

August 2, 2012

SECURITIES BILL, 2012

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August 2, 2012

No. X of 2012

First Session Tenth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the securities industry in Trinidad and Tobago and to reduce systemic risk and for other related matters

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THE SECURITIES BILL, 2012

**Explanatory
Notes**

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of the Securities Bill, 2012, *inter alia*, is to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the securities industry in Trinidad and Tobago; reduce systemic risk and for other related matters.

Clauses 1 to 4 would provide for the short title, commencement, the Act's inconsistency with the Constitution and the interpretation provisions, respectively.

Clause 5 seeks to establish the Securities and Exchange Commission as a body corporate.

Clause 6 would outline the functions of the Commission.

Clause 7 would address the powers of the Commission.

Clause 8 would address the delegation of powers by the Commission.

Clause 9 would provide for the custody and use of the seal.

Clause 10 would address the constitution of the Commission.

Clause 11 would treat with the issue of disqualification for appointment as a Commissioner.

Clause 12 would provide for the term of office and remuneration.

Clause 13 would provide for the protection of the Commissioner, employees or agents against legal action.

Clause 14 would provide a confidentiality provision.

Clause 15 would provide for meetings.

Clause 16 would provide for committees.

Clause 17 would provide for minutes.

Clause 18 would provide for declaration of interest by Commissioners.

Clause 19 would require the Commission to consult with the Central Bank and other agencies.

Clause 20 would provide for the annual report.

Clause 21 would provide for the Commission's regulation of its own business.

Clause 22 would provide for the appointment of the General Manager and Chief Executive Officer.

Clause 23 would provide for the appointment of experts.

Clause 24 would provide for the appointment of other staff to the Commission.

Clause 25 would address the transfer of officers to the public service and vice versa.

Clause 26 would address the transfer on secondment.

Clause 27 would identify the funds and resources of the Commission.

Clause 28 would highlight the financial powers of the Commission.

Clause 29 would outline how the Commission should apply funds to defray expenditure.

Clause 30 would address the use of cash deposits and payments.

Clause 31 would deal with accounts and audit.

Clause 32 would provide for filing of documents with the Commission.

Clause 33 would provide for the availability of filed documents to the public.

Clause 34 would provide for the registration of the Stock Exchange and the Central Depository.

Clause 35 would provide for rules of the Stock Exchange.

Clause 36 would provide for the registration of self-regulatory organizations.

Clause 37 would outline the registration requirements for self-regulatory organizations.

Clause 38 would outline the application for registration procedure.

Clause 39 would require all applicants for registration as self-regulatory organizations to have obligatory rules of governance.

Clause 40 would outline the procedure to be adopted by self-regulatory organizations to amend its rules of governance.

Clause 41 would provide for the Commission to require a self-regulatory organization to change its rules of governance in certain circumstances.

Clause 42 would impose a restriction on the imposition of a fee schedule by self-regulatory organizations on its members.

Clause 43 would provide for membership to a self-regulatory organization.

Clause 44 would require a self-regulatory organization to file a copy of any decision it makes under section 43.

Clause 45 would provide for the delisting of securities.

Clause 46 would provide for the appointment of an auditor.

Clause 47 would provide for a contingency fund to be maintained by the securities exchange.

Clause 48 would provide for sanctions against self-regulatory organization.

Clause 49 would provide for complaints to be lodged with the Commission against a self-regulatory organization and market actors.

Clause 50 would provide for the resolution of disputes between members of self-regulatory organizations.

Clause 51 would outline the registration requirements under the Act.

Clause 52 would require the Commission to register registrants under the Act.

Clause 53 would provide for a transitional period of one year from the date of proclamation of this Act, after which all registrants are required to be registered under this Act.

Clause 54 would impose certain restrictions on substantial share-holders of registrants.

Clause 55 would provide that the termination of employment of an individual by a registrant will also act as a suspension of the registration of that individual.

Clause 56 would outline the process for the application for registration.

Clause 57 would provide for suspension of registration, warning and censure.

Clause 58 would provide for the revocation of registration.

Clause 59 would provide for the surrender of registration.

Clause 60 would create an offence for misrepresentation in filing any document with the Commission.

Clause 61 would provide for the registration statements of issuers.

Clause 62 would provide for the registration of securities. Clause 63 would require reporting issuers to file annual reports with the Commission.

Clause 64 would subject reporting issuers to timely disclosure of material changes.

Clause 65 would require reporting issuers to file annual financial statements with the Commission.

Clause 66 would also require reporting issuers to file interim financial statements.

Clause 67 would provide for the filing and delivery of financial statements.

Clause 68 would provide for proxy solicitation.

Clause 69 would provide exemptions for certain foreign issuers.

Clause 70 would create an offence.

Clause 71 would provide for the Commission to order that a reporting issuer cease to be a reporting issuer.

Clause 72 would provide definition sections and construction of Part VI.

Clause 73 would provide for the filing of the prospectus.

Clause 74 would prohibit advertising.

Clause 75 would deal with the delivery of the prospectus.

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Clause 77 would provide for the amendment of the prospectus.

Clause 78 would provide that the consent of the expert who prepared a report in respect of a prospectus must be obtained.

Clause 79 would provide for exemptions in certain circumstances.

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Clause 82 would provide for the receipt for the prospectus.

Clause 83 would provide for the cessation of distribution.

Clause 84 would create an obligation to file a distribution statement with the Commission.

Clause 85 would create an exemption from stamp duty.

Clause 86 would require that a report be filed of all trades conducted other than through the Securities Exchange.

Clause 87 would provide for record keeping by market actors.

Clause 88 would require market actors to provide the Commission with information.

Clause 89 would provide for compliance reviews.

Clause 90 would provide for the issuance of compliance directions.

Clause 91 would deal with false trading and artificial prices in a securities market.

Clause 92 would address the issue of price rigging.

Clause 93 would deal with the dissemination of information containing a misrepresentation.

Clause 94 would deal with securities market manipulation.

Clause 95 would deal with the use of fraudulent or deceptive devices.

Clause 96 would address excessive trading.

Clause 97 would prescribe the standard of conduct for registrants.

Clause 98 would impose restrictions on recommendations.

Clause 99 would create an offence.

Clause 100 would prohibit the sale or purchase of securities by certain persons.

Clause 101 would prohibit the disclosure of material non-public information.

Clause 102 would create an offence.

Clause 103 would declare transactions not void or voidable.

Clause 104 would create exceptions to sections 100 and 101.

Clause 105 would limit defences in certain instances.

Clause 106 would outline certain presumptions in this Part.

Clause 107 would deal with client accounts.

Clause 108 would require registrants to send documents to beneficial owners.

Clause 109 would require confirmation to be sent to customers.

Clause 110 would require notification to the Commission. Clause 111 would restrict trading at residences.

Clause 112 would seek to control advertising.

Clause 113 would require the seller of a security to declare ownership.

Clause 114 would require a declaration as to short position where a person who places an order for the sale of a security is not the beneficial owner.

Clause 115 would prohibit the use of the name of another registrant.

Clause 116 would provide for representation as to registration.

Clause 117 would provide that approval by the Commission not be advertised.

Clause 118 would provide for the application of Part VIII.

Clause 119 would provide for definitions of terms used in Part VIII.

Clause 120 would provide for the use of a clearing agency as registered owner of security.

Clause 121 would provide for the transfer of securities through a clearing agency.

Clause 122 would provide for transfer by record entry participants.

Clause 123 would provide for blocked accounts.

Clause 124 would provide for effecting pledges by record

entry.

Clause 125 would provide for effecting blocked accounts by record entry.

Clause 126 would treat with situations where a security might be subject to a restriction.

Clause 127 would provide for blocking an account by order of the Court.

Clause 128 would outline limitations on the rights of participants.

Clause 129 would provide for the withdrawal of security. Clause 130 would outline the issuer's duty to request the list of participants and beneficial owners.

Clause 131 would treat with access to clearing agency records.

Clause 132 would treat with the eventuality of an incorrect entry by a clearing agency.

Clause 133 would deal with liability in extraordinary circumstances.

Clause 134 would provide for an application to be made to the Court to rectify records.

Clause 135 would provide for the participation by financial institutions to deliver securities held into the custody of clearing agencies.

Clause 136 would provide for connected persons to report to the Commission.

Clause 137 would provide for the disclosure of beneficial interest in share capital.

Clause 138 would provide for offences.

Clause 139 would highlight liability for misrepresentation in a prospectus and damages.

Clause 140 would treat with action by purchasers for rescission where there has been misrepresentation in a prospectus.

Clause 141 would outline the liability for misrepresentations in other offerings.

Clause 142 would set certain limitations in respect of sections 139, 140, 141.

Clause 143 would impose civil liabilities for trading contrary to section 100.

Clause 144 would impose civil liabilities for market misconduct offences.

Clause 145 would allow for the Commission to seek leave of the Court to intervene in an action.

Clause 146 would allow the Commission to make Guidelines

Clause 147 would provide for consultation on proposed Guidelines

Clause 148 would provide for the Minister to make By-laws on the recommendation of the Commission.

Clause 149 would provide for the publication of proposed By-laws.

Clause 150 would outline the power of the Commission to order cessation of trading or distributions.

Clause 151 would provide for the Commission to make orders in the public interest.

Clause 152 would provide for the Commission to order that penalties be paid to the state.

Clause 153 would provide for market misconduct proceedings.

Clause 154 would provide for conduct of hearings by the Commission.

Clause 155 would provide for appeals for review *re*: section 8 or 43.

Clause 156 would provide for appeals to Court of Appeal.

Clause 157 would provide for investigations by the Commission.

Clause 158 would provide for the examinations the affairs of market actors.

Clause 159 would provide for restrictions on withholding or concealing evidence or documents.

Clause 160 would provide for the protection of persons providing information

Clause 161 would provide for the Court to make orders for enforcing compliance.

Clause 162 would deal with the appointment of receivers.

Clause 163 would prescribe general offences.

Clause 164 would indicate the liability of directors.

Clause 165 would provide for costs of investigations

Clause 166 would provide for repeal and transition.

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the securities industry in Trinidad and Tobago and to reduce systemic risk and for other related matters

[, 2012]

Preamble

WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:—

**PART I
PRELIMINARY**

Short Title

1. This Act may be cited as the Securities Act, 2012.

Commencement

2. This Act comes into operation on a date to be fixed by the President by Proclamation.

Act inconsistent with
Constitution

3. This Act has effect even though inconsistent with sections 4 and 5 of the Constitution

4. (1) In this Act—

“approved foreign issuer” means a foreign issuer—

- (a) that is at the relevant date a reporting issuer (or equivalent) under the securities laws of a designated foreign jurisdiction;
- (b) that has been for the three years immediately preceding the relevant date a reporting issuer (or equivalent) under the securities laws of a designated foreign jurisdiction;
- (c) that is subject to foreign disclosure requirements; and
- (d) that has a class of securities listed for trading on a recognized stock exchange in a designated foreign jurisdiction;

“approved rating” means an investment grade rating or higher from a designated rating organization;

“asset-backed security” means any security that is primarily serviced by the cash flows of a distinct pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, together with any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

“associate”, when used to indicate a relationship with any person, means—

- (a) a body corporate of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, carrying more than twenty per cent of the voting rights;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate, in which that person has a substantial beneficial interest or in respect of which he serves as a trustee, legal representative or in a similar capacity;

(d) a spouse or child of that person; or

(e) a relative of that person if that relative has the same residence as that person;

Chap. 79:09

“bank” has the meaning assigned to it in the Financial Institutions Act. ;

“beneficial owner” means a person who has beneficial ownership of a security;

“beneficial ownership” means direct ownership and includes ownership through a trustee, legal representative, agent or other intermediary, and a person shall be deemed to have beneficial ownership of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the underlying security, or an option or right to purchase the underlying security or securities convertible into the underlying security –

(a) under all circumstances, or

(b) by reason of the occurrence of an event that has occurred and is continuing;

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 123 of this Act;

“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 and 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

Chap. 79:09

“business day” means any day on which institutions licensed under the Financial Institutions Act are open for the conduct of business in Trinidad and Tobago;

“By-law” means any by-law made by the Minister on the recommendation of the Commission pursuant to section 148 of this Act;

“Central Depository” means the Trinidad and Tobago Central Depository Limited;

“clearing agency” includes the Central Depository and any person that—

- (a) maintains records of trades of securities for the purpose of settling claims for money and securities;
- (b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;
- (c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry;
- (d) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities;

(e) provides centralized facilities for the clearing of trades and other transactions in securities, including facilities for comparing data in respect of the terms of settlement of a trade or transaction; or

(f) provides centralized facilities as a depository of securities,

but does not include a broker-dealer or financial institution acting exclusively in the ordinary course of its customary business;

“Chairman” means the Chairman of the Commission appointed under this Act;

Chap. 45:55

“cohabitant” has the meaning assigned to it in the Cohabitation Relationships Act;

“collective investment scheme” means any arrangement with respect to property of any description including money;

(a) the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

(b) that does not invest,

(i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme, or

(ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a

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collective investment scheme.

“Commission” means the Trinidad and Tobago Securities and Exchange Commission established under this Act;

Chapter number
needed

“communications” has the meaning ascribed to it in the Interception of Communications Act, 2010.

“control” in relation to an issuer, means the power of a person, or persons acting jointly or in concert, by virtue of the holding of securities of the issuer, or by virtue of any agreement, arrangement, commitment or understanding with any person or persons, to direct that the business and affairs of the issuer be conducted in accordance with the wishes of such person or persons, and is—

(a) deemed to exist where the person or persons exercise control or direction over more than fifty per cent of the voting power in, or in relation to, that issuer; and

(b) presumed to exist where the person or persons exercise control or direction over more than thirty per cent of the voting power in, or in relation to, that issuer;

“derivative” means an option, swap, futures contract, forward contract, or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from reference to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing), but does not include any contract or instrument that is prescribed not to be a derivative or that by reason of an order of the Commission under section 148(1)(tt) is not a derivative;

“designated foreign jurisdiction” means a

jurisdiction that is deemed to be a designated foreign jurisdiction by order of the Commission or as may be prescribed;

“director” means a director of a entity or an individual performing a similar function or occupying a similar position, including the trustee of a trust;

“distribution” means a trade—

- (a) in securities of an issuer that have not previously been issued;
- (b) in previously issued securities of an issuer that have been redeemed, repurchased or otherwise re-acquired by the issuer;
- (c) by an underwriter, acting as underwriter, in previously issued securities which were purchased from the issuer by such underwriter less than six months prior to such trade;
- (d) in previously issued securities of an issuer from the aggregate holdings of any person, or combination of persons acting jointly, where the number of securities of that class held by the person, or combination of persons acting jointly—
 - (i) enables or permits the person, or combination of persons acting jointly, to elect or appoint a majority of the board of directors, or exercise control or direction over the management or policies of the issuer; and
 - (ii) is equal to or exceeds thirty per cent of the outstanding voting securities of the issuer,

whether or not in the course of any transaction or series of transactions;

“entity” means a company, or trust, partnership, fund or other unincorporated enterprises or organizations, but does not include an individual;

“expert” means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him;

“filing” means the submission of a document or instrument to the Commission pursuant to a requirement under this Act;

Chap. 79:09

“financial institution” means a company licensed under the Financial Institutions Act;

“financial reporting standards” means IFRS or such other accounting standards as may be prescribed or specified by order of the Commission;

“foreign disclosure requirements” means the requirements to which a foreign issuer is subject concerning disclosure made to a competent securities regulatory authority, securities commission or securities exchange in a designated foreign jurisdiction which disclosure is made publicly available;

“form of proxy” means a written or printed form that, upon completion and signature by or on behalf of a security holder, becomes a proxy;

“former Act” means the Securities Industry Act, 1995;

“General Manager” means the general manager of the Commission appointed under Part II;

“government entity” means the Government of the Republic of Trinidad and Tobago, the Tobago House of Assembly, the Central Bank of Trinidad and Tobago or as otherwise prescribed;

“ICATT” means the Institute of Chartered

Accountants of Trinidad and Tobago;

“IFRS” means International Financial Reporting Standards issued by the International Accounting Standards Board and as adopted by ICATT;

Chap. 79:09

“Inspector” means the Inspector of Financial Institutions appointed under the Financial Institutions Act, and includes any person appointed to act temporarily for him;

“interim period” means, a period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year or as otherwise prescribed;

“international agency” means—

- (a) the International Bank for Reconstruction and Development;
- (b) the Inter-American Development Bank;
- (c) the Caribbean Development Bank;
- (d) the Asian Development Bank;
- (e) the African Development Bank;
- (f) the European Bank for Reconstruction and Development;
- (g) the International Finance Corporation;
or
- (h) any other entity specified by order of the Commission.;

“investment advice” means advice with respect to an investment in, or the purchase, sale or holding of, a security, whether or not provided by an investment adviser;

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

includes a person that provides investment advice to a manager of a collective investment scheme, or that carries out such other activities that are prescribed;

“investment contract” includes any contract, transaction, plan or scheme, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;

“investment decision” means a decision to purchase, hold or sell securities;

“issuer” means a person that has securities outstanding or issues, or proposes to issue or distribute, a security;

“management discussion and analysis” means a management discussion and analysis on comparative financial statements;

“manager of a collective investment scheme” means a person who directs the business, operations or affairs of a collective investment scheme;

“market actor” means a registrant, a person exempted under this Act from the requirement to be registered under this Act, a director, senior officer, or promoter of a reporting issuer, a custodian of assets, shares or units of a collective investment scheme, a registered self-regulatory organization, a designated rating organization, a transfer agent for securities of a reporting issuer, a registrar for securities of a reporting issuer, the general partner of a market actor, a contingency fund required under Part III of this Act, a settlement assurance fund required under Part III of this Act, or any other person or member of a class of persons prescribed to be a market actor;

“material change” means -

- (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;
- (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 that would be considered important by a reasonable investor in determining whether to purchase 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;

“material fact” means, if used in relation to the affairs of an issuer or its securities, a fact or a series of facts, the disclosure of which would be likely to be considered important to a reasonable investor in making an investment decision;

“material non-public information” means, in relation to securities of a reporting issuer, any material fact or material change that has not been published;

“Minister” means the Minister to whom responsibility for finance is assigned;

“misrepresentation” means—

- (a) an untrue statement of a material fact or material change; or
- (b) an omission to state a material fact or

material change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

“offeree issuer” means an issuer—

- (a) whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire; and
- (b) who has at least one security holder resident in Trinidad and Tobago, whether or not the take-over bid, issuer bid or offer to acquire is made to a security holder resident in Trinidad and Tobago;

“offer to acquire” includes—

- (a) an offer to purchase, or a solicitation of an offer to sell securities; or
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person accepting an offer to sell shall be deemed to be making an offer to acquire from the person that made the offer to sell;

“order”, unless a contrary intention appears, means an order of the Commission;

“participant” means a person who receives non-exclusive service from a clearing agency or through another person who acts as—

- (a) a pledgee;
- (b) a judgment creditor; or
- (c) a beneficial owner,

for whom a blocked account in a clearing

agency is established;

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“person” means a person as defined in the Interpretation Act;

“prescribed” means as prescribed in the By-laws;

“promoter” means a person that takes the initiative in founding, organizing or substantially reorganizing an issuer;

“proxy” means a completed and signed form of proxy by means of which a holder of voting securities of an issuer appoints a proxy holder to attend and act on his behalf at a meeting of security holders;

“publication” includes, without limitation, any information disclosed, circulated or disseminated, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures or pamphlets;
- (e) by way of sound or broadcasting, including television or radio broadcasting;
- (f) by any information system or electronic device; or
- (g) by any other means, whether mechanically, electronically, magnetically, optically, manually or by way of production or transmission of light, image or sound, or by any other medium;

“published” when used in relation to the disclosure of a material fact or material change, means –

- (a) published in a daily newspaper of general circulation in Trinidad and Tobago; or
- (b) a publication that is made available to the public in such manner as approved by the Commission;

“purchase” includes—

- (a) any acquisition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise; and
- (b) any act, advertisement, conduct or negotiation, directly or indirectly, done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

“records” means—

- (a) books of account, bank accounts and other bank records, correspondence, notes, memoranda and any other books, accounts, documents, data or information relating to the property or affairs of a person; or
- (b) data or information prepared or maintained in a bound or loose leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form, within a reasonable time;

“registered representative” means an individual employed by –

- (a) a broker-dealer or underwriter to participate in transactions in securities; or
- (b) an investment adviser to advise in securities or to carry out such other activities as may be prescribed

“registrant” means a person registered or required to be registered under Part IV of this Act;

“relative” in relation to a person, means a—

- (a) spouse or a cohabitant;
- (b) a parent;
- (c) a grandparent;
- (d) a brother or sister, whether or not connected by –
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of cohabitational relationship;
 - (iv) adoption; or
 - (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act;
- (e) a son or daughter, whether or not connected by –
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of cohabitational relationship;

(iv) adoption; or

(v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act; or

(f) a spouse or cohabitant (as defined in the Cohabitation Relationships Act) of any person identified in subsections (b) and (c) ;

“reporting issuer” means an issuer—

(a) that was a reporting issuer on the date of commencement of this Act;

(b) that has filed a prospectus and obtained a receipt for it under this Act;

(c) that is registered or is required to be registered under this Act as a reporting issuer;

(d) any of whose securities are listed on the Stock Exchange; or

(e) whose existence continues following:

(i). the exchange of securities of an issuer by or for the account of such issuer with another issuer or the holders of securities of that issuer in connection with a statutory amalgamation or arrangement; or

(ii) the merger of existing issuers into one issuer, where one of the companies to the amalgamation, merger or arrangement or the continuing company has been a reporting issuer,

but does not include a government entity or international agency;

“right to acquire a security” means—

- (a) a security convertible or exchangeable into another security;
- (b) a security carrying a warrant or right to acquire another security; or
- (c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (a) or (b);

“sale” includes—

- (a) a disposition of a security for valuable consideration, whether the terms of payment are on margin, installment, or otherwise; and
- (b) any act, advertisement, conduct or negotiation directly or indirectly done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

“Secretary” means the Secretary of the Commission appointed under this Act;

“securities exchange” means a person who maintains or provides—

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale,

and includes the Stock Exchange;

“securities market” means a securities exchange or quotation and trade reporting system, or any other person that –

- (a) Constitutes, maintains or provides a

market or facility for bringing together buyers and sellers off securities;

- (b) Brings together the orders for securities of multiple buyers and sellers; and
- (c) Uses established, non-discretionary methods under which the orders interact with each other and buyers and sellers entering the orders agree to the terms of a trade and includes a broker-dealer that executes a trade of an exchange traded security outside off an exchange.

“securities register” means a record or records maintained by or on behalf of an issuer in which the securities issued by the issuer are recorded showing with respect to each class or series of securities—

- (a) the name and address of each registered security holder of the issuer;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security;

(d)

“security” includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person, or enterprise, and without limiting the generality of the foregoing, extends to:

- (a) any bond, debenture, note or other evidence of indebtedness;
- (b) any share, stock, unit, unit certificate, participation certificate, certificate of share or interest;
- (c) any document, instrument or writing commonly known as a security;

- (d) any document, instrument or writing evidencing an option, subscription or other interest in or to a security;
- (e) any investment contract;
- (f) any asset-backed security;
- (g) any document, instrument or writing constituting evidence of any interest or participation in—
 - (i) a profit sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;
- (h) any agreement under which the interest of the purchaser is valued for the purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;
 - (i) any derivative; or
 - (j) any right to acquire or dispose of anything specified in paragraphs (a) to (i),

but does not include—

- (i) currency;
- (ii) a cheque, bill of exchange, or bank letter of credit;
- (iii) a certificate or document constituting evidence of any interest in a deposit account with—
 - (A) a financial institution;

(B) a credit union within the meaning of the Co-operative Societies Act;

(C) a registrant under the Insurance Act; or

(iv) a contract of insurance;

“self-regulatory organization” means a clearing agency, securities exchange or an association of market actors registered or required to be registered under this Act in order to carry out its business or function;

“senior officer” means the chairman or vice-chairman of the board of directors of an issuer, the managing director, the chief executive officer, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the chief financial officer, the financial controller, the general manager, the deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer and chief risk officer of a registrant or any other individual who performs functions for a registrant similar to those normally performed by an individual occupying any such office;

“Stock Exchange” means the Trinidad and Tobago Stock Exchange Limited;

“subsidiary” means an entity that is controlled by another entity;

“take-over bid” means an offer to acquire outstanding voting or equity securities of a class made to any security holder of the offeree issuer where the securities, subject to the offer to acquire, together with the offeror’s security, constitute in the aggregate thirty per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire;

“trade” includes—

- (a) any sale or purchase of a security;
- (b) any participation as a registrant or agent in any transaction in a security; or
- (c) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraph (a) or (b);

“trader” means an individual employed by a broker-dealer to participate in any transaction in securities;

“underwriter” means a person who—

- (a) as principal, agrees to purchase a security for the purpose of a distribution;
- (b) as agent, offers for sale or sells a security in connection with a distribution; or
- (c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for valuable consideration,

but does not include—

- (i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
- (ii) a company that purchases shares of its own issue and resells them; and

“voting security” means a security carrying voting rights—

- (a) under all circumstances; or

- (b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right, other than a call, to acquire such a security.

- (2) For the purpose of this Act, an affiliate means an affiliated body corporate or affiliated person.
 - (a) one body corporate is affiliated with another body corporate
 - (i) if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; or
 - (ii) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;
 - (b) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
 - (c) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other person, provided that a person is controlled by another person where—
 - (i) in the case of a partnership, the second-mentioned person owns or holds more than fifty per cent of the interest in the partnership; and
 - (ii) in the case of the first-mentioned person other than a body corporate, an individual, or a partnership, securities of the first-mentioned person carrying more than fifty per cent of the interests in such person, are held or owned, by or for the benefit of the second-mentioned person.

(3) For the purposes of this Act, a person is connected to a reporting issuer if the person—

- (a) is a director or senior officer of the reporting issuer;
- (b) is a director or senior officer of—
 - (i) an affiliate of the reporting issuer; or
 - (ii) any person who beneficially owns, directly or indirectly, or exercises control or direction over voting securities of the reporting issuer, or a combination of both, carrying more than ten per cent of the votes attached to all voting securities of the reporting issuer outstanding;
- (c) beneficially owns, directly or indirectly, or exercises control or direction over, voting securities of the reporting issuer, or a combination of both, carrying more than ten per cent of the votes attached to all voting securities of the reporting issuer outstanding;
- (d) is contemplating or proposing, whether alone or with any other person, to make a take-over bid for any securities of the reporting issuer, or is contemplating or proposing, whether alone or with any other person, to become a party to any amalgamation, merger or similar business combination with the reporting issuer, or is contemplating or proposing any other material transaction with or including the reporting issuer;
- (e) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer or any person identified in paragraph (d), or is an employee of any such person or of the reporting issuer or any affiliate;
- (f) learns, directly or indirectly, of material non-public information with respect to a reporting issuer from any person and knows, or ought

reasonably to have known, that the other person is connected to the reporting issuer; or

(g) is an expert retained or hired by—

(i) a reporting issuer; or

(ii) a person described in paragraph (d); or

(h) a relative of a director or senior officer of the reporting issuer; or

(i) an entity that controlled by a person referred to in paragraphs 3(a), 3(b) and (h)

(4) Notwithstanding subsection (3), a person connected to a reporting issuer is deemed to have continued to be connected to a reporting issuer—

(a) in the case of subsection (3), paragraphs (a) to (c), (e) and (g), six months after the day that the person otherwise ceases to be connected to a reporting issuer;

(b) in the case of subsection (3), paragraph (d), until the time any transaction described in paragraph (d) is published; and

(c) in the case of subsection (3), paragraph (f), until such material non-public information is published.

(5) For the purposes of this Act, a trade shall be presumed to occur in Trinidad and Tobago in the absence of evidence to the contrary where—

(a) in the case of an act, advertisement, solicitation, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, solicitation, conduct or negotiation is—

(i) made by mail or courier, telephone or facsimile transmission, with or to a person in Trinidad and Tobago, whether or not solicited by such person;

(ii) made by electronic correspondence, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail correspondence is in Trinidad and Tobago, or after reasonable inquiry, should have known, that the recipient of such e-mail correspondence is in Trinidad and Tobago, whether or not solicited by such person; or

(iii) in the case of securities offerings made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in Trinidad and Tobago, unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the offering is qualified to be made, and reasonable precautions are taken to ensure that no actual sales occur to persons in Trinidad and Tobago unless done in compliance with this Act; or

(b) the purchaser of the security is in Trinidad and Tobago.

(6) For the purposes of this Act, a person shall be presumed to be providing investment advice in Trinidad and Tobago in the absence of evidence to the contrary where—

(a) such person contacts or solicits by telephone or facsimile a person in Trinidad and Tobago for the purpose of offering or providing investment advice, whether or not solicited by such person;

(b) such person sends correspondence by e-mail, for the purpose of offering or providing investment advice, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail correspondence is in Trinidad and Tobago, or after reasonable inquiry, should have known that the recipient of such e-mail correspondence is in Trinidad and

Tobago, whether or not solicited by such person;

- (c) such person sends correspondence by mail or courier for the purpose of offering or providing investment advice to an address in Trinidad and Tobago, whether or not solicited by any person resident at such address; or
- (d) such person provides investment advice to a person in Trinidad and Tobago.

PART II

THE SECURITIES AND EXCHANGE COMMISSION

Division 1 – Establishment, Function and Power

Establishment of the
Commission

5. There is established a body corporate, which shall be known as the Trinidad and Tobago Securities and Exchange Commission.

Functions of the
Commission

6. The functions of the Commission are to—

- (a) advise the Minister on all matters relating to the securities industry ;
- (b) maintain surveillance over the securities industry and ensure orderly, fair and equitable dealings in securities;
- (c) register, authorize or regulate, in accordance with this Act, self-regulatory organizations, broker-dealers, registered representatives, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities industry;
- (d) regulate and supervise the timely, accurate, fair and efficient disclosure of information to the securities industry and the investing public;

- (e) conduct such inspections and examinations of self-regulatory organizations, broker-dealers, registered representatives, underwriters, issuers and investment advisers and reporting issuers as may be necessary for giving full effect to this Act;
- (f) protect the integrity of the capital market against any abuses arising from market manipulating practices, insider trading, conflicts of interest and other unfair and improper practices;
- (g) promote an understanding by the public of the securities industry and the benefits, risks, and liabilities associated with investing in securities;
- (h) co-operate with and provide assistance to regulatory authorities in Trinidad and Tobago, or elsewhere;
- (i) ensure aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; and
- (j) create and promote such conditions in the securities industry as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the securities industry and to further the purposes of this Act.
- (o) to co-operate with other jurisdictions in the development of a fair and efficient securities industry,

Powers of the
Commission

7. (1) For the purpose of the discharge of its functions, the Commission has power to—

- (a) formulate principles for the guidance of

the securities industry;

- (b) deal with such matters as may be referred to it by any person from time to time;
- (c) register and regulate self-regulatory organizations, registrants and other market actors in accordance with this Act;
- (d) monitor the solvency of registrants and self-regulatory organizations and take measures to protect the interest of customers where the solvency of any such person is in doubt;
- (e) adopt measures to supervise and minimize any conflict of interests that may arise in the case of registrants;
- (f) review, approve and regulate takeovers, amalgamations and all forms of business combinations in accordance with this Act or any other written law in all cases in which it considers it expedient or appropriate to do so;
- (g) review the contents of prospectuses and issue receipts therefor, and review any form of solicitation, advertisement or announcement by which securities are proposed to be distributed;
- (h) take enforcement action against any person for failing to comply with this Act;
- (i) prepare and recommend By-laws to the Minister;
- (j) formulate, prepare and publish notices, guidelines, bulletins and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act;

(k) make orders;

(l) undertake such other activities as are necessary or expedient for giving full effect to this Act; and

(m) do all things, and take all actions, which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act.

(2) The Commission may in writing require any market actor to furnish it with such information as it may require for the exercise of its functions within such time and verified in such manner as it may specify.

(3) A market actor that is required to furnish information to the Commission in accordance with subsection (2) shall furnish the required information, within the time specified and verified in the manner specified by the Commission.

(4) Where the Commission takes any enforcement action against an entity or an employee of an entity regulated by the Central Bank of Trinidad and Tobago for failing to comply with this Act, the Commission shall notify the Inspector of the enforcement action so taken.

Delegation of Powers

8. (1) The Commission may, by order, delegate any responsibility, power or function conferred on it by this Act to any—

(a) senior officer of the Commission; or

(b) self-regulatory organization registered under this Act.

(2) Notwithstanding subsection (1), the Commission shall not delegate its powers to—

(a) make By-laws; or

(b) hear appeals.

(3) A delegation pursuant to subsection (1) shall not preclude the exercise by the Commission of any power, duty, function or responsibility so delegated.

(4) All decisions made, and minutes of all meetings held by a delegatee under subsection (1) shall be recorded in writing.

(5) A delegatee shall forthwith notify the Commission of every decision made by him.

(6) The Commission may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Commission shall, within thirty days of the decision, notify the delegatee and the person directly affected by the decision, of the date, time and venue of the hearing to review the decision.

(7) Any person aggrieved by a decision of a delegatee may, within fourteen days of the decision, apply to the Commission for a review of that decision.

(8) Within seven days of the receipt of an application under subsection (7), the Commission shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.

(9) Pending the review of a decision, the Commission may, on the application ex parte of the applicant, grant a stay of the decision under review and shall notify the delegatee forthwith of any stay so granted.

(10) Upon reviewing the decision of a delegatee, the Commission may vary or confirm the decision under review or make such other decision as it considers proper.

Custody and
use of seal

9. (1) The seal of the Commission shall be kept in the custody of the Chairman or the Secretary, as the Commission may determine, and may be affixed to instruments in the presence of the Chairman and the Secretary

(2) The seal of the Commission shall be attested

by the signature of the Chairman and the Secretary.

(3) All documents, other than those required by law to be under seal and all orders and decisions of the Commission may be signified under the hand of the Chairman or the Secretary.

(4) Service upon the Commission of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary at the office of the Commission.

Division 2 – Membership

Constitution of
Commission

10. (1) The Commission shall consist of no more than nine nor fewer than three individuals (hereafter referred to as “Commissioners”).

(2) The President shall appoint all the Commissioners and shall appoint one of their number to be its Chairman.

(3) The Commissioners shall be elected from among persons who in the opinion of the President have wide experience and ability in legal, financial, business, investment or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing.

(4) Where a Commissioner is, by reason of illness, absent from Trinidad and Tobago, or otherwise unable to perform his functions as Commissioner, or where an office of Commissioner is vacant, the President may appoint a temporary Commissioner to act in place of that Commissioner during his illness, absence or incapability, or until the office is filled, as the case may be.

(5) A temporary Commissioner appointed in accordance with subsection (4) shall have qualifications similar to those of the Commissioner for whom he is appointed to act.

(6) In addition to the Commissioners appointed in accordance with subsections (1), (2) and (3) the President may, on the advice of the Minister, appoint not more than three persons with such expertise as

may be required by the Commission, to act as temporary Commissioners for such period as may be required.

(7) Subject to the terms of his appointment, a person appointed in accordance with subsection (6) may exercise any of the functions and powers exercisable by a Commissioner under this Act.

Disqualification for
appointment

11. (1) A person shall not be appointed or continue as Commissioner if, directly or indirectly, as owner, security holder, director, senior officer, partner, employee or otherwise, he—

- (a) is engaged in the business in the securities industry;
- (b) has a material pecuniary or proprietary interest in—

- (i) a registrant; or

- (ii) a self-regulatory organization; or

- (c) has beneficial ownership of, or control or direction over more than five per cent of the outstanding equity or voting securities of a reporting issuer.

For the purposes of subsection (b) a pecuniary or proprietary interest is material where it may reasonably be expected to have a significant influence on the Commissioner's ability to make an unbiased decision.

(2) If an interest referred to in subsection (1)(b) vests in a Commissioner by gift or will or succession for his own benefit, he shall forthwith disclose the interest to the Chairman and shall within three months there-after absolutely dispose of the interest or resign.

(3) A person who is appointed General Manager under this Act shall, forthwith after the appointment, declare every interest he has in any security and there-after he shall not, while holding office as General Manager—

- (a) participate, directly or indirectly, in any securities market operation transaction in which he has a material interest and which is subject to regulation by the Commission pursuant to this Act; or
- (b) engage in any other business, vocation or employment other than that of serving as General Manager.

(4) A person who contravenes subsection (3) is liable on conviction on indictment to a fine of five hundred thousand dollars and imprisonment for six months.

Term of office
and remuneration

12. (1) Subject to this section, the Chairman and the other Commissioners, shall hold office for three years and shall be eligible for reappointment.

(2) The Chairman of the Commission may resign his membership by notice in writing addressed to the President.

(3) A Commissioner, other than the Chairman, may at any time resign his membership by notice in writing addressed to the President and transmitted through the Chairman.

(4) A Commissioner may be removed from membership of the Commission by the President, where he—

- (a) becomes a person of unsound mind;
- (b) is absent from three consecutive meetings of the Commission without the permission of the Minister or without reasonable cause;
- (c) is guilty of misconduct in relation to his duties as a Commissioner;
- (d) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty;

- (e) is declared bankrupt in accordance with the law of Trinidad and Tobago or any other country;
- (f) is a professional and is disqualified or suspended from practising his profession in Trinidad and Tobago or in any other country by an order of any competent authority made in respect of him personally;
- (g) is unable to perform his functions because of illness or for any other reason; or
- (h) contravenes this Act.

(5) The Chairman and the other Commissioners shall be paid such remuneration and allowances in respect of their office as the President may determine from time to time

Protection of
Commissioners,
employees or agents

13. No action or other proceeding for damages shall be instituted against a Commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a function or power of the Commission under this Act.

Confidentiality

14. (1) No person shall make use of any confidential information obtained as a result of his relationship with the Commission in the course of official duties other than for the administration or enforcement of this Act.

(2) Notwithstanding subsection (1) or any other written law, the Commission or any duly authorized person may disclose the information referred to in subsection (1) to -

- (a) a Commissioner or employee of the Commission;
- (b) a duly authorized representative of the government or an agency of a government;

(c) an expert hired or retained by the Commission; or

(d) a duly authorized representative of the government of another country or an agency of a government of another country;

in connection with the administration and enforcement of this Act or similar legislation of any foreign jurisdiction if the Commission is satisfied that the information will be treated as confidential by the person or agency to whom it is disclosed and used strictly for the purpose for which it is disclosed.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for twelve months.

Division 3 – Proceedings of Commission

Meetings

15. (1) The Commission shall ordinarily meet for dispatch of business at such time and place as the Chairman may decide but shall meet at least once in every two months.

(2) The Chairman shall, at the request in writing of not less than two Commissioners, call an extraordinary meeting of the Commission within seven days of the receipt of such request.

(3) Subject to subsection (4), the Chairman shall preside at every meeting of the Commission and in his absence, a Commissioner designated by the Chairman shall preside at the meeting.

(4) Where no Commissioner is designated pursuant to subsection (3), the members of the

Commission present shall elect one of their number to preside as Chairman at the meeting.

(5) The quorum at every meeting of the Commission shall be three.

(6) All questions proposed at a meeting of the Commission shall be determined by a simple majority of the Commissioners present and voting, and where the votes are equal, the Chairman or the Commissioner presiding shall have a casting vote.

(7) The Commission may request the attendance of any person at any of its meetings, but such person shall not vote on any matter for decision by the Commission.

Committees

16. (1) Subject to subsection (3), where under this Act or any other written law, the Commission is empowered or required to perform any function, the Commission may, by resolution appoint, for the purpose of doing anything required or deemed expedient or necessary for the purpose of performing such function, a committee of the Commission and the performance by the committee of any such thing shall be deemed to be done and performed by the entire Commission.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), where any power or function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act assigned to the Commission, such investigation or hearing may be conducted by a committee appointed under this section and shall be fully, duly and validly conducted as if conducted by the entire Commission.

(3) A committee appointed under this section shall, upon the completion of the power or function for which it was so appointed, report in writing to the Commission thereon and the performance by the committee of that power or function and any act or thing done by it in relation thereto shall be complete and shall be a decision or due exercise by the

Commission of the power or function in question when, and not before the Commission by resolution adopts the recommendation or the decisions by the committee, whereupon that power or function shall be deemed to have been performed by the Commission itself.

Minutes

17. (1) Minutes, in proper form, of each meeting of the Commission, or a committee thereof, shall be kept under the direction of the Secretary.

(2) All decisions, resolutions, orders, or rules made, and By-laws recommended by the Commission or a committee thereof, as the case may be, shall be recorded in the minutes.

(3) The minutes shall be confirmed at the next meeting of the Commission, or the committee, as the case may be, and a copy of the minutes when prepared and confirmed shall, in the case of a committee, be forwarded to the Commission.

(4) The Minister is entitled, upon request, to have access to the minutes of the Commission or a committee thereof, and to receive from the Commission a copy of any of those minutes.

Declaration of
interest

18. (1) A Commissioner or any other person attending a meeting of the Commission who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission.

(2) The Commission, excluding the Commissioner whose interest is being considered, shall determine whether this interest is sufficiently material so as to constitute a conflict of interest.

(3) In the event that the Commission finds that the interest is such as to constitute a conflict of interest, the Commissioner or any other person attending a meeting of the Commission shall not take part in any deliberations or vote on that matter, and shall leave the room during such deliberations.

(4) For the purposes of this section, a Commissioner or any other person attending a

meeting of the Commission shall be deemed to have an interest in a matter if he, or his relative that resides in the same dwelling as the Commissioner, or his nominee, is a security holder or partner in, or an officer or director of an issuer having an interest or being involved in a matter before the Commission.

(5) Any person who fails to comply with subsection (1) is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for six months, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

Consultation with
Central Bank and
other agencies

19. (1) The Commission shall consult, co-operate with and provide information to the Central Bank of Trinidad and Tobago or any other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other entity in order to minimize duplication of effort and to maximize the protection of investors.

(2) The Commission may co-operate with, provide information to and receive information from any of the following entities, whether in Trinidad and Tobago or elsewhere;

(a) other securities or financial regulatory authorities, exchanges, clearing agencies, self-regulatory bodies or organizations, law enforcement agencies and other government entities or regulatory authorities not included in the foregoing, and

(b) any person, other than an employee of the Commission, who acts on behalf of or provides services to the Commission,

(3) The Commission may enter into a memorandum of understanding with the Stock Exchange or any other agency referred to in subsection (1) in furtherance of the purposes of this Act or any matter under this Act.

(4) The Commission may enter into a memorandum of understanding with any agency of

a foreign government, foreign securities regulator, other regulatory body which regulates the financial services industry or any international association of securities regulators in furtherance of the purposes of this Act or any matter under this Act.

(5) The Commission may co-operate and participate in the work of national, regional or international organizations dealing with the regulation of the securities industry.

(6) Any information provided and received by the Commission pursuant to this section shall be confidential and shall not be disclosed except where authorized by the Commission.

Annual Report

20. (1) The Commission shall within four months of the end of the financial year send an annual report to the Minister who shall cause it to be laid in Parliament within thirty days after he receives it or, if Parliament is not then sitting, on any of the first thirty days there-after that Parliament is sitting.

(2) Copies of an annual report shall be available to the public on or before the expiration of fourteen days after it is required to be laid in Parliament under subsection (1).

Regulation of
business

21. (1) Subject to subsection (2), the Commission may make rules—

- (a) respecting the calling of and conduct of business at meetings of the Commission;
- (b) respecting procedures for the initiation and holding of hearings by the Commission;
- (c) prescribing the procedure for appeals and review of decisions of a delegate and self-regulatory organizations;
- (d) establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and

other practices that the Commission considers undesirable; and

- (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Commission.

(2) As soon as practicable after the making of any rule or amendment under subsection (1), the Commission shall forward a copy to the Minister and where the Minister objects, the Commission shall revoke or further amend the rule in accordance with the directions of the Minister.

Division 4 – Staff

Appointment of
General Manager
and Chief Executive
Officer

22. (1) The Commission shall appoint a General Manager.

(2) The Minister shall approve the terms and conditions of appointment of the General Manager.

(3) The Commission may, with the approval of the Minister, appoint the Chairman or the General Manager as its chief executive officer.

Appointment of
experts

23. (1) The Commission may appoint, hire or retain, on such terms and conditions as it may determine, an expert to assist it in any manner that it considers necessary.

(2) Where the Commission appoints an expert to advise it on the development of specific policies, By-laws or other regulatory proposals of the Commission or a self-regulatory organization, the expert shall formulate and report his views to the Commission in writing and the Commission may, if it thinks fit, make it available to the public.

Appointment of
other staff

24. The Commission shall appoint a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.

Transfer of officers

25. (1) An officer in the public service or in the

to the public service
and vice versa

service of a statutory authority may, with the approval of the appropriate service commission and the Commission, consent to be transferred to the service of the Commission.

(2) The officer shall, upon transfer, have preserved his superannuation or pension rights accruing at the time of the transfer.

Transfer of
secondment

26. (1) An officer or employee in the public service, a statutory authority, any public or private body, national or international, or the Commission may, with the consent of the Commission and with the approval of the appropriate service commission or the relevant body, consent to be transferred on secondment to the service of the Commission, or from the service of the Commission to the public service or a statutory authority or other body, as the case may be.

(2) Where a transfer on secondment is effected, such arrangements as may be necessary shall be made to preserve the rights of the officer or employee transferred to any pension, gratuity or other allowance for which he would have been eligible had he not been transferred.

Division 5 – Financial Provisions

Funds and
resources of the
Commission

27. The funds and resources of the Commission shall consist of—

- (a) such sums as may be appropriated by Parliament;
- (b) all fees and other sums from time to time paid, or otherwise payable, to the Commission under this Act; and
- (c) all other sums or property that may in any manner become payable in any matter related to its functions and powers.

Financial powers

28. For the purpose of carrying out its power or functions, the Commission may, with the prior approval in writing of the Minister, charge, vary, waive or suspend fees for—

- (a) any function performed by the Commission under this Act;
- (b) the filing of any document or instrument with the Commission;
- (c) obtaining registration as a reporting issuer, registrant or self-regulatory organization under this Act; and
- (d) transactions effected on a self-regulatory organization.

Application of funds

29. The funds of the Commission shall be applied in defraying the following expenditures:

- (a) the remuneration, fees and allowances of the members of the Commission;
- (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the officers and employees of the Commission;
- (c) the capital and operating expenses, including maintenance and insurance of any property of the Commission; and
- (d) any other expenditure authorized by the Commission in the discharge of its functions and contractual obligations.

Cash deposits and payments

30. (1) All monies of the Commission received under the Act shall be paid into a bank appointed by the Commission.

(2) All payments made out of the funds of the Commission shall be made by any person appointed to do so by the rules made under section 21.

Accounts and audit

31. (1) The Commission shall keep proper books of accounts of—

- (a) all monies received and expended by the Commission and shall record the matters in respect of which such monies have been received and expended; and

(b) the assets and liabilities of the Commission.

(2) Where assets are held upon any special trust, the receipts and expenditure relating to such trust shall be kept in an account separate and apart from all other receipts and expenditure.

(3) All accounts shall be kept in the principal office of the Commission for a period of six years after the last entry therein, and shall be open to inspection by Commissioners and by the auditors of the Commission.

(4) Within four months after the end of each financial year, the Commission shall cause to be prepared in respect of that year, financial statements which include—

(a) an account of the revenue and expenditure of the Commission;

(b) a balance sheet;

(c) a report setting out the activities of the Commission; and

(d) such other accounts as the Commission may require.

(5) Accounts prepared in accordance with this section shall—

(a) be audited by an auditor who is a member of, and in good standing with the ICATT and who is appointed by the Commission with the approval of the Minister; and

(b) be signed by the Chairman and not less than two other Commissioners.

(6) The Secretary shall cause copies of the signed accounts to be sent to every member of the Commission, the auditor and the Minister.

(7) The Minister may at any time request the

Commission to provide him with information concerning any aspect of its administration of this Act and the Commission shall provide the information requested within fourteen days.

(8) The Commission shall have an audit committee composed of not less than three Commissioners.

(9) The audit committee shall review the annual financial statements required under subsection (4) before such financial statements are approved by the Commission.

(10) The auditor of the Commission is entitled to receive notice of every meeting of the audit committee and, at the expense of the Commission, to attend and be heard thereat, and, if so requested by the Chair of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

Division 6 – Filing of Documents

Filing of documents
with Commission

32. All documents or instruments required to be filed with the Commission shall be filed in the prescribed manner.

Public availability of filed
documents

33. (1) Unless the Commission determines that disclosure would not be in the public interest, the Commission shall make all documents or instruments required to be filed with it under the Act available for public inspection during the normal business hours of the Commission.

(2) Subject to subsection (1), the Commission may also make all documents or instruments filed with it available to the public by posting such documents to the Commission's website.

Division 1—The Stock Exchange

Registration of
Stock Exchange and
Central Depository

34. (1) The Stock Exchange is deemed to be duly registered under this Act as a self-regulatory organization.

(2) The Central Depository is deemed to be duly registered under this Act as a self-regulatory organization.

Rules of the Stock
Exchange

35. (1) The rules, regulations and listing requirements of the Stock Exchange (hereafter referred to as “the existing rules”) approved or deemed approved by the Commission under the former Act shall be deemed to be approved by the Commission under this Act.

(2) Within two years after the commencement of this Act, the Stock Exchange shall review and, where necessary, amend the existing rules to ensure conformity with this Act.

(3) The Stock Exchange shall not change or amend the existing rules except in accordance with this Act.

Division 2 – Self – Regulatory Organisations

Registration of a Self-
Regulatory
Organization

36. (1) No person shall carry on business or activities as a self-regulatory organization unless registered as a self-regulatory organization under this Part.

(2) Application for registration pursuant to subsection (1) shall be made to the Commission in the prescribed form and shall be accompanied by such fees as may be prescribed.

(3) The registration of a person as a self-regulatory organization shall be valid for a period of one year from the date of registration, and subject to this Act, the Commission may renew the registration of a person annually on the payment of the prescribed fee and upon compliance with such

other conditions as the Commission may determine.

Registration
requirements

37. (1) A person shall not be registered as a self-regulatory organization unless that person—

(a) proposes to—

- (i) engage in the securities industry;
- (ii) conduct activities as a clearing agency or securities exchange; or
- (iii) conduct any other activities as may be prescribed;

(b) is a body corporate—

- (i) under the laws of Trinidad and Tobago;
- or
- (ii) under the laws of any other jurisdiction and is registered in Trinidad and Tobago;

(c) has a body of rules for the governance of its members that comply with the requirements of this Part; and

(d) is fit and proper for registration as a self-regulatory organization.

(2) An association of market actors may apply to the Commission for registration as a self-regulatory organization provided it satisfies the requirements of paragraphs (b) to (d) of subsection (1).

(3) In considering whether an applicant for registration as a self-regulatory organization under this Part is fit and proper for registration, the Commission shall consider the financial condition, proficiency, integrity, and competency of such applicant and any additional requirements as may be prescribed.

Application for
registration

38. (1) Subject to subsections (3), (4) and (6), the Commission shall grant an application for registration as a self-regulatory organization.

(2) Forthwith after receipt of an application for registration as a self-regulatory organization under this Part, the Commission shall publish in a daily newspaper of general circulation in Trinidad and Tobago, a notice inviting any interested person to submit written comments on the application.

(3) Subject to subsection (5), the Commission shall refuse an application for registration where—

- (a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act and to enforce compliance by its members and their employees with its rules of governance;
- (b) the applicant does not meet the requirements set out in section 37(1);
- (c) the rules of governance of the applicant do not comply with section 39; or
- (d) the Commission determines that it would not be in the public interest to grant registration as a self-regulatory organization to the applicant.

(4) The Commission may refuse an application for registration if the applicant or a director or officer of the applicant would be refused registration as a registrant under Part IV.

(5) Where the Commission grants an application for registration as a self-regulatory organization, it may require a change in the rules of governance of the applicant to ensure its fair administration or to make the proposed rules of governance conform to the requirements of, or otherwise further the purposes of, this Act.

(6) In considering whether to grant an application for registration, the Commission shall, in particular, take into account the rules of governance of the applicant that relate to—

- (a) prices, fees or rates charged by members of

the applicant for services;

- (b) conditions of entry into the securities industry through membership in the applicant or otherwise;
- (c) the structure or form of a member or participant;
- (d) the quantity or quality of services furnished by a member or participant; and
- (e) any type of restraint on competition.

(7) On application by a registered self-regulatory organization, the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of registration of a self-regulatory organization, if the Commission is satisfied that the voluntary surrender of registration of the self-regulatory organization would not be prejudicial to the public interest.

Obligatory rules of
governance

39. (1) The rules of governance of an applicant for registration as a self-regulatory organization shall contain provisions, as prescribed,—

- (a) for the protection of investors and the public interest;
- (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate, process information about, and facilitate trades in securities;
- (c) ensuring fair representation of its members in the administration of its affairs;
- (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
- (e) relating to the disciplining of a member or employee of a member who contravenes its rules of governance or this Act and

without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of, or exclusion from employment; and

- (f) specifying the procedure required to implement section 43 for disciplinary proceedings, denial of membership, exclusion from employment, or denial or limitation of access to services furnished by it or its members.

(2) Without prejudice to subsection (1), the rules of governance of an applicant for registration as a securities exchange shall also contain provisions designed to—

- (a) prevent deceptive, fraudulent and manipulative acts and practices;
- (b) promote fair trading practices and to facilitate an efficient market; and
- (c) ensure that a broker-dealer may become a member of the securities exchange.

(3) Without prejudice to subsection (1), the rules of governance of an applicant for registration as a clearing agency shall also contain provisions designed to—

- (a) develop and operate a prompt and accurate clearance and settlement system;
- (b) safeguard money and securities in its custody or under its control or for which it is responsible; and
- (c) provide, subject to section 43, that a broker-dealer, a financial institution, another clearing agency or a person or class of persons designated by the Commission may become a participant in the clearing agency.

(4) The rules of governance of an applicant for registration as a self-regulatory organization shall not—

- (a) permit unfair discrimination among persons who use its facilities; or
- (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure on proposed amendment to rules of governance

40. (1) A self-regulatory organization may only amend its rules of governance in accordance with this section.

(2) Where a self-regulatory organization proposes to amend its rules, it shall file with the Commission a copy of the proposed amendment and a concise statement of its substance and purpose.

(3) Forthwith after receipt of a proposed amendment under subsection (2) the Commission shall publish in a daily newspaper of general circulation in Trinidad and Tobago a notice inviting any interested person to submit written comments on the amendment and the cost of the publication shall be borne by the self-regulatory organization.

(4) Subject to subsection (5), the Commission may make an order approving a proposed amendment to the rules of governance of a self-regulatory organization.

(5) The Commission may make an order refusing a proposed amendment to the rules of governance of a self-regulatory organization if—

- (a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules of governance as amended;
- (b) the amended rules of governance would not comply with section 39; or
- (c) the amended rules of governance would be inconsistent or conflict with this Act.

(6) Where the Commission determines that a proposed amendment filed pursuant to subsection (1)—

(a) makes no material substantive change in an existing rule; or

(b) relates exclusively to the administration of the self-regulatory organization,

it may approve the amendment without providing an opportunity for a hearing pursuant to section 154.

Power of Commission to require change in rules of governance

41. (1) The Commission may make an order requiring a change in the rules of governance of a self-regulatory organization to ensure its fair administration or to make the rules of governance conform to the requirements of, or otherwise further the purposes of this Act.

(2) Where the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the self-regulatory organization a notice that complies with section 154(1) prior to making the order.

Restriction on imposition of fees schedule

42. (1) A self-regulatory organization shall not require its members to comply with a schedule of commissions or other fees for their services or limit in any way the income of a member.

(2) Nothing in this section shall prevent a self-regulatory organization from issuing, from time to time, a notice to its members indicating what, in its opinion, is the market price, fee or rate charged for any particular service.

Membership

43. (1) Subject to subsections (2) and (3) and section 51(6), a self-regulatory organization shall grant an application for membership or for approval as an employee of a member.

(2) A self-regulatory organization may refuse membership or impose conditions on membership or prohibit or limit access to services furnished by it or its members to a person who—

(a) lacks the financial responsibility or

operational capability required by its rules;

(b) does not meet the criteria for membership specified in its rules; or

(c) does not carry on the type of business that its rules of governance require a member to carry on,

but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules of governance on the basis of the volume of the required business or any other business that the person carries on.

(3) A self-regulatory organization may refuse membership to, impose conditions of membership on, prohibit or limit access to services furnished by it or its members, or prohibit employment by a member or impose conditions on such employment of, a person who—

(a) lacks the training, experience or competence required by its rules; or

(b) contravenes this Act, a rule of a self-regulatory organization registered under this Act, or any other law in Trinidad and Tobago.

(4) A self-regulatory organization shall, before refusing membership or imposing conditions on such membership or before approving employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for hearings of the Commission in section 154(1), (4) to (7) and (9).

(5) A self-regulatory organization shall publish in a daily newspaper of general circulation in Trinidad and Tobago any notice disciplining a member or an employee of a member unless the Commission directs otherwise.

(6) Subject to subsection (7), a self-regulatory organization may, without holding a hearing as

required by subsection (4)—

(a) suspend—

(i) a member who has been expelled or is under suspension from; or

(ii) an employee of a member who has been expelled or is under suspension from employment by the member of,

another self-regulatory organization that is registered under this Act;

(b) suspend a member if the self-regulatory organization reasonably believes it necessary for the protection of investors, creditors, members or the self-regulatory organization because of financial or operational difficulties of the member;

(c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and

(d) prohibit or limit access to services furnished by it or its members to a person—

(i) to whom paragraph (a), (b) or (c) applies;

(ii) who does not meet the criteria for access specified in its rules; or

(iii) where such action is necessary for the protection of investors, creditors, members or the self-regulatory organization.

(7) Where a self-regulatory organization acts in accordance with subsection (6), the organization shall provide an opportunity for such a hearing within fifteen days of its order and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.

Filing of copy of
decision of
Commission

44. (1) Where a self-regulatory organization makes a decision under section 43(2) or (3) refusing membership or imposing conditions on membership or prohibiting employment by a member or imposing conditions on the employment by a member, it shall at once file with the Commission a copy of the decision, the reasons therefor and any other information requested or prescribed.

(2) A person aggrieved by an order of a self-regulatory organization made under section 43(2) or (3) may appeal to the Commission any such decision within fourteen days of receipt of the decision.

(3) On an appeal or review of a decision of a self-regulatory organization made under section 43(2) or (3), the Commission shall affirm the decision if it finds that—

- (a) the decision is in accordance with the rules of governance of the self-regulatory organization and this Act; and
- (b) the rules of governance of the self-regulatory organization and this Act were applied in a manner that furthers the objectives specified in section 39 and the purposes of this Act.

(4) Where the Commission finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 39(1), (2) or (3), it may set aside the decision or require the self-regulatory organization to—

- (a) admit the person affected to membership;
- (b) permit the person to become an employee of a member;
- (c) grant the person access to services furnished by it or its members; or
- (d) take any other action or make any other order not inconsistent with the objectives specified in section 39.

(5) On an appeal or review of an order of a self-regulatory organization disciplining a member or an employee of a member, the Commission may—

- (a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of governance of the self-regulatory organization or this Act;
- (b) set aside the sanction imposed if it does not so find; or
- (c) remand the matter to the self-regulatory organization for further proceedings.

(6) On an appeal or review referred to in subsection (5), the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 39(1), (2) or (3).

(7) An order made by the Commission under subsection (5) or (6) setting aside or modifying a sanction does not affect the validity of any action taken by the self-regulatory organization as a result of the sanction before the order was made, unless the action contravened this Act or the rules of governance of the self-regulatory organization.

De-listing of securities

45. (1) No securities exchange shall de-list a security admitted for quotation by it, unless it obtains an order from the Commission, authorizing the de-listing and imposing, for the protection of investors, such conditions as the Commission thinks fit.

(2) The Commission may refuse to authorize the de-listing of a security where the de-listing is in breach of—

- (a) the rules of governance of the self-regulatory organization;
- (b) an agreement entered into by the issuer of the security with the self-regulatory organization; or

(c) the rights of investors.

Appointment of
auditor

46. (1) A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.

(2) A self-regulatory organization shall require each of its members to appoint an auditor who shall—

(a) examine the financial affairs of the member in accordance with the rules of governance of the self-regulatory organization; and

(b) report the results of the examination to the self-regulatory organization.

(3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of the Institute of Chartered Accountants of Trinidad and Tobago.

(4) A self-regulatory organization or a member of a self-regulatory organization shall deliver to the Commission on request a copy of a report made under subsection (2).

Contingency fund of
securities exchange

47. (1) A self-regulatory organization that is a securities exchange, shall maintain a contingency fund, as prescribed.

(2) A self-regulatory organization that is a clearing agency shall maintain a settlement assurance fund, in the prescribed manner, to address the failure by any of its participants to deliver securities or monies required by the rules of governance of the clearing agency.

(3) A self-regulatory organization shall file with the Commission every document that relates to the creation, administration and operation of a fund required by this section.

(4) Where after consultation with the self-regulatory organization referred to in subsection (1) or (2)—

(a) the Commission reasonably believes that a

fund established under this section does not contain sufficient assets to meet claims which may be made against the fund or to meet its purpose; and

- (b) the self-regulatory organization fails to contribute or cause its members to contribute to the fund established under this section an increased amount sufficient to maintain the assets of the fund at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

then the Commission may make an order requiring the self-regulatory organization to contribute to such fund such amount required to attain the level that the Commission believes to be reasonably necessary to pay the claims.

(5) A self-regulatory organization shall at any time—

- (a) permit a person authorized by the Commission in writing to inspect the records and assets of any fund referred to in this section;
- (b) produce and furnish to the person authorized by the Commission in writing, any document or record which he reasonably requests; and
- (c) answer any questions that the person authorized by the Commission in writing, may ask concerning those records or assets.

(6) A self-regulatory organization shall appoint an auditor to audit the financial statements of a fund established under this section.

(7) A self-regulatory organization that establishes a fund under this section shall, within one hundred and twenty days of the end of the financial year of the fund, file with the Commission the report of the auditors appointed under subsection (6) together

with the financial statements of the fund in such form and containing such information as may be prescribed.

(8) Monies held in a fund in accordance with this section shall not be made available for payment of the debts or expenses or other obligations of the self-regulatory organization or its members.

Sanctions re Self-
Regulatory
Organizations

48. (1) Where a self-regulatory organization—

- (a) contravenes its rules or this Act;
- (b) is unable to comply with its rules or this Act;
- (c) fails or is unable to enforce its rules of governance or a provision of this Act that it is required to administer or enforce, or fails to comply with an order of the Commission made under this Part;
- (d) fails to observe the prescribed standards of solvency;
- (e) no longer satisfies the requirements for registration as a self-regulatory organization set out in section 37; or
- (f) is, or any of its members are, guilty of negligence or fraud,

the Commission may make an order in accordance with subsection (2).

(2) Subject to subsection (1), the Commission may make one or more of the following orders to:

- (a) censure the self-regulatory organization;
- (b) limit the activities, functions or operations of the self-regulatory organization; or
- (c) suspend or revoke the registration of the self-regulatory organization.

(3) In addition to any penalties under this Act, where a director, officer or employee of a self-

regulatory organization contravenes the rules of governance of the self-regulatory organization or this Act, the Commission may make an order censuring him or suspending or removing him from office or employment with the self-regulatory organization.

Complaints re: self-regulatory organizations and market actors

49. (1) Subject to subsection (4), any person who is aggrieved by any act or omission of a self-regulatory organization, a member thereof, or by any other market actor, may lodge a written complaint in respect thereof with the Commission.

(2) The Commission may investigate and adjudicate upon the complaint lodged pursuant to subsection (1).

(3) Section 157 shall have effect in relation to any investigation and adjudication conducted by the Commission pursuant to subsection (2).

(4) The Commission may, following receipt of a complaint made under subsection (1), make such order as it thinks just, including an order for the payment by the self-regulatory organization, the member of the self-regulatory organization or the market actor, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

Dispute between members

50. (1) Where a dispute arises between members of a self-regulatory organization, such dispute shall be referred to the board of the self-regulatory organization, and the board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.

(2) It shall be the duty of each of the parties to the dispute forthwith to inform the Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the party or parties to the dispute, within seventy-two hours of such notice to the Commission, a copy of the notice of the dispute to the Commission.

(3) Where a member of a self-regulatory organization is aggrieved by the decision of the board under subsection (1), the member may, within fourteen days of the receipt of such decision, appeal to the Commission.

(4) The Commission may, by any adjudication under this section, make any order it thinks just, including an order for the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Commission require.

PART IV REGISTRATION OF REGISTRANTS

Registration
requirement

51. (1) Subject to this Act, no person shall carry on business or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of—

- (a) a broker-dealer;
- (b) an investment adviser; or
- (c) an underwriter,

unless the person is registered, or deemed to be registered, as such, in accordance with this Act, and except for persons deemed registered, the person has received written notice of the registration from the Commission.

(2) Subject to section 53(2), an individual who is a director or senior officer or employee of a person required to be registered under subsection 51(1) and who engages in any act, action or course of conduct in connection with or incidental to, the class of business activities for which a person registered under subsection (1) is engaged shall register in accordance with this Act, in the prescribed category, subject to such terms and conditions as the Commission may determine.

(3) An individual who is not registered under subsection (2) shall not perform any of the

functions or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of the person that is required to be registered under subsection (1) in order to carry on its business activities.

(4) Subsections (2) and (3) do not apply to an employee performing functions which are solely administrative in nature, including without limitation, technology support, facilities support, human resources management and clerical support.

(5) Notwithstanding subsections (1) and (2), a person may carry on business, or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer or investment adviser for a period not exceeding thirty days in any one calendar year, where such person is not registered under subsection (1) or (2), provided such person is registered in the manner prescribed.

(6) No self-regulatory organization registered under this Act shall admit to membership or grant a licence to any person who is not a registrant duly registered, or deemed registered, under subsection (1) or (2).

(7) The registration of a person as a registrant who is registered under subsection (1) or (2) shall be valid for a period of one year from the date of registration, and subject to this Act, the Commission may renew the registration of a person annually on the payment of the prescribed fee and on compliance with such other requirements as may be prescribed.

Registration
by the
Commission

52. (1) Subject to subsections (2) and (3) where an applicant for registration under section 51(1)—

- (a) is considered by the Commission to be fit and proper for registration, renewal or reinstatement of registration in the category applied for;
- (b) complies with the prescribed requirements; and
- (c) pays the prescribed fee,

the Commission shall register, renew or reinstate the registration of the applicant and issue to such applicant a certificate of registration in the prescribed form.

(2) The Commission may refuse to register, renew or reinstate the registration of an applicant where such registration is not in the public interest.

(3) The Commission may in its discretion restrict a registration by—

- (a) imposing such terms and conditions as it thinks necessary;
- (b) limiting the duration of a registration; and
- (c) limiting the trading to certain securities or a certain class of securities.

(4) The Commission may require-

- (a) a registrant under section 51(1) to establish and maintain a compliance committee, which shall be responsible for ensuring that the registrant complies with this Act; and
- (b) a registrant under section 51, other than a person required to be registered under section 51(2), to effect policies of insurance on terms as may be ordered by the Commission for the purpose of indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees.

(5) Where the registration of a registrant under this Part is subject to terms and conditions, the registrant shall comply with such terms and conditions.

(6) In considering whether a person is fit and proper for registration under this Part, the Commission shall consider the –

- (a) financial condition and solvency;
- (b) educational and other qualification;
- (c) ability to perform his proposed business efficiently, honestly and fairly;
- (d) ability to comply with the requirements of this Act applicable to the category of registration for which he is applying;
- (e) character, financial integrity and reliability; and
- (f) additional requirements as may be prescribed, and for the purpose of this subsection, the Commission may have regard to any information in its knowledge or possession whether furnished by the applicant or not.

(7) The Commission shall not refuse to register, renew or reinstate the registration of an applicant without giving the applicant an opportunity to be heard and where the Commission refuses to register, renew or reinstate the registration of an applicant, it shall notify the applicant in writing of the reasons for so doing.

(8) The Commission shall by the 31st day of March of each year prepare a list of all registrants and self regulatory organizations, by class of registration, which shall be published in the Gazette, one daily newspaper of general circulation in Trinidad and Tobago or the annual report of the Commission under section 19.

(9) The Commission shall maintain a register of all registrants and self regulatory organizations with the Commission under this Part.

53. (1) For the period of one year from the date of proclamation of this Act, a person registered or deemed registered under the former Act as—

- (a) a broker, is deemed to be duly registered under this Act as a broker-

dealer;

- (b) a dealer, is deemed to be duly registered under this Act as a broker-dealer;
- (c) an investment adviser, is deemed to be duly registered under this Act as an investment adviser;
- (d) a trader, is deemed to be duly registered under section 51(2) as a registered representative of a registrant registered under section 51(1) of this Act;
- (e) an underwriter, is deemed to be duly registered under this Act as an underwriter; and
- (f) a securities company, is deemed to be duly registered under this Act as a broker-dealer.

(2) A person required to obtain registration under section 51(2) is required to comply with the registration requirements of section 51(2) within twelve months from the date of proclamation of this Act and shall, until the earlier of the expiry of such twelve month period and the date such person obtains registration under section 51(2), be permitted to continue performing the functions that such person was authorized to perform under the former Act.

Restrictions on
substantial shareholders
of registrants

54. (1) Subject to subsection (2) a person shall not become a substantial shareholder of a registrant required to obtain registration under section 51(1) in order to carry on its business activities without first being approved by the Commission as being fit and proper.

(2) A financial institution or a person duly registered as a registrant under sections 51(1) or 51(2) are deemed approved by the Commission for purposes of subsection (1).

(3) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant to become a substantial

shareholder of a registrant required to obtain registration under section 51(1).

(4) The Commission shall refuse to approve an applicant to become or continue to be a substantial shareholder of a registrant registered under section 51(1) unless the applicant satisfies the Commission that the registrant will remain a fit and proper person to be registered if the application is approved.

(5) In this section, “substantial shareholder” means any person who beneficially owns, or has control or direction over, or proposes to own or acquire control or direction over voting securities of a registrant registered under section 51(1) representing more than ten per cent of the outstanding voting securities of the registrant.

(6) A person that is a substantial shareholder of a registrant registered under section 51(1) on the date of the commencement of this Act is deemed approved by the Commission for purposes of subsection (1).

Termination of
employment

55. (1) The termination of the employment of an individual who is registered under section 51(2) with a registrant that is registered under section 51(1) shall operate as a suspension of the registration of such individual under section 51(1), with effect from the date of termination of the employment, until notice in writing and an application for reinstatement on the prescribed form has been received by the Commission from another registrant registered under section 51(1) of the employment of such individual by the other registrant.

(2) If notice in writing of the employment of an individual referred to in subsection (1) by another registrant registered under section 51(1) is not received by the Commission within ninety days of the suspension of the registration of such individual, the Commission shall revoke the registration of such individual.

(3) An individual whose registration is revoked under subsection (2) may apply for registration under section 51(2) upon employment of such individual by a registrant registered under

section 51(1).

Application for
registration

56. (1) An application for registration under this Part shall be made in writing in the prescribed form and shall be accompanied by the prescribed fee and such other prescribed documents or information requested by the Commission.

(2) If at any time between the date of the filing of an application and the date that a notice of registration is received by the applicant, the applicant becomes aware of a material change in the information contained in the application, then the applicant shall forthwith inform the Commission in writing of such material change.

(3) The Commission may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material fact then or previously submitted, or may require the applicant or the registrant or any partner, officer, director, or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant, to submit to examination under oath by a person designated by the Commission.

(4) Subject to the By-laws, every registrant registered under section 51(1) shall, within five business days of the event, deliver to the Commission notice in the prescribed form of—

(a) any change in—

- (i) address for service in Trinidad and Tobago, or any business address;
- (ii) the directors or senior officers of the registrant and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor;
- (iii) the information required under section 54;

(iv) the name or address of the person in charge of any branch office where the class of business for which the person is registered under section 51(1) in Trinidad and Tobago;

(v) the end of its financial year; or

(vi) its registered name.

(b) the commencement and termination of employment of every individual registered under section 51(2) and, in the case of termination of employment, the reason therefor;

(c) the opening, closing, or relocation of any branch office and, in the case of the opening of any branch office in Trinidad and Tobago, the name and address of the person in charge thereof;

(d) the failure by the registrant, at any time, to maintain the prescribed levels of capitalization; and

(e) such other changes as may be prescribed.

(5) A person opening a branch office where the class of business for which the person is registered under section 51(1) is intended to be conducted shall apply to the Commission for registration of the branch office in the prescribed form and shall pay the prescribed fee and the Commission may grant such application subject to such conditions as it considers appropriate.

Suspension of
registration, warning,
censure

57. (1) The Commission may, where it considers it to be in the public interest, issue a warning, private reprimand or public censure or may suspend the registration of a registrant registered under section 51(1), (2) or (5) if—

(a) such registrant ceases to carry on the

business of a registrant;

- (b) such registrant had obtained registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to the application for registration or to the suitability of the registrant to be registered;
- (c) the registration of such registrant under this Act or the former Act has been made by mistake, however such mistake arose;
- (d) such registrant has defaulted in the payment of any monies due to a self-regulatory organization or to the Commission;
- (e) in the case of a registrant that is not an individual, a levy of execution in respect of such person has not been satisfied;
- (f) in the case of a registrant that is not an individual, such registrant fails to maintain the prescribed level of capitalization;
- (g) such registrant is charged or convicted of an offence involving fraud or dishonesty;
- (h) such registrant contravenes, or fails to comply with, any term, condition or restriction applicable in respect of his registration, or with a provision of this Act;
- (i) in the case of a registrant that is not an individual, such registrant fails adequately to supervise or to conduct the activities of any other person acting for, or on behalf of, such registrant;
- (j) such registrant is prosecuted for breach of this Act;

(k) such registrant ceases to meet a registration requirement, or a term or condition of registration, applicable to such person; or

(l) such registrant is guilty of misconduct or is no longer fit and proper for registration.

(2) In considering at any time whether a registrant registered under sections 51(1), 51(2) or 51(5) is no longer fit and proper for registration under section 57(1)(l), the Commission shall consider the financial condition, proficiency, integrity, and competency of such applicant and any additional requirements as may be prescribed.

(3) In this section, “misconduct” means—

(a) a contravention of any provision of the Act;

(b) a contravention of the terms and conditions of any registration or licence; or

(c) any act or omission relating to carrying on the business requiring registration which in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.

(4) Subject to subsection (5), the Commission shall not suspend the registration of a registrant under this section without giving the person an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may suspend the registration of a registrant for a period of thirty days where it considers that immediate suspension is in the public interest or that any delay may be prejudicial to the public interest.

(6) Where any registered registrant is prosecuted for breach of this Act, the Commission may suspend the registration of such registrant from the date of the institution of such prosecution or at any time thereafter, but such suspension shall automatically cease upon the dismissal of the charge

or the withdrawal thereof or, if there is more than one charge, upon the dismissal or withdrawal of all the charges.

(7) The Commission may, where it considers it to be in the public interest, revoke or rescind any suspension it has made of the registration of a registrant under this section, whether on its own determination or on application by a registrant.

(8) Where the Commission has suspended the registration of any registrant registered under sections 51(1), 51(2) and 51(5), or the registration otherwise expires, that registrant shall forthwith cease activities in the area of activity for which he was registered, and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith be suspended.

(9) Where a suspension of the registration of any registrant under registered under sections 51(1), 51(2) and 51(5) is revoked or rescinded by the Commission for any reason, the registration of such registrant and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization held by the registrant, shall be reinstated with the full terms, conditions, rights, privileges and obligations of such registration, licence or membership.

Revocation of
registration

58. (1) The Commission may, where it considers it to be in the public interest, revoke the registration of a registrant registered under section 51(1), (2) or (5) for any reason set out in section 57 other than section 57(1)(g) or (j) or (k).

(2) Where the Commission has suspended the registration of a registrant for a reason set out in section 57(1)(g) or (j) or (k), the Commission may revoke the registration of such registrant if the registrant—

- (a) has been convicted by a court for an offence involving fraud or dishonesty,
- (b) has been convicted by a court for a contravention of the Proceeds of Crime Act, 2000, the Anti-Terrorism Act, 2005, or

any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time;

(c) has breached this Act.

(3) The Commission shall not revoke the registration of a registrant under this section without giving the person an opportunity to be heard.

(4) The Commission shall not revoke the registration of a registrant unless it is satisfied that the financial obligations of the registrant to the clients of such registrant have been discharged to the extent possible.

(5) Where the Commission has revoked the registration of any registrant that registrant shall forthwith cease activities in the area of activity for which such registrant was registered, and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith become invalid.

Surrender of
registration

59. On application by a registrant registered under sections 51(1), 51(2) and 51(5), the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant if the Commission is satisfied that the financial obligations of the registrant to the clients of such registrant have been discharged and the surrender of the registration would not be prejudicial to the public interest.

Offence

60. (1) A person who makes a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Part commits an offence and is liable on conviction on indictment to a fine of one million dollars and to imprisonment for one year.

(2) A person who contravenes section 51(1) or (2) commits an offence and is liable on conviction on indictment to a fine of two million dollars and to imprisonment for two years.

61. (1) A person who proposes to make a distribution shall register with the Commission as a reporting issuer and file a registration statement in the prescribed form within the prescribed time and pay the prescribed fee.

(2) A reporting issuer shall amend its registration statement in the prescribed form annually, within fourteen days of the end of its financial year and pay the prescribed fee.

(3) Subject to the By-laws, every reporting issuer shall within five business days of the event, deliver to the Commission notice in the prescribed form of—

(a) any change in—

(i) address for service in Trinidad and Tobago, or any business address;

(ii) the end of its financial year; and

(iii) its registered name.

(4) The Commission may on its own motion or on application by a reporting issuer or another interested person make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(5) This section shall not apply to any issuer which is a government entity.

62. (1) No security shall be distributed or listed with any self-regulatory organization unless it is registered with the Commission.

(2) Any security may be registered with the Commission by filing a registration statement in the prescribed form signed—

(a) by the principal executive officer of the issuer and at least two members of the board of directors of the issuer; or

(b) in the case of a government entity, by the underwriter or designated agent.

(3) Signatures appearing on the registration statements shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proved by the person denying the validity of the signature.

(4) A registration statement shall be deemed effective only as to the securities specified therein proposed to be offered.

(5) At the time of filing a registration statement pursuant to subsection (2), the applicant shall pay to the Commission such fees as may be prescribed.

(6) The filing with the Commission of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (5).

(7) The information contained in or filed with any registration statement shall be made available to the public in such manner as may be prescribed.

(8) The effective date of a registration statement shall be determined by the Commission.

(9) Securities which were registered prior to the commencement of this Act and in accordance with the former Act, shall be deemed to be registered under this Act.

PART V DISCLOSURE OBLIGATIONS OF REPORTING ISSUERS

Annual reports

63. A reporting issuer shall, within the prescribed time period, after the end of its financial year —

(1) file with the Commission, a copy of its annual report containing the prescribed information; and

(2) send the annual report to each holder of its securities, other than debt securities, addressed to the latest address as shown on the securities register of the reporting issuer.

Timely disclosure of material changes

64. (1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall —

- (a) within three days of the occurrence of material change, file with the Commission the prescribed report disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer; and
- (b) forthwith, and in any event within seven days of the occurrence of the material change, publish a notice in a daily newspaper of general circulation in Trinidad and Tobago or as otherwise prescribed and such notice shall be authorized by a senior officer and shall disclose the nature and substance of the material change; and
- (c) Within seven days of the occurrence of the material change file a copy of the notice published in subsection (1) with the Commission.

(2) Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that-

- (a) the disclosure required by subsection (1) would be unduly detrimental to its interests; or
- (b) the disclosure required by subsection (1) would be unwarranted, and

the reporting issuer shall forthwith but in any event no later than three days after the occurrence of the material change advise the Commission in writing of the material change and of the reasons why it is of the opinion that there should not be a notice as contemplated in subsection (1)(a).

(3) Where the Commission is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a reporting issuer, it may after giving the reporting issuer an opportunity to be heard—

(a) require disclosure to the public of the material change in accordance with subsection (1); or

(b) permit non-disclosure of the material change by the reporting issuer until such time as the Commission may order.

Annual financial
statements

65. (1) Every reporting issuer shall within the prescribed time prepare and file with the Commission annually comparative financial statements relating separately to—

(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year; and

(b) the period covered by the financial year next preceding the last financial year, if any, made up and certified as prescribed and prepared in accordance with financial reporting standards.

(2) Every financial statement referred to in subsection (1) shall be audited by an auditor.

(3) No person shall be appointed to act as the auditor of a reporting issuer unless such person is a member in good standing of the ICATT and meets any other requirements as may be prescribed.

(4) Subject to subsection (5), at the time a reporting issuer files comparative financial statements with the Commission under this section it shall concurrently file a certificate in the prescribed form and signed by—

(a) its chief executive officer and its chief financial officer;

(b) any other two senior officers if the reporting issuer does not have a chief executive officer or chief financial officer; or

(c) any two directors of the reporting issuer shall certify the accuracy of the comparative financial statements in the prescribed manner.

(5) The board of directors of a reporting issuer shall have an audit committee composed of not less than three directors of the reporting issuer, a majority of whom are not senior officers or employees of the reporting issuer or any of its affiliates.

(6) The audit committee of a reporting issuer shall review the comparative annual financial statements of the reporting issuer before such financial statements are approved by the directors of the reporting issuer.

Interim financial
statements

66. (1) Every reporting issuer shall prepare and file with the Commission within the prescribed time period interim financial statements—

(a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively, before the date on which that financial year ends, but no interim financial statement is required to be filed for any period that is less than three months in length; and

(b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up and certified as prescribed and prepared in accordance with financial reporting standards for each interim period of each financial year beginning on or after [January 1, 2009].

(2) An interim financial statement prepared and filed under subsection (1) need not include an auditor's report, but if an auditor has been associated with that statement, his audit report or his comments on the unaudited financial information shall accompany the financial statement.

Filing and delivery
of financial
statements

67. (1) Subject to subsection (2), every financial statement required to be prepared and filed with the Commission pursuant to section 65 or 66, shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt securities, to the latest address as shown on the securities register of the reporting issuer at the time such financial statements are filed with the Commission.

(2) A reporting issuer satisfies the obligation in subsection (1) with respect to interim financial statements by publishing the financial statements in a daily newspaper of general circulation in Trinidad and Tobago or in any other prescribed manner.

Proxy
solicitation

68. (1) A reporting issuer shall, concurrently with the giving of notice of a meeting of its security holders, send a prescribed form of proxy to each holder of voting securities who is entitled to receive notice of the meeting, to the latest address as shown on the securities register of the reporting issuer.

(2) A person shall not solicit proxies under subsection (1) unless there is sent to each such security holder whose proxy is solicited and to the reporting issuer if the solicitation is not by or on behalf of the management of the reporting issuer, concurrently with the solicitation a—

- (a) proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by the management of the reporting issuer; or

- (b) dissident's proxy circular in the prescribed form stating the purpose of the solicitation when the solicitation is not by the management of the reporting issuer.

(3) A person sending a proxy circular or dissident's proxy circular shall file a copy of such document with the Commission together with the form of proxy concurrently with the mailing thereof.

(4) Where a reporting issuer is complying with the—

- (a) requirements of the law of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this section;

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- (b) comparable requirements of the Companies Act; or

- (c) requirements of any designated foreign jurisdiction,

the requirements of this section shall not apply.

(5) In this section, "solicit" means—

- (a) a request for a proxy, whether or not accompanied by or included in a form of proxy;
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy;
- (c) the sending of a form of proxy or other communications to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
- (d) the sending of a form of proxy to a security holder under subsection (1),

but does not include—

- (a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a security holder;
- (b) the performance of administrative acts or professional services on behalf of a person requesting a proxy;
- (c) the sending by a broker-dealer of documents to a beneficial owner;
- (d) the request by a person in respect of securities of which he is the beneficial owner; or
- (e) publically announcing, by a security holder, how the security holder intends to vote and the reasons for that decision, and that public announcement is made by:
 - (i) a speech in a public forum; or
 - (ii) a press release, an opinion, a statement or an advertisement provided through a broadcast medium or by a telephonic, electronic or other communication facility, or appearing in a newspaper, a magazine or other publication generally available to the public.

Exemptions for certain
foreign issuers

69. (1) A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 68 where the reporting issuer—

- (a) had a market capitalization of no less than the prescribed amount on the date it became a reporting issuer under this Act calculated in the prescribed manner;
- (b) complies in all respects with the foreign disclosure requirements of a designated foreign jurisdiction regarding—

- (i) the disclosure of material changes on a timely basis;
 - (ii) the preparation, filing and delivery of annual comparative financial statements and an auditor's report thereon;
 - (iii) the preparation, filing and delivery of interim financial statements; and
 - (iv) the preparation, filing and delivery of an annual report, a management discussion and analysis or other similar document on the reporting issuer's annual comparative financial statements;
- (c) files with the Commission all such documents which it files with the securities regulatory authority in a designated foreign jurisdiction in respect of the items described in subsection (1)(b) as soon as possible but in any event within seven (7) days after such filing is required to be made with the foreign regulatory authority; and
- (d) delivers to each security holder, resident in Trinidad and Tobago, at the last address shown on the securities register of the reporting issuer, the documents that such security holder would be entitled to receive under the securities laws of the designated foreign jurisdiction if such security holder were resident in that jurisdiction and such documents shall be sent within seven (7) days after such documents would be required to be sent to the security holder if such security holder were resident in that jurisdiction.

(2) Subsection (1) is not available to an approved foreign issuer if, as at the end of the last financial year of the approved foreign issuer, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by

residents of Trinidad and Tobago exceeded ten per cent of the number of voting securities outstanding of the issuer on such date.

(3) A reporting issuer which is an approved foreign issuer shall certify annually to the Commission in writing, concurrently with the filing of its annual comparative financial statements, that it is an approved foreign issuer and is permitted to rely on the exemption provided by this section.

Offence

70. (1) Subject to subsection (2), a reporting issuer who—

(a) contravenes this Part; or

(b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

commits an offence and is liable on conviction on indictment to a fine of one million dollars and to imprisonment for two years.

(2) Where a reporting issuer is convicted of an offence under subsection (1), each director and senior officer of the reporting issuer, who knowingly or recklessly authorized, permitted or acquiesced in the offence is also liable on conviction on indictment for such offence to a fine of five hundred thousand dollars or to imprisonment for two years.

(3) Notwithstanding subsection (2), the defence available to a director or senior officer under section 163(3) is also available to a director or senior officer in respect of this section.

(4) Where a director or senior officer is convicted of an offence under subsection (2), the Commission may order, if it is in the public interest, and in addition to any other order that the Commission may make, that the director or senior officer be prohibited from being a director or senior officer of a reporting or registrant or self regulatory organization for a period not exceeding five years.

Ceasing to be a reporting issuer

71. (1) The Commission may on its own motion or on application by a reporting issuer, make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(2) Where a reporting issuer fails to file a report or statement required to be filed under this Part for more than six months following the prescribed date by which the report or statement is required to be filed, the Commission may impose such conditions on a reporting issuer as it sees fit including suspension and cessation of trading until such time as the outstanding report or statement is filed.

PART VI DISTRIBUTION

Definition and construction

72. (1) For the purpose of this Part, an advertisement solicits the purchase or sale of securities if—

- (a) it invites a person to enter into an agreement for, or with a view to subscribing for, or otherwise acquiring or underwriting any securities; or
- (b) it contains information reasonably calculated to lead, directly or indirectly, to a person entering into such an agreement.

(2) In this Part—

“accredited investor” means—

- (a) a person who has access to substantially the same information concerning the issuer that is required in a prospectus under this Part;
- (b) an officer or director of the issuer, or a spouse of any such person;
- (c) a bank, insurance company, loan or trust company incorporated, governed, or regulated under the laws of Trinidad and

Tobago;

- (d) a registrant registered under sections 51(1), 51(2), or 51(5);
- (e) a government entity, international agency or any other foreign government;
- (f) an individual who has net financial assets of no less than five million dollars or such higher amount as may be prescribed;
- (g) any person other than an individual, including a collective investment scheme, that has net financial assets of no less than ten million dollars or such higher amount as may be prescribed; and
- (h) any person outside of Trinidad and Tobago that is analogous to persons referred to in paragraphs (c), (d), (f) and (g);

“financial assets” means cash, securities, or any contract of insurance, or deposit or evidence thereof that is not a security for purposes of the Act;

“limited offering” means a distribution where—

- (a) following the completion of such distribution, the number of security holders of the issuer is not greater than thirty-five persons exclusive of directors, officers and employees or former directors, officers and employees of the issuer and its affiliates; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by a registrant registered under sections 51(1), 51(2), or 51(5);

“offer to sell” includes an attempt or offer

to dispose of, and a solicitation of an offer to buy, a security.

Prospectus
required

73. (1) Subject to section 79, no person shall trade in a security where such trade would be a distribution unless a prospectus has been filed with the Commission with the prescribed fee and a receipt therefor has been issued by the Commission.

(2) Notwithstanding subsection (1), no person shall trade in an asset-backed security where such trade would be a distribution, except under an exemption provided for in section 79, unless such security has received an approved rating.

Advertising

74. A person shall not solicit the purchase or sale of a security by way of advertisement in connection with a distribution of a security unless a receipt has been issued by the Commission under this Act for a prospectus offering the security and the advertisement—

- (a) identifies the security distributed;
- (b) states that a receipt has been issued;
- (c) identifies a person from whom a document specified in paragraph (a) may be obtained, and identifies a person through whom orders will be executed; and
- (d) contains any other prescribed information.

75. (1) An issuer, or a registrant acting as agent for the issuer, who receives an expression of interest, order or subscription for a security offered in a distribution, shall send or deliver to such person a prospectus, or amended prospectus, as the case may be, within two business days after the expression of interest, order or subscription is received.

(2) An agreement of purchase and sale is not binding on a purchaser if the issuer or the registrant acting as agent for the issuer, receives not later than two business days after the day the purchaser received a prospectus or an amended prospectus under subsection (1), written notice that the purchaser

intends not to be bound by the agreement.

(3) A person who files a prospectus with the Commission pursuant to section 73, during the period of distribution determined in accordance with section 83, shall furnish to a registrant registered under sections 51(1), 51(2), and 51(5) a reasonable number of copies of the prospectus upon request and without charge.

(4) For the purposes of this section, the receipt of a prospectus by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1), is deemed to be a receipt by the principal purchaser as of the date on which the agent received the prospectus.

Contents of
prospectus

76. (1) A prospectus shall contain full, true and plain disclosure of all material facts concerning the issuer and the securities to be distributed, and shall comply with the prescribed requirements.

(2) In addition to subsection (1), a prospectus distributing securities of a collective investment scheme shall comply with such additional requirements as may be prescribed.

Amended
prospectus

77. (1) Where a prospectus has been filed with the Commission under section 73 in respect of any proposed distribution of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer, or during the period of distribution thereunder—

(a) there is a material change; or

(b) a material fact occurs, the inclusion of information in respect of which would have been required to be included in the prospectus if it had arisen when the prospectus was prepared,

then the issuer shall file with the Commission an amended prospectus containing particulars of that material change or material fact as the case may be, and every prospectus thereafter sent or delivered to any person shall include such amended prospectus.

(2) Where an amended prospectus is required to be prepared and filed with the Commission under subsection (1), the distribution of securities under the prospectus shall cease until such time as the Commission has issued a receipt for the amended prospectus.

(3) An issuer, or a registrant acting as agent for the issuer, who sends a prospectus to a purchaser under section 75 (1) shall send to each such purchaser an amended prospectus forthwith after a receipt is issued by the Commission in respect of such amended prospectus.

Expert's consent

78. (1) A prospectus that includes a report, opinion, valuation or statement purporting to be made by an expert shall not be received by the Commission unless—

- (a) that expert has given, and has not before delivery of a copy of the prospectus is withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) The written consent of an expert under subsection (1) shall be filed in the prescribed manner.

Exemptions

79. (1) Subject to subsection (2), section 73 does not apply to a distribution—

- (a) by an issuer where the purchaser is an affiliate of the issuer acting as principal;
- (b) by an issuer of a security that is distributed to holders of its securities as a dividend or a distribution out of earnings, surplus, capital or other sources;
- (c) by an issuer of a security to holders of its securities incidental to a reorganization or winding up or to a distribution of its

assets for the purpose of winding up its affairs;

- (d) by an issuer of a security pursuant to the exercise of a right to acquire a security of its own issue, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;
- (e) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right if the issuer —
 - (i) files with the Commission a notice that is to be sent to its security holders and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; and
 - (ii) sends to its security holders any information relating to the securities that is satisfactory to the Commission;
- (f) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to—
 - (i) a statutory amalgamation or arrangement; or
 - (ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

- (g) by an issuer pursuant to a take-over bid;
- (h) by an issuer of securities of its own issue or that of an affiliate to its directors, officers or employees, or directors, officers or employees of an affiliate, if—
 - (i) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
- (i) where the Commission makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the order subject to any conditions it considers appropriate;
- (j) of securities issued or guaranteed by a government entity, a foreign government or an international agency;
- (k) by a person declared an exempt purchaser by order of the Commission who purchases as principal or as trustee for accounts fully managed by it;
- (l) by a reporting issuer to an accredited investor where—
 - (i) the distribution is not accompanied by an advertisement other than an announcement, on prescribed terms, of its completion;

(ii) no selling or promotional expenses are paid in connection with the trade except for professional services or services performed by a registrant; and

(iii) where the accredited investor is an individual, other than an individual described in paragraph (b) or (d) of the definition of accredited investor, the individual has obtained investment advice in respect of the distribution from—

(A) a registrant registered under sections 51(1), 51(2), or 51(5);
or

(B) any prescribed person,

who receives no remuneration from the issuer or selling security holder in connection with the distribution;

(m) in a limited offering by a reporting issuer;
or

(n) in such other circumstances as may be prescribed.

(2) An asset-backed security may only be distributed pursuant to an exemption in subsection (1) where a risk disclosure statement in the prescribed form has been delivered to each purchaser of the asset-backed security.

(3) The certificate for any security distributed under an exemption in subsection (1)(a), (k), (l) or (m) shall contain a legend in the prescribed form.

(4) Subject to subsection (6), section 73 does not apply to a distribution by a person within the meaning of paragraph (d) of the definition of distribution if the distribution is a trading transaction.

(5) For purposes of subsections (4) and (6), a distribution is a trading transaction where—

- (a) the distribution is conducted by or through a underwriter, broker-dealer or investment adviser;
- (b) the issuer of the security being distributed has been a reporting issuer for at least twelve months immediately preceding the date of commencement of the distribution;
- (c) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registered registrant;
- (d) the distribution takes place through the facilities of a securities exchange;
- (e) at the time of the distribution, the selling security holder does not have knowledge or possession of any material non-public information in respect of the reporting issuer;
- (f) if the securities being distributed have been acquired by the selling security holder under a prospectus exemption, at least six months have elapsed from the date of the initial exempt distribution; and
- (g) notice of the intention to distribute securities in a trading transaction is published by a notice in a daily newspaper of general circulation in Trinidad and Tobago and filed with the Commission no less than three and no more than ten business days prior to the first sale by the selling security holder.

(6) Subsection (4) is not available in a distribution that is a trading transaction unless—

- (a) the first sale takes place no less than three business days and no more than ten business days after the date of issuance of the notice required by subsection (5)(g); and
- (b) the final sale takes place no later than the sixtieth day after the date of issuance of the notice required by subsection (5)(g)

Exemptions for
approved foreign
issuers

80. (1) In connection with a distribution of securities, an issuer that is an approved foreign issuer may satisfy the requirements of sections 73, 75, 76, 77 and 78 of this Part by—

- (a) filing with the Commission—
 - (i) a certificate in the prescribed form signed by a senior officer of the issuer certifying that it is an approved foreign issuer;
 - (ii) a copy of the receipt or other evidence that the prospectus or offering document to be used in connection with a distribution of securities has become final for purposes of a distribution of securities in a designated foreign jurisdiction;
 - (iii) a copy of all documents incorporated or deemed incorporated by reference in the prospectus or offering document;
 - (iv) a copy of all reports or valuations filed in the designated foreign jurisdiction in connection with the distribution;
 - (v) a form of submission to jurisdiction and appointment of agent for service of process of the issuer in the prescribed form; and

(vi) a copy of the prospectus or offering document, and each supplement or amendment thereto, including a certificate of a senior officer of the issuer certifying that the prospectus or offering document constitutes full, true and plain disclosure of all material facts relating to the issuer and the securities being distributed; and

(b) delivering to each purchaser in Trinidad and Tobago—

(i) the offering document or prospectus, and each supplement or amendment thereto; and

(ii) an addendum to the offering document or prospectus containing the prescribed information.

(2) Subsection (1) does not apply to an approved foreign issuer where—

(a) following the distribution, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by residents of Trinidad and Tobago would exceed twenty per cent of the total number of voting securities outstanding of the issuer;

(b) the approved foreign issuer is a collective investment scheme;

(c) the approved foreign issuer has a market capitalization of less than the amount as prescribed on the date the documents required to be filed under subsection (1) are filed with the Commission; or

(d) the documents required to be filed by the issuer under subsection (1) are

not filed in the English language.

(3) Subject to subsection (2), where an approved foreign issuer files with the Commission the documents and material required under subsection (1), the Commission shall issue a receipt for such prospectus or offering document unless the Commission determines it is not in the public interest to do so.

Resale restrictions

81. (1) The first trade in securities previously acquired pursuant to an exemption contained in paragraph (a), (d), (k), (l), or (m) of section 79(1), other than a further trade exempted by this Act, is deemed to be a distribution, unless

- (a) the issuer whose securities are being traded is and has been a reporting issuer for the twelve months immediately preceding the date of the trade;
 - (b) the trade is not a distribution within the meaning of paragraph (d) of the definition of distribution;
 - (c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - (d) no extraordinary commission or consideration is paid to a person in respect of the trade;
 - (e) if the seller is a person connected to a reporting issuer within the meaning of Part IX, such seller has no reasonable grounds to believe that such issuer is in default under the Act; and
 - (f) at least six months have elapsed from the date of the initial distribution.
- (2) A person who purchases a security

pursuant to an exemption from the prospectus requirement of section 73(1), that is available under this Act at a time when the condition set forth in subsection (1)(f) has not been satisfied, shall be in the same position as the seller for the remainder of the period specified in subsection (1)(f).

(3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition set forth in subsection (1)(f) has not been satisfied in respect of the convertible or exchangeable security, a person who takes such security distributed on conversion or exchange shall be in the same position for the remainder of the period specified in such paragraph as if such conversion or exchange had not occurred.

Receipt for
prospectus

82. (1) Subject to subsections (2), (3) and (4), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the filing of the prospectus.

(2) The Commission shall refuse to issue a receipt for a prospectus if—

- (a) the prospectus or any document filed therewith—
 - (i) contains a misrepresentation;
 - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;
 - (iii) fails to disclose any material fact which may be required under this Act; or
 - (iv) fails to comply with any requirement of this Act;
- (b) the distribution in connection with which it is filed is deceptive;
- (c) an unconscionable consideration has been or is intended to be given for

promotional purposes or for the acquisition of the security;

- (d) the past conduct of the issuer, or any director, senior officer, promoter, or person holding securities sufficient to affect materially the control of the issuer, or any other person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or policies, suggests to the Commission that the business or affairs of the issuer are likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;
- (e) the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;
- (f) an expert who has prepared or certified a part of the prospectus or report used in connection with it, or who has filed a consent with the Commission, is not acceptable to the Commission;
- (g) the issuer is in default in filing or delivering any document with the Commission required under this Act or under any other written law by or under which it is incorporated or organized;
- (h) an underwriter named in the prospectus as underwriting a distribution is not acceptable under Part IV as a registrant, as determined in accordance with the By-laws;

- (i) where a minimum amount of funds is required by an issuer, the prospectus does not indicate that the distribution will cease if the minimum amount of funds is not subscribed within ninety days of the commencement of the distribution; or
- (j) the Commission considers that the distribution would be prejudicial to the public interest.

(3) The Commission shall not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

(4) The Commission may, in connection with the issuance of a receipt for a prospectus, impose any condition which in the opinion of the Commission is necessary for the protection of investors including a condition that—

- (a) outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;
- (b) the proceeds of a distribution which are payable to the issuer be held in trust until such amounts, as may be specified by the Commission, are to be released to the issuer; and
- (c) no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

Cessation of
distribution

83. (1) For the purposes of this Part, a distribution commences on the date on which a receipt for a prospectus is issued by the Commission.

(2) Where in the first ninety days following the commencement of a distribution, less than twenty-five per cent of the securities proposed to be distributed and sold under the prospectus are actually sold and paid for, the distribution shall cease and the funds shall be returned to subscribers until such time as a

new prospectus is filed and a receipt therefor issued by the Commission.

(3) Where a minimum amount of funds is required by an issuer, and such minimum amount of funds is not raised by the issuer in the first ninety days following the commencement of the distribution, the distribution shall cease and the funds shall be returned to subscribers until such time as a new prospectus is filed and a receipt therefor issued by the Commission.

(4) Subject to subsection (5), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the prospectus relating to it unless the Commission issues a new receipt for a current prospectus in which case the period runs from the date of the latter receipt.

(5) The Commission may order that the period specified in subsection (4) be reduced to not less than six months.

(6) Subsections (2), (3) and (4) do not apply to a distribution of securities by a collective investment scheme.

Distribution
statement

84. (1) A person who distributes a security, other than a security which is issued by a collective investment scheme—

- (a) under a prospectus which has been filed with the Commission and receipt obtained therefor under this Act; or
- (b) pursuant to an exemption from the requirement to file a prospectus with the Commission and obtain a receipt therefor,

shall within ten days of the completion of the distribution file a distribution statement in respect of the securities distributed with the Commission in the prescribed form.

(2) Where the period of distribution of securities exceeds ten days in length, an issuer shall comply with subsection (1) within ten days of the first distribution of securities thereunder, notwithstanding that such distribution may not be complete, and thereafter shall file a distribution statement with the Commission in respect of the remaining securities distributed within ten days of the completion of the distribution.

(3) A distribution statement shall be signed by a senior officer of an issuer and at least two directors of the issuer, or where the issuer does not have a senior officer or board of directors, by any two persons authorized to sign on behalf of such issuer.

PART VII MARKET CONDUCT AND REGULATION

Division 1 – Stamp Duty

Exemption from
stamp duty
Chap. 76:01

85. Notwithstanding the Stamp Duty Act, no stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of governance of any registered self-regulatory organization.

Division 2 – Transactions Conducted other than through a Securities Exchange

Trades conducted
other than through a
securities exchange

86. Where a registrant participates in trades other than through the facilities of a securities exchange such a registrant shall keep a record of all trades executed by any person other than through the facilities of a securities exchange and shall file with the Commission a report of the trades in the prescribed form and within prescribed time.

Division 3 – Record – Keeping and Compliance Reviews

Record-keeping

87. (1) Every market actor shall —

- (a) make and keep such books, records and other documents in such form

and for such periods as—

(i) are reasonably necessary in the conduct of its business and operations, including to document compliance with this Act, including for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others;

(ii) are required by this Act;

(iii) are required by the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; and

(iv) otherwise prescribed

(b) file with, or deliver to, the Commission any prescribed document, instrument, writing or report; and

(c) make available to a person any report referred to in paragraph (b) upon request.

(2) Without limiting the generality of subsection (1), every registered self-regulatory organization that is a securities exchange shall keep a record as prescribed of the time at which each transaction on a registered self-regulatory organization took place and any other prescribed information and shall supply to a client of a member of the registered self-regulatory organization, on production of a written confirmation of a transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the written confirmation.

(3) On the request of a person who produces a written confirmation of a trade on his behalf through

its facilities, a securities market shall furnish to him—

- (a) forthwith, if the trade was executed within thirty days of the request; and
- (b) within a reasonable time, if the trade was executed more than thirty days before the request,

details of when the trade took place and of any other matter contained in the confirmation of which the securities market acquired knowledge in the ordinary course of its business.

Provision of
information to the
Commission

88. Every market actor shall deliver to the Commission at such time as the Commission or any duly authorized member, employee or agent of the Commission may request in the performance of its functions under this Act—

- (a) any of the books, records and documents that are required to be kept by the market actor under the Act; and
- (b) any filings, reports or other communications made to any other regulatory agency whether required under this Act or any other written law.

Compliance
reviews

89. (1) In the performance of the functions of the Commission under this Act, the General Manager or any duly authorized employee or agent of the Commission so authorized in writing by the General Manager, shall be permitted to review the books, records and documents that are required to be kept by a registrant or self regulatory organization under section 87 for the purpose of determining whether the provisions of this Act, the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism are being complied with.

(2) A person conducting a compliance review under this section shall be permitted to, on production

of his authorization—

- (a) enter the business premises of any registrant or self regulatory organization during normal business hours;
- (b) inquire into and examine the books, records and documents of the registrant or self regulatory organization that are required to be kept under section 87, and make copies of the books, records and documents; and
- (c) request any information or explanation as they consider necessary for the due performance of their duties.

(3) References to books, records, and documents in this section include all books of account, tangible or intangible securities or other instruments, cash or cash equivalents, vouchers, sales contracts, minutes of meetings or other records, accounts or data.

(4) The Commission may charge a fee as prescribed for a compliance review conducted under this section.

Compliance Directions

90. (1) Notwithstanding any other action or remedy available under this Act, if a compliance review conducted under section 89 or any other inspection reveals that a registrant or self regulatory organization –

(a) is committing, or is about to commit an act or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of securities;

(b) is committing, or is about to commit an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of investors;

(c) is violating or is about to violate any of the provisions of this Act or By-Laws or Guidelines made thereunder or the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; or

(d) has breached any requirement or failed to

comply with any measure imposed by the Commission in accordance with this Act or By-Laws or Guidelines made thereunder,

the General Manager, upon notifying the Chairman, may direct the registrant or self regulatory organization within such time as may be specified, to take all such measures as he may consider necessary to remedy the situation or minimize the prejudice.

(2) For the purposes of this section, the term “unsafe or unsound practices” shall include without limitation, any action or lack of action that is contrary to generally accepted standards or prudent operation and behaviour, the possible consequences of which, if continued, would be a risk of loss or damage to a registrant or self regulatory organization, its investors or the general public.

(3) Subject to subsection (6), before a direction is issued, the person to whom the direction is to be issued shall be served with a notice specifying –

- (a) the facts of the matter;
- (b) the directions that are intended to be issued; and
- (c) the time and place at which the person served with the notice may make representations to the General Manager.

(4) If the person served with the notice referred to in subsection (3) fails to attend at the time and place stipulated by the said notice, the General Manager, upon notifying the Chairman, may proceed to issue directions in his absence.

(5) Where after considering the representations made in response to the notice referred to in subsection (3), the General Manager determines that the matters specified in the notice are established, the General Manager, upon notifying the Chairman, may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (3), if in the opinion of the General Manager, the length of time required for the representations to be made might be prejudicial to investors or to the stability of the securities industry, the General Manager may, upon notifying the Chairman, make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty business days.

(7) A direction made under subsection (6) continues to have effect after the expiration of the twenty-day period referred to in that subsection if no representations are made to the General Manager within that period, or if representations have been made, the General Manager notifies the person to whom the direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(8) A person who fails to take measures directed pursuant to subsection (1) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for one year.

(9) All directions issued under this section shall be referred to as “compliance directions”.

Division 4 – Market Manipulation Offences

91. (1) No person shall do anything, take part in, carry out, or cause anything to be done, whether directly or indirectly, in one or more related transactions, with the intention that or being reckless that such transaction has or is likely to have the effect of creating a false or misleading appearance of trading activity on a securities market.

(2) No person shall do anything, take part in, carry out, or cause anything to be done, whether directly or indirectly, in one or more related transactions, with the intention that or being reckless that such transaction has or is likely to have the effect of creating an artificial price, or maintaining at a level that is artificial a price, for a security on a securities market.

(3) Without limiting the generality of subsections (1) and (2) where a person—

- (a) enters into or carries out, directly or indirectly, any transaction which purports to be a transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of the securities;
- (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to purchase the same or substantially the same number of the securities;
- (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to sell the same or substantially the same number of the securities,

then, the person is presumed, for the purposes of subsections (1) and (2) be regarded as doing something or causing something to be done, with the intention that, or being reckless that such transaction has, or is likely to have, the effect of creating a false or misleading appearance of trading activity on a securities market, or creating or maintaining at a level that is artificial, a price for a security on a securities market unless shown to the contrary by him.

Price rigging

92. No person shall—

- (a) enter into or carry out, directly or indirectly, any transaction or

sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, with the intention that, or being reckless that such transaction has, or is likely to have, the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a securities market; or

- (b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless that such transaction has, or is likely to have, the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a securities market.

Dissemination of information containing a misrepresentation

93. No person shall disclose, circulate or disseminate, or authorize the disclosure, circulation or dissemination of, information to induce another person to buy, sell or otherwise trade in securities, whether or not such purchase, sale or trade is with such person, where the information contains a misrepresentation, and the person knows, or is reckless as to whether the information contains a misrepresentation.

Securities market manipulation

94. A person shall not directly or indirectly enter into, carry out or participate in any transaction in securities of an issuer by itself or in conjunction with any other transaction that the person knows or reasonably ought to know will result in or contribute to a misleading appearance of trading activity in, or an artificial price for, a security.

Use of fraudulent or deceptive devices

95. (1) A person shall not, directly or indirectly, in connection with a trade in securities—

- (a) employ any device, scheme or artifice with the intent to defraud or deceive;

- (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception; or
- (c) make any untrue statement of a material fact or omit to state a material fact with the intention to mislead.

Excessive trading

96. (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to control or direct.

(2) No person who has discretionary authority over, or who is a trustee for an account of another, shall effect or cause to be effected trades that are excessive in volume and frequency for the person whose account he has discretionary authority over or is a trustee for.

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the customer's account or the pattern of trading in the account, or the needs and objectives of the customer as ascertained on reasonable inquiry.

Standard of conduct
for registrants

97. (1) The Commission may prescribe standards for the conduct of a registrant in relation to a customer to prevent—

- (a) a conflict of interest; or
- (b) any other conduct that would enable a registrant to treat a customer unfairly.

(2) The Commission may prescribe standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a customer.

Restrictions on
recommendation

98. (1) A registrant shall not recommend a trade in a security to any customer unless—

- (a) he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the registrant; and
- (b) he discloses in writing to any such person all conflicts of interest or potential conflicts of interest that he has, or may have, in respect of the security or the issuer of the security, including any conflict or potential conflict of interest arising from—
 - (i) his holding of securities of the issuer as beneficial owner;
 - (ii) any compensation arrangement with any person;
 - (iii) his acting as underwriter in any distribution of securities of the issuer in the three immediately preceding years; or
 - (iv) any direct or indirect financial or other interest in the security or the issuer of the security held by the registrant.

(2) Where a registrant publishes a research report which is not prepared for a specific client and which recommends generally a trade in security, that research report—

- (a) must contain the information required in subsection (1)(b); and
- (b) is exempt from the requirement outlined in subsection (1)(a).

99. A person who contravenes section 91, 92, 93, 94, 95, 96 or 98 commits an offence and is liable on conviction on indictment to a fine of two million dollars and imprisonment for two years.

Division 5 – Insider Trading

100. No person that is connected to a reporting issuer shall, directly or indirectly, buy, sell, or otherwise trade in securities of such reporting issuer, whether in a transaction on a securities market or otherwise, with knowledge or possession of material non-public information, however obtained, until such information has been published.

Prohibition on
material non-public
information information

101. (1) No person connected to a reporting issuer shall, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise trade in any securities of a reporting issuer, whether in a transaction on a securities market, during the time such person has knowledge or possession of material non-public information until such information has been published.

(2) A person connected to a reporting issuer shall not, directly or indirectly, communicate or otherwise disclose any material non-public information to any person until such information has been published, unless in the necessary course of business.

Offence

102. A person who contravenes section 100 or 101 commits an offence and is liable on conviction on indictment to a minimum fine equal to the profit made or loss avoided by him and a maximum fine equal to the greater of triple the profit made or the loss avoided by him and two million dollars and to imprisonment for two years.

Transaction not
void or voidable

103. No transaction is void or voidable by the person who has knowledge or possession of material non-public information, by reason only that it was entered into in contravention of section 100 or 101 .

Exceptions to sections
100 and 101

104. (1) Sections 100 and 101 do not prohibit a person by reason of his having knowledge or possession of any material non-public information

from—

- (a) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver, receiver-manager or trustee in bankruptcy; or
- (b) acquiring securities through any employee profit-sharing plans or employee stock ownership plan established to provide for the ownership of such securities by all employees where—
 - (i) the participation of the person in such plan is established prior to the time that the person acquired knowledge or possession of the material non-public information; and
 - (ii) the plan provides for the automatic acquisition of securities by participants in such plan.

(2) A person is not, by reason only of his having knowledge or possession of material non-public information relating to any particular transaction prohibited by section 100 or 101 —

- (a) from buying or selling or participating in any transaction on any securities market; or
- (b) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities market,

if he does that thing only in order to facilitate the completion or carrying out of a transaction that was agreed to before the time that the person acquired knowledge or possession of the material non-public information and the transaction is completed on the same terms.

(3) An entity who buys, sells or otherwise trades in securities of a reporting issuer with knowledge or possession of material non-public information that has not been published is exempt from section 100, where the entity proves that—

- (a) no director, senior officer, partner, employee or agent of the entity that made or participated in making the decision to buy, sell or otherwise trade the securities of the reporting issuer had knowledge of the material non-public information; and
- (b) no investment advice was given with respect to the purchase, sale or other trade of the securities to the director, senior officer, partner, employee or agent of the entity who made or participated in making the decision to buy, sell or otherwise trade the securities by a director, senior officer, partner, employee or agent of the entity who had knowledge of the material non-public information,

provided that this exemption is not available to an individual who had knowledge of the material non-public information.

(4) In determining whether an entity has met the requirements under subsection (3), it shall be relevant whether and to what extent the entity has implemented and maintained reasonable policies and procedures to prevent contraventions of section 100 by persons making or influencing investment decisions on its behalf, and to prevent transmission of material non-public information contrary to section 101.

Defence not available

105. Where a person is accused of an offence under section 100 or 101, it shall not be a defence to the charge that the material non-public information in respect of which the accusation has been made came to his knowledge or possession without having been

solicited by him or that he made no effort to procure the acquisition of such information.

Presumptions

106. In this Part—

- (a) a person who trades in a security at a time when he has knowledge or possession of material non-public information is presumed to have traded in the security as a result of his knowledge or possession of the material non- public information unless shown to the contrary by him; and
- (b) An entity is deemed to have knowledge or possession of material non- public information at and from the time such material non-public information comes to the knowledge or possession of any director, senior officer, partner, employee or agent of such entity.

Division 6 – Market Practices

Client accounts

107. (1) A broker-dealer shall establish and keep in a financial institution one or more trust accounts or such other accounts as may be prescribed designated as such into which it shall upon receipt pay—

- (a) all amounts, less any commission and other proper charges, that are received from or on account of any person, other than another broker-dealer, for the purchase of securities not delivered to the broker-dealer, within the prescribed time; and
- (b) all amounts, less any commission and other proper charges, that are received on account of any person, other than a broker-dealer, from the sale of securities and not paid to that person or as that person directs, within the

prescribed time after receipt of such amounts.

(2) No money shall be withdrawn from an account established under subsection (1), except for the purpose of making payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorized by law.

(3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in a client account, or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into a trust account.

(4) Every broker-dealer that fails to comply with, or contravenes any of the provisions of this section commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for six months.

Registrant to send documents to beneficial owner

108. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a registrant or his nominee, the registrant shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document need not be sent.

(2) A person who sends a document to registered security holders pursuant to this Act shall furnish to a registrant forthwith upon request, sufficient copies of the document to enable him to comply with subsection (1) and shall pay or reimburse the reasonable costs of him doing so.

Confirmation to be sent to customer

109. (1) Subject to subsection (2), a registrant who trades in any security with or for a customer shall send to that customer within two business days after the completion of the trade, a written confirmation of the trade containing the prescribed information.

(2) The Commission may order that a registrant who provides a service of a continuous nature

may send, instead of a confirmation as referred to in subsection (1), a periodic statement at the end of each three-month period or at such other shorter times and containing such information as may be prescribed.

Notification to
Commission

110. A registrant who has acted as a broker-dealer in connection with a trade in a security shall on the request of the Commission forthwith but in any event no later than seven days from the date of the request disclose to it the name of the person with or through whom the security was traded.

Restriction on trading
at residence

111. (1) In this section, “residence” includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

(2) No person shall—

- (a) attend at any residence without being invited by an occupant of the residence; or
- (b) make an unsolicited communication to any residence including by telephone, facsimile or mail delivered to the residential address;

within Trinidad and Tobago for the purpose of trading in a security, or providing investment advice.

(3) Subsection (2) shall not apply where the person communicates to any residence—

- (a) of a close friend, a business associate or a client with whom or on whose behalf the person communicating has been in the habit of trading securities; or
- (b) of a person who has received a copy of a prospectus for which a receipt has been obtained under this Act and who has requested that information respecting a security offered in that prospectus be furnished to him by the person communicating to the residence.

Control of
advertisement

112. (1) The Commission may order a registrant or reporting issuer to send to it a copy of

each advertisement that he proposes to use in connection with a trade in a security at least seven days before it is used, if the Commission reasonably believes that the past conduct of the registrant or reporting issuer in connection with such advertisements makes such review by it necessary for the protection of investors.

(2) The Commission may order that the use of an advertisement sent to it pursuant to subsection (1) be prohibited or require that it be altered before it is used if the Commission is of the view that the advertisement is likely to mislead the public.

(3) In this section, "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus.

Seller of security
to declare
non- ownership

113. A person who places an order with a registrant to sell a security that he does not beneficially own or, if acting as agent, that he knows his principal does not beneficially own, shall, when he places the order, declare that he or his principal, as the case may be, does not beneficially own the security.

Declaration as to short
position

114. A person who places an order for the sale of a security through a registrant acting on his behalf and who—

(a) does not beneficially own the security; or

(b) if he is acting as agent knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to the registrant that he or his principal, as the case may be, does not beneficially own the security, and that fact shall be published by the registrant in the written confirmation of sale.

(2) For the purposes of subsection (1), a security which is not owned by a person includes, but is not limited to, a security that —

(a) has been borrowed by that person; or

(b) is subject to any restriction on its sale.

Prohibition on use of
name of another
registrant

115. A registrant shall not use the name of, or hold himself out as, another registrant on letterheads, forms, advertisements or signs, on correspondence or otherwise, unless he is a partner, director, officer or agent of, or is authorized in writing by, the other registrant.

Representation as to
registration

116. (1) A person shall not represent that he or any other person is registered in any capacity under this Act unless—

(a) the representation is true; and

(b) in making the representation, he specifies his or the other person's category of registration under this Act.

(2) A person who is not registered under this Act shall not, directly or indirectly, hold himself out as being registered.

Approval by
Commission not
to be advertised

117. A person shall not represent, orally or in writing, that the Commission or a person authorized by the Commission, has in any way approved the financial standing, fitness or conduct of any registrant or evaluated the merits of any security or issuer.

PART VIII SIMPLIFIED CLEARING FACILITIES

Application of Part

118. Notwithstanding any other written law, this Part shall have effect in relation to securities registered with the Commission.

Definitions

119. In this Part—

“interested person” means a person who has an interest in a security in an account of a participant in a clearing agency;

“in writing” includes production in

machine readable form; “pledge” means a contractual interest in a security that is delivered to, retained by, or deemed to be in the possession of, a creditor to secure payment of a debt or other obligation and includes a mortgage and pledge of a security;

“registered owner” means a person who is shown on the securities register of an issuer as the owner of a security or security certificate issued by it; and

“security certificate” means an instrument issued by, or on behalf of an issuer that is evidence of a security.

Use of clearing agency as registered owner of security

120. (1) On the issue of a security, an issuer may deliver a security certificate directly to a clearing agency as registered owner of the security if—

- (a) the issuer has written authorization signed by, or on behalf of the beneficial owner; and
- (b) the delivery of the certificate is evidenced by a written confirmation signed by the clearing agency and sent at once by the issuer to the beneficial owner or his agent.

(2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a clearing agency as registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent at once by the issuer to the beneficial owner of the security or his agent; and

- (c) the issue is recorded at once in the securities register of the issuer and the records of the clearing agency.

(3) The requirement to obtain the written authorization of a beneficial owner required by subsection (1)(a) or (2)(a) is satisfied if the beneficial owner acknowledges in any agreement or document entered into with a registrant, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security contemplated in this section.

(4) A written confirmation referred to in subsection (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

Transfer of
securities through
clearing agency

121. (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency.

(2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if —

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;

- (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent at once by the issuer to the beneficial owner of the security or his agent; and
- (c) the transfer is recorded at once by the issuer in the securities register of the issuer and the records of the clearing agency.

(4) The requirement to obtain the written authorization of a beneficial owner required by subsection (3)(a) is satisfied if the beneficial owner acknowledges in any agreement or document entered into with a registrant, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security contemplated in this section.

(5) A written confirmation referred to in subsection (3)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

Transfer by record entry
participants

122. (1) On receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from the participant to another participant by making an entry in its records.

(2) Where—

- (a) a security shown in the records of a clearing agency is evidenced by a security certificate identifying the clearing agency as the registered owner and that security certificate is in the custody of the clearing agency; or
- (b) the clearing agency is the registered owner of the security by means of record entries contemplated by section 120(2) or 121(3),

then on receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from one beneficial owner to another beneficial owner by making an appropriate entry in its records in addition to any other method permitted by law, and such transfer shall have the effect of transferring all rights, title and interest in such security to the beneficial owner.

Blocked account

123. (1) A clearing agency shall establish a procedure whereby it or an interested person may exercise control over a participant's account in the clearing agency where—

- (a) the interested person is, in relation to a security in the participant's account, a beneficial owner, a pledgee, or a judgment creditor of the beneficial owner; or
- (b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 132(3), a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

Effecting pledge by record entry

124. (1) On receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall, in accordance with the instructions, effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

(2) On receipt of instructions in writing from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to

realize the securities in the blocked account, a clearing agency shall, in accordance with the instructions, transfer the securities unless—

- (a) it knows that the pledgee is not entitled to realize the securities; or
- (b) its procedure established pursuant to section 123 specifies otherwise.

(3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

Effecting blocked account
by record entry

125. On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency may, in accordance with the instructions, make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

Security subject to
restriction

126. (1) A clearing agency may refuse to open an account in respect of a security that is subject to—

- (a) a lien in favour of its issuer; or
- (b) a restriction or constraint on its transfer, whether statutory or otherwise.

(2) A clearing agency may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person.

Blocking account by
Court order

127. (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, the Court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of, or instructions in

writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 134 claims to be entitled to a security held for a beneficial owner in a clearing agency, the Court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation on rights of participants

128. A participant has no right to pledge, transfer or otherwise deal with a security held by a clearing agency except through the facilities of the clearing agency.

Withdrawal of security

129. (1) On the receipt of a demand in writing from a participant for whom a security is held, other than in securities held in a blocked account, for withdrawal of that security, a clearing agency shall, within a reasonable time, subject to any proceedings under section 134, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

(2) On receipt of instructions in writing from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

Issuer's duty to request list of participants and beneficial owners

130. (1) Where a clearing agency is the registered owner of a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled—

(a) to receive notice of, or to vote at, a meeting

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of security holders;

(b) to receive payment of a dividend or interest; or

(c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the clearing agency notice of its intention to close its securities register or fix a record date.

(2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants and beneficial owners for whom the clearing agency and the participants hold securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of participants and beneficial owners for whom it and the participants hold securities of a class issued by the issuer, a clearing agency shall within ten days provide the issuer with a list setting out—

(a) the names and addresses of; and

(b) the number or amount of securities of the class held for,

each such participant and beneficial owner made up as of the date specified in the demand.

(4) On receipt of a demand from an issuer under subsection (3), a clearing agency shall send notice of the demand to each participant.

(5) A participant that receives a notice sent pursuant to subsection (4) shall within five days—

(a) furnish to the clearing agency a list containing the name and address of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

(b) instruct the clearing agency to furnish the list to the issuer.

(6) Where a participant receives a notice sent pursuant to subsection (4), but does not provide a clearing agency or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.

(7) A clearing agency that receives lists of participants and beneficial owners under subsection (5) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not disclose any connection between a beneficial owner and a participant, and the clearing agency may charge participants a reasonable fee for the consolidation.

(8) A clearing agency shall treat as confidential any information it receives under subsection (5) concerning the beneficial ownership of securities.

(9) After receipt of a demand in writing from an issuer that has received a list of participants and beneficial owners under subsection (3), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for any participant or beneficial owner since the date as of which the list under subsection (3) was made up.

(10) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants and beneficial owners under subsection (3) with respect to each class of securities held by the clearing agency, and the issuer shall pay the clearing agency a reasonable amount for—

(a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or

(b) any additional list.

(11) An issuer is entitled to presume that a person named in a list obtained under this section is the beneficial owner of the securities of the issuer referred to in the list.

Access to clearing
agency records

131. After submitting a request in writing to a clearing agency, a beneficial owner of a security of an issuer and the beneficial owner's agent may during usual business hours examine a list delivered to an issuer under section 130(9) that relates to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of a reasonable fee.

Incorrect entry by
clearing agency

132. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the clearing agency may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

Liability in
extraordinary
circumstances records

133. (1) Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

(2) For the purposes of this section an extraordinary event shall include, but not be limited to acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act

of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of power source.

Application to Court
to rectify records

134. (1) Where an entry is alleged to have been incorrectly made or retained in, or omitted or deleted from, the records of a clearing agency, other than in the circumstance outlined in section 132(3), the clearing agency or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency;
- (d) directing that the records of a clearing agency be rectified;
- (e) directing that a clearing agency make an entry in its records to block an account; or
- (f) compensating any person.

Participation by
financial institution

135. (1) A clearing agency may hold securities issued by the Central Bank of Trinidad and Tobago, a financial institution or a collective investment scheme that is authorized under the law applicable to it to deliver or transfer any securities held by it into custody of a clearing agency.

(2) The Commission may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held

by it into the custody of a clearing agency.

(3) The Commission may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

PART IX
REPORTING BY PERSONS CONNECTED
WITH ISSUERS

Reports by certain
connected persons

136. (1) A person who is connected to a reporting issuer as a result of section 4(3)(a), (b) or (c) shall, within five business days of the day that he becomes connected to the reporting issuer, file a report in the prescribed form with the Commission disclosing any direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates.

(2) A person who has filed or is required to file a report under this section and whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates changes from that shown or required to be shown in the report or in the latest report filed by the person under this section, shall within five business days from the day on which the change takes place, file a report of direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates as of the day on which the change took place and the change or changes that occurred, giving such details of each transaction as may be prescribed.

(3) No person to whom this section applies shall transfer or cause to be transferred any securities of the reporting issuer to which he is connected into the name of an agent, nominee or custodian, other than a clearing agency, without filing with the Commission a report in the prescribed form of such transfer except for a transfer for the purpose of giving collateral for a genuine debt.

(4) Notwithstanding subsection (1), a person is not required to file a report under this section where

the person does not beneficially own, or exercise control or direction over, any securities of the reporting issuer.

(5) For purposes of this section, a person has beneficial ownership of, or control or direction over securities of a reporting issuer including—

- (a) securities which are third-party derivative securities related to the reporting issuer;
- (b) securities that are convertible or exchangeable for securities of a reporting issuer, whether or not on condition; or
- (c) rights to acquire or to subscribe for, or otherwise receive, securities of a reporting issuer,

in each case whether or not such securities are securities issued by the reporting issuer.

(6) Any person who files a report with the Commission under this section shall forthwith thereafter deliver a copy of the report that he has filed with the Commission under this section to the reporting issuer.

Disclosure of beneficial
interest in share capital

137. (1) A reporting issuer may by notice in writing, require any holder of its securities within such reasonable time as is specified in the notice being not less than ten days—

- (a) to indicate in writing the capacity in which he holds any securities of the reporting issuer; and
- (b) where he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in them, either by name and address or by other particulars sufficient to enable that person to be identified, and the nature of that person's interest.

(2) Where a reporting issuer is informed in

pursuance of a notice given to any person under subsection (1) or paragraph (b) of this subsection, that any other person has an interest in any securities of the reporting issuer, the reporting issuer may, by notice in writing, require that other person within such reasonable time as specified in the notice being not less than ten days—

(a) to indicate in writing the capacity in which he holds that interest; and

(b) where he holds that interest otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it, either by name and address or by other particulars sufficient to enable him to be identified, and the nature of that person's interest.

(3) Any reporting issuer may, by notice in writing, require any holder of its securities to indicate in writing, within such reasonable time as is specified in the notice being not less than ten days, whether any of the voting rights carried by any securities of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(4) Where a reporting issuer is informed in pursuance of a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the reporting issuer may, by notice in writing, require that other person within such reasonable time as is specified in the notice being not less than ten days, to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever a reporting issuer receives information from a person in pursuance of a requirement imposed on him under this section, it shall keep a record of—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) The Commission may request that a reporting issuer deliver to it a copy of the record kept by the reporting issuer under subsection (5).

Offences

138. Any person who commits a breach of any section in this Part, or who, in complying with any other section of this Part, makes a statement or files a report which he knows to be false, or recklessly makes a statement or files a report which is false, or fails to supply any particulars which he is required to supply, commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for six months.

PART X CIVIL LIABILITY

Liability for
misrepresentation
in prospectus,
damages

139. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action for damages against each of the following persons for any loss or damage sustained by him by reason of any misrepresentation in the prospectus, without regard to whether the purchaser relied on the misrepresentation and each such person shall be liable for any such loss or damage, namely—

- (a) the issuer or the selling security holder on whose behalf the distribution is made;
- (b) a person who is a director of the issuer at the date of the filing of the prospectus;
- (c) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately preceding the date of filing of

the prospectus or after an interval of time thereafter;

- (d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four month period immediately preceding the date of filing of the prospectus;
- (e) a person whose consent has been filed as required by section 78 but only with respect to misrepresentations in a prospectus derived from, or based on, reports, opinions, valuations or statements that have been made by such person; and
- (f) any other person who signed a certificate in the prospectus other than a person referred to in paragraphs (a) to (e) of this subsection.

(2) No person, other than the issuer or the selling security holder on whose behalf the distribution is made, is liable under subsection (1)—

- (a) who, having consented to become a director of the issuer, withdrew his consent before the filing of the prospectus and the prospectus was filed without his authority or consent;
- (b) who, when the prospectus was filed without his knowledge or consent, gave reasonable public notice of that fact forthwith after becoming aware of it;
- (c) who, after the filing of the prospectus and before the sale of securities under it, became aware of a misrepresentation and withdrew his consent, and gave reasonable public notice of the withdrawal of the consent and the reasons for it; or
- (d) who, as regards every misrepresentation, not purporting to be made on the

authority of an expert or a public official document or statement, had conducted such reasonable investigation as to provide reasonable grounds to believe and did believe, up to the time of the distribution of the securities, that the prospectus did not contain a misrepresentation.

(3) No person is liable under subsection (1)—

- (a) where, as regards a misrepresentation in a prospectus made by an expert or based on a report, opinion, valuation, or statement made or prepared by an expert, the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report, opinion, valuation or statement of the expert, and that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus, that the expert making the statement or preparing the report, opinion or valuation was competent to make it, and had given his, her or its consent as required under section 78 and had not withdrawn that consent before delivery of a copy of the prospectus for filing, nor had the expert, to the person's knowledge, withdrawn that consent before the sale of any securities under the prospectus;
- (b) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase; or
- (c) if, as regards a misrepresentation purporting to be a statement made by a public official or contained in what purports to be a copy of, or extract from, a public official document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(4) The liability of all persons referred to in subsection (1) is joint and several as between

themselves with respect to the same cause of action.

(5) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

(6) Notwithstanding subsections (4) and (5), no underwriter is liable for more than the total public offering price represented by the portion of the distribution of securities underwritten, sold by, or to the underwriter.

(7) The right of action for damages conferred by this section shall not be in derogation of any other right the purchaser may have.

Action by purchasers for
rescission for
misrepresentation in a
prospectus

140. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action against the issuer or the underwriter that has sold securities to such purchaser under such prospectus for the rescission of the sale and the repayment to such purchaser of the price that has been paid in respect of the security if the prospectus contained a misrepresentation, provided that if the purchaser elects to exercise a right of action for rescission against the issuer or underwriter under this section, such purchaser shall have no right of action for damages against such issuer or underwriter under section 139.

(2) In an action brought under this section or section 139, the purchaser bringing such action need not prove that he was in fact influenced by the misrepresentation or that he relied on the misrepresentation in purchasing the security.

(3) No person shall be liable under subsection (1) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(4) This section applies to securities sold under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of

cash by, or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

Liability for misrepresentation in other offering document

141. (1) Subject to this section, where an offering document, other than a prospectus, contains a misrepresentation, a purchaser who purchased a security in reliance on the offering document has a right of action for damages against the issuer and the selling security holder on whose behalf the distribution is made.

(2) For the purposes of this section, “offering document” means any document purporting to describe the business and affairs of an issuer which has been prepared primarily for delivery to and review by a prospective purchaser so as to assist such purchaser in making an investment decision, but does not include a prospectus or general advertisement.

(3) In this section a purchaser who receives an offering document whether prior to or following the purchase of a security shall be deemed to have relied on the offering document in making his investment decision.

Limitation on sections 139, 140, 141

142. (1) In no case shall the amount recoverable under section 139, 140 or 141 exceed the price at which the securities were sold.

(2) No action shall be brought under section 139, 140 or 141 more than 180 days after the date that the purchaser bringing the action learned of the misrepresentation.

Civil liability for trading contrary to section 100

143. (1) Subject to this section, a purchaser of a security has—

- (a) a right of action for damages against the seller and such seller shall be liable for any losses or damages sustained; or
- (b) a right of action for rescission against the seller for rescission of the transaction,

where the seller has made the sale to the purchaser

contrary to section 100.

(2) Subject to this section, a seller of a security has—

(a) a right of action for damages against the purchaser and such purchaser shall be liable for any losses or damages sustained; or

(b) a right of action for rescission against the purchaser for rescission of the transaction,

where the purchaser has made the purchase from the seller contrary to section 100.

(3) No action may be brought under this section more than four years after the date of the trade.

(4) A person may bring an action under subsection (1) or (2) in respect of a contravention referred to in subsection (1) or (2) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) Every person who is a director, senior officer or employee of a reporting issuer that trades contrary to section 100 is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the contravention of section 101, unless the person proves that he reasonably believed that the material non-public information had been published.

(6) No person shall be liable under this section if the person bringing the action violated section 100 in respect of the trade that is the subject of the action.

(7) The rights in this section shall not be in derogation of any other right a purchaser, or seller, as the case may be, may have.

144. (1) Subject to this section—

(a) a person who contravenes section 91, 92, 93, 94, 95, 96 or 98, whether or not he also incurs any other liability, shall be

liable to pay compensation by way of damages to any other person for any loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention; and

- (b) each person who sustained a loss as a result of the contravention by a person of section 91, 92, 93, 94, 95, 96 or 98, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention, has a right of action for damages under paragraph (a) against the contravening person.

(2) A person may bring an action under subsection (1) in respect of a contravention set forth in subsection (1)(a) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

Commission may
seek leave to
intervene in an
action

145. The Commission may apply to a judge of the High Court for leave to appear or intervene in an action under this Part.

PART XI GENERAL PROVISIONS AND ENFORCEMENT

Division 1—Guidelines and By-laws

Guidelines

146. (1) The Commission may issue guidelines on any matter it considers necessary to –

- (a) give effect to this Act;
- (b) enable the Commission to perform its functions;
- (c) aid compliance with the Proceeds of Crime

Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; and

(d) regulate the market conduct of market actors.

(2) Guidelines issued under this section shall not be regarded as a statutory instrument.

(3) Contraventions of a Guideline referred to in sub-section (1) shall not constitute an offence, but this shall not prevent the Commission from taking action under section 90.

Consultation
on proposed
Guidelines

147. (1) Before making or amending Guidelines referred to in section 146, the Commission shall issue draft Guidelines or draft amendments thereof and shall consult with the market actors and other relevant stakeholders who may be affected by the draft guideline or amendment.

(2) Where, in the opinion of the Commission, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Commission shall proceed to issue the Guidelines or amendment thereof, without following the process referred to in subsection (1), which Guidelines shall be effective for ninety days, unless re-issued or replaced by permanent Guidelines.

By-laws

148. (1) The Minister may, on the recommendation of the Commission, make By-laws—

(a) prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of the suspension, revocation, cancellation or reinstatement of registration of registrants and self-regulatory organizations;

(b) prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and

prescribing the conditions of registration, or other requirements for registrants or any category or sub-category, including—

- (i) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients;
- (ii) standards of conduct in relation to a customer of a registrant to prevent conflicts of interest or ensure the fair treatment of customers;
- (iii) standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a customer;
- (iv) requirements in respect of membership by a registrant in a self-regulatory organization;
- (v) standards of conduct of a registrant who is not a member of a self-regulatory organization;
- (vi) the making, keeping and retention of books and records by a registrant, including the keeping and filing of a record of trades executed by the registrant through the facilities of a securities market ;
- (vii) requirements for a registrant to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained;
- (viii) requirements and standards of conduct for registrants to document and record cash transactions, and to comply with the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation

to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time;

- (ix) standards for the conduct of a registrant who exercises investment discretion with respect to a customer account, including disclosure to the customer of the policies and practices relating to the payment of commissions for trades in securities;
 - (x) minimum and ongoing capital requirements for registrants; and
 - (xi) filing information in respect of missing, lost, counterfeit or stolen securities or securities which are in the custody or control of the registrant, or are his responsibility;
- (c) prescribing the terms and conditions of policies of insurance and the amount of such insurance which registrants shall be required to obtain and maintain indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees;
- (d) extending any requirements prescribed for registrants to unregistered directors, partners, salespersons, employees, and senior officers of registrants;
- (e) prescribing requirements in respect of the residence in Trinidad and Tobago of registrants;
- (f) prescribing requirements for persons in respect of calling at, telephoning or delivering correspondence to, or otherwise communicating by any means, including electronic means, at residences for the purposes of trading in securities or

providing investment advice;

- (g) prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by registrants;
- (h) providing for exemptions from the registration requirements under this Act or for the removal of exemptions from those requirements and prescribing when an issuer of securities may be required to register as a broker-dealer;
- (i) prescribing requirements in respect of the books, records and other documents required to be kept by registrants, self-regulatory organizations and other market actors, including the form in which and the period for which the books, records and other documents are to be kept;
- (j) regulating all aspects of the listing or trading of securities on a securities market including requiring reporting of trades and quotations;
- (k) regulating self-regulatory organizations, including prescribing requirements in respect of the review or approval by the Commission of any By-law, rule, regulation, policy, procedure, guideline, interpretation or practice of the self-regulatory organization;
- (l) regulating all aspects of the operation in Trinidad and Tobago of self-regulatory organizations which are organized under the laws of another jurisdiction;
- (m) regulating trading or advising in securities to prevent trading or advising

that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;

- (n) prescribing categories or sub-categories of issuers for purposes of the prospectus requirements under the Act and classifying issuers into categories or sub-categories;
- (o) varying the By-laws to facilitate, expedite or regulate the distribution of securities or the issuing of receipts for prospectuses, including by establishing—
 - (i) requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference;
 - (ii) requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure or offering document;
 - (iii) requirements in respect of distributions of securities on a continuous or delayed basis;
 - (iv) provisions for the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary perspective, of modifying or superseding statements;
 - (v) requirements for the form of a prospectus certificate, including providing for alternative forms;
 - (vi) provisions for eligibility requirements to obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility; and
 - (vii) provisions for rights of investors;

- (p) designating activities, including the use of documents or advertising, in which registrants or issuers are permitted to engage or are prohibited from engaging in connection with distributions;
- (q) providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements;
- (r) prescribing the circumstances in which the Commission must refuse to issue a receipt for a prospectus and prohibiting the Commission from issuing a receipt in those circumstances;
- (s) prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of—
 - (i) an annual report; and
 - (ii) supplemental analysis of financial statements;
- (t) exempting reporting issuers from any requirement of the Act under circumstances that the Commission considers justify the exemption, including that the reporting issuer is subject to oversight in an appropriate jurisdiction;
- (u) requiring issuers or other persons to comply, in whole or in part, with continuous disclosure requirements under the Act made in respect thereof;
- (v) regulating the distribution, sale and trading of asset-backed securities;
- (w) prescribing requirements in respect of financial accounting, financial reporting and auditing for purposes of the Act,

including—

- (i) defining accounting principles and auditing standards acceptable to the Commission;
 - (ii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and pro forma financial statements;
 - (iii) standards of independence and other qualifications for auditors;
 - (iv) requirements respecting a change in auditors by a reporting issuer or a registrant; and
 - (v) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under the Act;
- (x) regulating take-over bids and related party transactions including issuer bids, insider bids, and going-private transactions and varying the requirements of the Act in respect thereof, including—
- (i) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all holders of securities of the class shall become mandatory and the conditions applying to such offers;
 - (ii) the requirements of the offeror and offeree issuers in respect of information to be published to security holders of both issuers;
 - (iii) the requirements as regards equitable treatment of security holders of the same class or cash alternatives in offers or both;

- (iv) the timing of offer procedures and circulation of documentation;
 - (v) conditions observable in the dealing of securities by the offeror or by persons in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree issuer during the take-over period;
 - (vi) the minimum period within which an unsuccessful offer may not be renewed; and
 - (vii) requirements to protect minority interests;
- (y) prescribing standards or criteria for determining when a material fact or material change has occurred or has been published;
- (z) prescribing time periods under or varying or providing for exemptions from any requirement related to trading on material non-public information or market manipulation;
- (aa) regulating collective investment schemes and all aspects of the distribution and trading of the securities of collective investment schemes, including—
- (i) varying the prospectus requirements in the Act by prescribing additional disclosure requirements in respect of collective investment schemes and requiring or permitting the use of particular forms or types of prospectuses or additional offering or other documents in connection with the collective investment schemes;
 - (ii) prescribing permitted investment

policy and investment practices for collective investment schemes and prohibiting or restricting certain investments or investment practices for collective investment schemes;

- (iii) prescribing requirements governing the custodianship of assets of collective investment scheme;
- (iv) prescribing minimum initial capital requirements for any collective investment schemes making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of collective investment schemes;
- (v) prescribing matters affecting collective investment schemes that require the approval of security holders of the collective investment scheme or Commission, including, in the case of security holders, the level of approval;
- (vi) prescribing requirements in respect of the calculation of the net asset value of collective investment schemes;
- (vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to the securities of collective investment schemes;
- (viii) regulating sales charges imposed on purchasers of securities of collective investment schemes, and commissions or sales incentives to be paid to market actors in connection with the securities of

collective investment schemes;

- (ix) prescribing procedures applicable to collective investment schemes and any other person in respect of sales and redemptions of collective investment scheme securities and payments for sales and redemptions; and
 - (x) prescribing requirements in respect of, or in relation to, promoters, managers, advisers or persons and companies who administer or participate in the administration of the affairs of collective investment schemes;
- (bb) prescribing requirements relating to the qualification of a registrant to act as an investment adviser to a collective investment scheme;
- (cc) varying the By-laws with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers, and the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers adequate in light of the purposes of the Act;
- (dd) requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents, instruments or information required under or governed by the Act and all documents, instruments or information determined by the By-laws to be ancillary to the documents;
- (ee) respecting the designation or recognition of any person, or jurisdiction if advisable for purposes of the Act,

including self-regulatory organizations;

- (ff) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under the Act, including the conduct of investigations and examinations and the conduct of hearings;
- (gg) prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of the securities law of Trinidad and Tobago;
- (hh) establishing requirements for, and procedures in respect of the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of—
 - (i) documents, instruments or information required under or governed by the Act; and
 - (ii) documents, instruments or information determined by the By-laws to be ancillary to documents required under or governed by the Act;
 - (iii) varying the By-laws to permit or require the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of documents, instruments or information required under, or governed by, the Act, or determined by the By-laws to be ancillary to such documents, instruments or information;
- (jj) prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on

an electronic or computer-based system for any purpose of the Act;

- (kk) specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;
- (ll) varying the By-laws to permit or require methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by the securities laws of Trinidad and Tobago;
- (mm) providing for exemptions from or varying the requirements under the Act in respect of amendments to prospectuses, or prescribing circumstances under which an amendment to a prospectus must be filed;
- (nn) regulating trading in securities that have been distributed but are not listed on a securities market ;
- (oo) providing for standards in respect of the governance of market actors including requirements for directors;
- (pp) establishing requirements for reporting issuers to appoint audit committees and prescribing requirements relating to their functions, responsibilities, composition, the independence of their members, the qualifications of their members and their review of an audit;
- (qq) prescribing, providing for exemptions from, or varying any or all of the time periods in the Act ;
- (rr) prescribing requirements in respect of a fund to be maintained by a self-regulatory organization under the Act,

including the—

- (i) participants in a fund; (ii) contributors to a fund;
- (iii) amount of contributions to a fund; and
- (iv) claimants, or class of potential claimants, in a fund;
- (ss) prescribing requirements in respect of preparation and dissemination of continuous disclosure or other documents or information to holders of debt securities of a reporting issuer; and
- (tt) prescribing requirements in respect of derivatives including determining when an instrument or arrangement is or is not a derivative;

in addition to any other matter which may be prescribed under this Act.

(2) In addition to subsection (1), the Minister may, on the recommendation of the Commission, make By-laws in respect of any matter necessary for carrying out the purposes of this Act.

(3) In addition to subsection (1), the Minister may, on the recommendation of the Commission, make urgent By-laws to regulate conditions in the market that require regulation as a matter of urgency, which By-laws shall be effective for ninety days, unless re-issued or replaced by permanent By-laws.

(4) By-laws made under this Act shall be subject to negative resolution of Parliament.

(5) The Commission may establish a committee under section 16 to administer the By-laws made under subsections (1) and (2) and may make rules for the conduct of the business of that committee.

Publication of
proposed by-laws

149. (1) The Commission shall publish in the Gazette, a daily newspaper of general circulation in Trinidad and Tobago, or any regular periodical

published by the Commission, at least thirty days before the proposed effective date thereof—

- (a) a copy of any By-law that it proposes to recommend to the Minister;
- (b) a concise statement of the substance and purpose of the proposed By-law; and
- (c) a reference to the authority under which the By-law is proposed.

(2) After a proposed By-law is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed By-law.

(3) The Commission, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed By-law.

(4) The Commission is not required to comply with subsections (1) and (2) if—

- (a) all persons who will be subject to the By-law are named and the information required by subsection (1)(a) to (c) is sent to each of them;
- (b) the By-law only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
- (c) the By-law makes no material substantive change in an existing By-law; or
- (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise

statement of the reasons for it.

(5) Any person may petition the Commission to recommend the making, amendment or revocation of a By-law.

Division 2—Orders of Commission

Power to order
cessation of trading
or distributions

150 (1) Where the Commission considers that—

- (a) a security is being traded in connection with a distribution contrary to this Act;
- (b) a prospectus contains a misrepresentation;
- (c) any of the circumstances specified under this Act as the basis for a refusal to issue a receipt for a prospectus exists; or
- (d) an issuer, selling security holder or registrant fails to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Commission,

the Commission may order, subject to such conditions as it considers appropriate, that all trading in connection with the distribution cease at the time and for the period specified by the Commission.

(2) Where the Commission considers that—

- (a) a material change relating to an issuer of a security has not been published;
- (b) trading in a security or fluctuations in the price of a security requires explanation;
- (c) a reporting issuer has failed to comply with, or contravenes any provision of this Act; or
- (d) it is otherwise in the public interest or necessary for the protection of investors,

the Commission may order, subject to such conditions

as it considers appropriate, that trading cease in respect of any security at the time and for the period specified by it.

(3) Where the Commission considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 154, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order, and the order remains in effect until the hearing is completed.

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 154, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Commission may extend it until the material change is published and becomes public.

(6) The Commission shall forthwith give notice of an order under this section to—

- (a) each person named in the order;
- (b) the issuer of the security specified in the order;
- (c) any other person the Commission believes is directly affected by the order; and
- (d) every registrant registered under section 51(1) if the order is made pursuant to subsection (1) or (2),

and shall include the text of the order in a regular periodical published by it, or in a daily newspaper of general circulation in Trinidad and Tobago.

(7) No person shall trade in contravention of an order under this section.

Orders in the public interest

151. (1) Where the Commission, on its own motion or on application by an interested person, considers it to be in the public interest, it may order, subject to such conditions as it considers appropriate that—

- (a) a person comply with or cease contravening, or that the directors and senior officers of the person cause the person to comply with or cease contravening—
 - (i) this Act;
 - (ii) an order of the Commission; or
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;
- (b) a person not act as a director or senior officer of a registrant;
- (c) a person—
 - (i) be prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;
 - (ii) be required to disseminate to the public, by the method described in the order, any information or record relating to the business or affairs of the person that the Commission considers must be disseminated;
 - (iii) be required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;

- (d) a registrant be reprimanded or that the registration of a registrant be suspended or revoked in accordance with sections 57 and 58;
- (e) any exemption contained in the Act not apply to any person permanently or apply for such period as specified in the order;
- (f) a market actor submit to a review of his practices and procedures and institute such changes as may be ordered by the Commission;
- (g) any person be reprimanded;
- (h) a person, security, trade, distribution, or registration be classified under Part III, IV or VI, and the requirements appropriate to the class be applied;
- (i) any person, registrant, self-regulatory organization, reporting issuer or other market actor be exempted from any requirement of this Act; and
- (j) any documents filed with another government agency be filed with the Commission.

(2) An order granting an exemption is effective against all persons, but the Commission shall make an order revoking or modifying such an order when it finds that a determination reflected in it is no longer consistent with the facts.

(3) The Commission shall forthwith give written notice of an order under this section to—

- (a) each person named in the order; and
- (b) any other person the Commission believes is directly affected by the order,

and shall include the text of the order in a regular periodical published by it, or in a daily newspaper of general circulation in Trinidad and

Tobago.

Order for penalty

152. (1) Subject to subsection (3), and notwithstanding any other provision of this Act, where the Commission after a hearing determines that a person has contravened this Act or an order of the Commission and considers it to be in the public interest to make the order, the Commission may order the person to pay to the State a penalty of not more than five hundred thousand dollars.

(2) Where the Commission makes an order under subsection (1) the Commission shall file in the registry of the Court a copy of the order certified by the Chairman of the Commission and on being filed the order shall have the same force and effect, and all proceedings may be taken on it as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 155.

(3) Notwithstanding subsection (1), a person who contravenes this Act solely by reason of his failure to file or publish a document or instrument required under this Act within the time prescribed shall be liable to a penalty of one thousand dollars per day for each day that the document or instrument remains outstanding after the expiration of the time prescribed.

(4) Notwithstanding subsection (1), the Commission may, without conducting a hearing, make an order imposing a penalty under subsection (3) for the period beginning on the day following the expiration of the prescribed period and ending on the day that the penalty is paid.

(5) A person who files a document or instrument with the Commission after the expiration of the time prescribed may in writing request the Commission to conduct a hearing in accordance with the requirements of subsection (1).

(6) Every penalty imposed by the Commission in the exercise of its powers under this Act shall be payable into the general revenue and may be recovered by the State as a civil debt and for the purposes of the proof of such debt a certificate under the hand of the Chairman of the Commission shall be

receivable in evidence as sufficient proof of such debt.

Division 3—Market Misconduct Proceedings

Market misconduct
proceedings

153. (1) If it appears to the Commission that market misconduct is taking place, has or may have taken place, the Commission may conduct an investigation under section 157 to ascertain whether any person has contravened, is contravening, or is about to contravene this Act.

(2) For the purposes of the Part, “market misconduct” means—

- (a) breaches of sections 91, 92, 93, 94, 95, 96 and 98, respectively;
- (b) trading with knowledge of material non-public information contrary to section 100;
- (c) disclosure of material non-public information contrary to section 101;
- (d) failure of a person to be registered in a category of registrant in accordance with section 51;
- (e) failure of an issuer to prepare, file and have receipted a prospectus in connection with a distribution of securities contrary to section 73;
- (f) the inclusion in a prospectus of a misrepresentation or the failure of a prospectus to comply with section 76(1);
- (g) failure of a reporting issuer to comply with Part V of the Act, or making a misrepresentation in any document filed or required to be filed under Part V of the Act, contrary to section 70; and
- (h) a breach of any provision under Part VII of this Act.

(3) Where an investigator appointed pursuant to section 157(1) reports to the Commission in accordance with section 157(10) that based on his investigation he has reasonable grounds to believe that any person has contravened, is contravening or is about to contravene the Act, the Commission may conduct a hearing in accordance with section 154.

(4) Without limiting the generality of subsection (3), the object of a hearing instituted under that subsection is for the Commission to determine—

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

(5) Where market misconduct is proven, the Commission may order that a person identified as having engaged in market misconduct be subject to one or more of the following:

- (a) pay a penalty of not more than five hundred thousand dollars to the State;
- (b) be censured, through the publication of a written notice;
- (c) compensate or pay restitution to any person on such terms as the Commission may direct;
- (d) account for, in such form and on such terms as the Commission may direct, such amounts as the Commission determines to be profits arising from the market misconduct or any other form of unjust enrichment determined by the Commission;

- (e) cease and desist from such activity as the Commission may stipulate;
- (f) be prohibited from being, or becoming a senior officer or director or a registrant;
- (g) pay a specified amount, being all or part of the costs of the proceedings, including those of any other party to the proceedings; or
- (h) do any other act or thing that the Commission deems necessary.

(6) The Commission may publish a report or other information concerning proceedings under this section, but if it intends to do so it shall—

- (a) provide a person against whom an adverse finding is to be made with fourteen days notice of the finding and an opportunity to be heard in person or by counsel; and
- (b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

(7) The standard of proof required to determine any question or issue before the Commission shall be on a balance of probability.

(8) Nothing in subsection (1) prevents the Commission from referring any matter to the Director of Public Prosecutions if it appears to the Commission that market misconduct is taking place, or has or may have taken place.

Division 4—Hearings

Conduct of hearings

154. (1) The Commission shall, before making a final order, provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any

interested market actor or self-regulatory organization including a—

- (a) statement of the time, place and purpose of the hearing;
- (b) reference to the authority under which the hearing is to be held;
- (c) concise statement of the allegations of fact and law; and
- (d) statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

(2) The Commission may—

- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Trinidad and Tobago; and
- (b) require a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(3) Notwithstanding subsection (2), no person giving evidence before the Commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Court is entitled in respect of evidence given by him before the Court.

(4) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.

(5) A person who is entitled to notice of a hearing

under subsection (1) may be represented by counsel and, subject to rules made under section 21, may present evidence and cross-examine witnesses at the hearing.

(6) A witness at a hearing under subsection (1) may be advised by counsel.

(7) The Commission may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

(8) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(9) The Commission shall—

- (a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;
- (b) send a copy of the final order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and
- (c) publish a copy of the final order and reasons or a summary thereof in a periodical published by it or in at least two daily newspapers of general circulation in Trinidad and Tobago but the Commission may omit the name of an affected person from an order so published.

(10) Subsection (1) does not apply to—

- (a) an appointment that is made under section 157 or 158(1);
- (b) an order that is essentially procedural;
- (c) an order that does not adversely affect

the rights or interests of any person; or

- (d) an interim order or other order that the Commission may make under this Act without holding a hearing under this section.

Division 5—Appeals

Appeals for review
re: section 8 or 43

155. (1) A person directly affected by a decision made pursuant to authority delegated under section 8, or by a self-regulatory organization under section 43 may appeal the decision to the Commission.

(2) The Commission may of its own motion review any decision made pursuant to authority delegated under section 8 or made by a self-regulatory organization under section 43 and shall provide a reasonable opportunity for a hearing and give reasonable notice to each person, including a self-regulatory organization, directly affected by the decision.

(3) On an appeal or review under this section the Commission may, subject to sections 44(3), (4) and (5) in the case of an appeal of any decision of a self-regulatory organization made under section 43, confirm the decision or make such orders as it considers appropriate.

(4) A decision that is subject to appeal or review under this section takes effect immediately, but the Commission may grant a stay pending an order of the Commission.

Appeals to Court of
Appeal

156. (1) A person directly affected by an order of the Commission may appeal to the Court of Appeal.

(2) No appeal of a decision made pursuant to authority delegated under section 8, or by a decision of a self-regulatory organization under section 43, may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the decision pursuant to section 155.

(3) An order that is subject to appeal under this section takes effect immediately, but the Court of

Appeal may grant a stay pending the hearing of the appeal.

(4) The Commission is entitled to appear and be heard on the merits of an appeal under this section or on any other application to the Court of Appeal relating to the exercise by the Commission of its powers.

(5) On an appeal under this section, the Court of Appeal may make or may direct the Commission to make any order that the Commission is authorized to make and which the Court of Appeal considers just and proper, or it may remand the case to the Commission for further proceedings subject to any conditions which the Court of Appeal thinks fit.

Division 6—Investigations

Investigations by the
Commission

157. (1) The Commission may appoint a person to make such investigations as it considers expedient –

- (a) for the due administration of this Act or the regulation of securities industry in Trinidad and Tobago; or
- (b) to assist in the administration of securities laws or the regulation of securities industry in another jurisdiction.

(2) A person appointed under subsection (1) may investigate and inquire into—

- (a) the affairs of a person in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, or on behalf of, or in relation to, or connected with, the person, and any property, assets or things owned, acquired, or alienated in whole or in part by the person or by any other person acting on behalf of such

person; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person, and any relationship that may at any time exist or have existed between the person and any other person by reason of investments, commissions promised, secured or paid, interest held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of securities or any other relationship.

(3) Notwithstanding any other written law a person appointed by the Commission pursuant to subsection (1) may examine and make copies of all such books, records and documents or other things relating to the subject of the investigation within the scope of subsection (2) whether or not they are in the possession or control of the person or company in respect of which the investigation is ordered or of any other person or company.

(4) A person appointed by the Commission pursuant to subsection (1) may for the purposes of the examination to be conducted under subsection (3) enter the place of business of any person for the purpose of examining or reviewing books, records, documents or other things during normal business hours.

(5) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons or may require a person to attend at a specified time and place, to give evidence on all matters relating to the subject of an investigation and to produce all books, records, documents or other things relating to the subject of the investigation that are in his possession or under his control relating to the subject of the investigation within the scope of subsection (2).

(6) A person appointed by the Commission pursuant to subsection (1) may require a person to

give evidence within the scope of subsection (2) on oath, with affirmation or otherwise, or orally or in writing, and may administer an oath or affirmation at any place.

(7) A person who gives evidence in an investigation under this section may be represented by counsel and may claim any privilege to which the person is entitled.

(8) Where a person who is required to attend or give evidence during an investigation fails or refuses to attend or give evidence on oath, with affirmation or otherwise, the Commission may make an application to the Court to so compel the person to do so.

(9) An investigation under this section shall be held in camera.

(10) A person appointed by the Commission pursuant to subsection (1), shall provide the Commission with a full and complete written report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.

(11) The Commission may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall—

- (a) provide a person against whom an adverse finding is to be made with fourteen days notice of the finding and an opportunity to be heard in person or by counsel; and
- (b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

158. (1) The Commission may at any time authorize a person in writing—

- (a) to examine or review the books, records and documents of a market actor, including at the place of business of the

market actor; or

- (b) to examine or review the financial affairs of a market actor,

and to prepare such financial or other reports as the Commission may require, whether or not the Commission is of the view that the market actor may be in breach of this Act or the rules of governance of any self-regulatory organization.

(2) A market actor shall permit any person authorized under subsection (1) to enter the place of business of the market actor for the purpose of examining or reviewing the books, records and documents of the market actor during normal business hours.

(3) A person authorized by the Commission pursuant to this section may examine and make copies of any books, records, documents and other things, including all books of account, tangible or intangible securities or other instruments, cash or cash equivalents, or other records, accounts or data.

(4) The Commission may charge a market actor a fee as prescribed for an examination made under this section.

Restrictions on withholding or concealing

159. No person shall withhold, conceal, destroy or refuse to produce any document, instrument, writing, information or record required for the purpose of an examination or investigation under this Act.

Protection of persons providing information

160. Notwithstanding any other written law no duty to which a person may be subject shall be regarded as contravened by reason of his communication in good faith to the Commission whether or not in response to a request made by the Commission, for any information or opinion on a matter which is relevant to any function of the Commission under this Act.

Court order for enforcing
compliance

161. (1) Where the Commission considers that a person has failed to comply with or is contravening this Act or an order of the Commission, the Commission may, in addition to any other powers it may have, apply to the Court for an order—

- (a) directing the person to comply with or to cease contravening this Act or the order;
- (b) directing the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act or the order; or
- (c) to freeze the assets of the person or a portion of the assets of the person.

(2) On application under subsection (1), the Court may make any order it thinks fit including an order—

- (a) requiring restitution or disgorgement of profits;
- (b) restraining the conduct complained of;
- (c) requiring compliance with this Act or an order;
- (d) requiring disclosure of any information;
- (e) setting aside a transaction relating to trading in securities; or
- (f) requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

Appointment of receiver,
etc

162. (1) Where the Commission considers that it is necessary in the public interest or for the protection of investors to prevent—

- (a) a person who has contravened this Act ; or
- (b) a registrant or self-regulatory organization whose registration under this Act has been suspended or revoked,

from dealing with property under his control or direction, it may apply to the Court and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, creditors or security holders of that person, or members of that person to do so.

(2) Where the Commission intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Inspector of Financial Institutions with regard to the proposed application.

(3) The Court may make an order under subsection (1) on an ex parte application by the Commission for a period not exceeding fifteen days.

(4) The provisions of Division 3 of Part IV of the Companies Act shall apply to a receiver or receiver-manager appointed under this section.

Chap 81:01

Division 8—Offences

General Offences

163. (1) A person who—

- (a) makes a misrepresentation in contravention of this Act;
- (b) makes a misrepresentation to any person appointed to conduct an investigation or an examination under section 157 or 158;
- (c) contravenes section 36 or 73; or
- (d) contravenes a provision of this Act for which no penalty or sanction is

specified in respect of that
contravention, whether by action or
omission,

commits an offence and is liable on conviction on indictment to a fine of up to two million dollars and to imprisonment for up to two years.

(2) A person who contravenes an order of the Commission commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for one year.

(3) Reasonable reliance, including reliance in good faith on advice of an expert upon a statement of the law contained in—

(a) this Act;

(b) a judgment or declaration by the Court; or

(c) an order or publication of the Commission,

is a defence in a proceeding under this section.

(4) An auditor which knowingly or recklessly makes or provides a false or misleading audit report in respect of financial statements which are required to be filed under this Act commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and imprisonment for six months.

(5) Where an auditor is convicted of an offence under subsection (4), the Commission may order if it is in the public interest, and in addition to any other order that the Commission may make, that the auditor be prohibited from being the auditor of a market actor for a period not exceeding five years.

Liability of
directors, etc

164. (1) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, then any director, senior officer, or supervisor of the person who knowingly or recklessly authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Reasonable reliance, including reliance on

advice of counsel, in good faith upon a statement of the law contained in—

- (a) this Act;
- (b) a judgment or declaration by the Court; or
- (c) an order or publication of the Commission,

is a defence in a proceeding under this section.

Costs

165. (1) A person convicted of an offence against this Act is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(2) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(3) The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Civil Proceedings Rules 1998 made under section 78 of the Supreme Court of Judicature Act (Chap 4:01) as amended as if the certificate were a bill of costs, and the Master or Registrar shall review the costs and may vary them if he considers them unreasonable or not related to the investigation.

(4) The scales of costs in Order 62 of the Civil Proceedings Rules 1998 made under section 78 of the Supreme Court of Judicature Act (Chap 4:01) as amended do not apply to a certificate reviewed under this section.

(5) After review the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of the Court.

PART XII REPEAL AND TRANSITIONAL PROVISIONS

Repeal and transition

166. (1) The Securities Industry Act, 1995, is repealed.

(2) By-laws, guidelines and rules made under the Securities Industry Act, 1995, in force at the commencement of this Act, remain in force until replaced by new By-laws made pursuant to this Act.

Passed in the Senate this day of ,
2012.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of ,
2012.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above. 181

Speaker

No. of 2012

SESSION PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices, foster fair and efficient capital markets and confidence in the securities industry in Trinidad and Tobago and to reduce systemic risk and for other related matters

Received and read the

First time.....

Second time.....

Third time.....
