Tobago.

Tobago students visit the TTSEC

On October 20, the Tobago House of Assembly's (THA's) Division of Finance and Enterprise Development arranged for nine senior secondary students from select schools across Tobago, four teachers and staff of the THA to visit the Commission in the observance and commemoration of Finance Week. These students, who represented Mason Hall Secondary, Pentecostal Light & Life Foundation High School, Scarborough Secondary School and Roxborough Secondary School, were exposed to financial literacy through a dynamic session which was led by the TTSEC's Director, Corporate Communications, Education and Information, Arlene Stephen. During this session, they were introduced to the following:

- **Why Save or Invest**
- **Activity: completion of a Goal Card by students**
- **Saving & Investing Calculator**
- **Budgeting**
- **Saving Options**
- **Investment Products**
- **Financial Tips for Teens**
- **Investment Scams**

In addition to the financial education session, attendees were also provided with information on career paths at the Commission. This presentation

Students complete their "Goal Card" during their visit to the TTSEC.

was facilitated by Ria Badree, Human Resource Officer and proved to be quite thought provoking and engaging as the students linked their goals and desires to their career paths.

This visit was mutually beneficial as the teachers were interested in having similar presentations and visits for their respective schools and the staff of the THA envisioned a similar type of outreach programme for the staff of the Tobago House of Assembly as well as the wider Tobago public.

TTSEC partners with the National Training Agency to train and mentor the youth

TTSEC CEO, C. Wainwright Iton (right) and Deputy CEO, Lystra Lucillio says goodbye to the OJTs who spent the July/August vacation at the Commission.

During the period July-August 2014, the Commission was assigned seven (7) On-the-Job Trainees (OJTs) from the National Training Agency, an agency of the Ministry of Tertiary Education and Skills Training. The seven Trainees were assigned to the Legal Advisory and Enforcement Division; Disclosure, Registration and Corporate Finance Division; Policy Research and Planning Division; Market Regulation and Surveillance Division, Corporate Services Division and the Human Resource Management Department.

These assignments allowed them to be coached and mentored by experienced employees during the period of their assignment. At the end of their tenure, the Commission presented them with tokens of appreciation and wished them all success in their future endeavours. In his brief remarks to the OJTs, TTSEC's Chief Executive Officer, C. Wainwright Iton indicated that he hoped that they "now have a greater understanding of the work of the TTSEC and the importance of the securities market as a major contributor to the country's GDP." He also stated that he hoped that they will consider the TTSEC as a viable career option when they completed their tertiary education studies.

Financial Planning Tips

The start of a new year is always a good time for you to become more serious about your finances.

Here are some helpful tips:

- Learn self-control;
- Minimise excessive or unnecessary spending;
- Start an emergency fund;
- Begin thinking of the retirement years; and
- Explore your investment options with a registered financial advisor and start investing

Have a Happy Holiday and a Prosperous and Productive 2015

From the Board of Commissioners, Management and Staff of the TTSEC

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A production of the Corporate Communications, Education and Information Division

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