



**RECOMMENDATIONS COMING OUT OF PUBLIC CONSULTATIONS
ON THE PROPOSED SECURITIES ACT**

COMMENTS/QUESTIONS	PROVISION IN THE SECURITIES BILL	RECOMMENDATIONS
INSIDER TRADING; DISCLOSURE;TRANSPARENCY		
How does the proposed Bill deal with a distribution which is 1. Being offered to foreign investors, 2. Governed by the laws of the foreign jurisdiction and 3. Not having the end product return to T&T.	Reference is to US Securities Legislation Regulation S which provides an exemption from registration for foreign issues.	Recommend a provision be inserted for the issuer to submit the securities to the Commission and request an exemption to registration.
Has there been a change in the definition of “offer to the public”? Does a reporting issuer have to issue a	Section 65 requires registration before distribution; Section 78 states that no person shall trade	The term “Offer to the Public” attracted an obligation to file a registration statement. This has been changed to the term “distribution”

<p>prospectus if there are less than 35 persons to whom its security is to be issued?</p>	<p>a security where such trade would be a distribution unless a prospectus has been filed with the Commission; Section 79 deals with distribution by advertisement. Section 77 (2) defines the reference to less than 35 persons as a ‘limited offering’ Sections, 78 requires a filing of a prospectus unless it falls within the exemption in section 84 (1) distribution to an ‘ accredited investor’ which is defined under section 77 (2)</p>	<p>which attracts the requirement to prepare and file a prospectus with the Commission. The term distribution will not require an assessment of whether a trade is been made to a member of the public : The definition of “accredited investor” does not limit the amount of investors to 35 persons. ‘Limited distribution is defined as 35 persons’ but is used in relation to a non-reporting issuer. A reporting issuer is always required to register its securities or request an exemption. No amendment is required</p>
<p>Does a reporting issuer have to issue a prospectus if there are less than 35 persons to whom its security is to be issued?</p>	<p>Sections, 78 requires a filing of a prospectus unless it falls within the exemption in section 84 (1) distribution to an ‘ accredited investor’ which is defined under section 77 (2)</p>	<p>If the issuer is a reporting issuer the security has to be registered. If the issuer is not a reporting issuer then in a limited offering no registration is required. No amendment is required</p>
<p>“Are issues to less than 35 investors, typically known as “private placements” now subject to registration?;</p>	<p>Sections 77(2) “limited offering” is defined as when the number of security holders is not greater than 35 persons, 84(1) (1) grants an exemption where the distribution is to an accredited investor by an investor that is not a reporting issuer</p>	<p>If the issuer is a reporting issuer the security has to be registered. If the issuer is not a reporting issuer then in a limited offering no registration is required. Recommend: no amendment to the SA required</p>
<p>How does the Commission “protect” the investor? Recommended that the word ‘protect’ be removed from the legislation because the Commission can be tested in court if it didn’t in</p>	<p>Section 2 (b) states the purpose of the Act is to provide protection and section 6 defines the functions of the Commission, one of which is to “protect the integrity of</p>	<p>Protection requires the Commission to act with due care and attention in the carrying out of its functions. Recommend: no amendment to the SA required</p>

<p>fact “protect” the investor.</p>	<p>the capital market against any abuses arising from market manipulation, insider trading, etc. Section 14 safeguards the Commission’s employees, agent or Commissioners from legal action where the act complained of is done in good faith in the performance of a duty.</p>	
<p>Section 155 (f) should be removed as it is vague</p>	<p>Section 155 (f) states that where a person is identified as having engaged in market misconduct the commission may order that they be subject to “ (f) do any act or thing “</p>	<p>Recommend rewording to a catch-all clause that will allow the Commission to make any such order as it may seem fit.</p>
<p>Recommend :definition of “relative” should be consistent with the draft FIA</p>	<p>Draft FIA definition includes cohabitants and children of cohabitants as defined in the Cohabitational Relationships Act, which includes adopted and step children. SA definition does not include these relationships but includes g/children and g/parent.</p>	<p>Recommendation amendment to provide consistency. “Relative” under the draft FIA and SA should be amended to include spouses and children of cohabitational relationships, adopted and step children and g/children and g/parents</p>
<p>IMPROVED SURVEILLANCE OF MARKET ACTORS</p>		
<p>Are there any differences between market actors i.e. broker-dealers, underwriters and issuers</p>	<p>Sections 55 (5) gives a fit and proper standard for all market actors. The</p>	<p>Standard being applied is the International standard of broker-dealer.</p>

	Commission has the power under section 150 (b) to prescribe categories of market actors and prescribe the condition for their registration	Recommendation: no amendment to the SA required
In the CIS By-Laws the definition of manager is vague and does not include the crucial role of investment adviser. It is recommended that it be expanded to include Investment Advisers and that the By-Laws be made more comprehensive.”	CIS By-Laws Section 2 “Manager” defined as the person responsible for the business operations and affairs of a CIS	Recommendation: the creation of a form for attestation by the Manager responsible for the business operations of the CIS
How will the SEC deal with the timeliness of reporting and audits of companies and any required enforcement?	Part V – disclosure. There are new requirements for disclosure of financial statements; liability of an auditor and stringent penalties for contravention of the proposed Bill. Hearing and Settlement rules	Recommend: no amendment to the SA required
How can the Commission function in a way to overcome any existing hurdles that may exist say in the Insurance field?	Section 4 (insurance not a security) Section 7 (j)	SA has gone from a person based to activity based and this has expanded the definition of security. No amendment required.
Will enhanced powers of oversight of the Commission allow the Commission to deal with sub-prime situations like those that have arisen in the United States?	SEC has regulatory powers as defined in Section 6, 7, and 8 of the proposed Bill.	SEC has regulatory powers. SEC can demand registration and disclosure but cannot advise an investor as to which securities an investor should purchase.

<p>Is it necessary to register employees of directors and all other persons required to be registered? Would this requirement present a burden to registrants?</p>	<p>Section 54 (2) requires directors senior officers and employees of persons that are required to be registered under section 54 (1) to be registered with the Commission</p>	<p>No amendment required.</p>
<p>What is the definition of “senior officer”</p>	<p>Section 54 (2)</p>	<p>To be amended to include a definition for the Commission as the definition in the section refers to senior officers of an issuer</p>
<p>Is there a fee payable when a receipt is issued for a new prospectus under section 88 (4). If so will the fee be the same as the initial fee? Line 3 in subsection (4) ‘a current prospectus’ should be changed to ‘the current prospectus’ unless the reference is to a ‘new prospectus’ then it should so reflect</p>	<p>Section 88 (4) requires that a distribution run for a period of not longer than one year and twenty days unless a new receipt for a prospectus is issued by the Commission</p>	<p>Fee can be sited in a fee schedule. Recommend: Replace ‘a current prospectus’ with ‘a new prospectus’.</p>
<p>Is it necessary to require a company not listed and not publicly traded to issue a press release upon a material change occurring in the affairs of the company?</p>	<p>Section 68 (2) requires that a reporting issuer issue a press release at least within one day where a material change occurs in the affairs of the company.</p>	<p>The security holders of such companies are entitled to the information. Recommend: no amendment to the SA required</p>
<p>Verify whether sub-section 56(1) (d) should cite sub-section 54 (2) rather than sub-section 54 (1)</p>	<p>Section 54 (1) does not list a trader as a person to be registered. Section 56 (1) (d) states that a trader is deemed to be registered under section 54 (1) as a registered representative of a market actor.</p>	<p>Recommend: The lack of registration for registered representatives referred to as traders in the SIA seems to be an oversight. All market actors should have a minimum understanding of the regulatory framework and knowledge of the financial products that they deal in.</p>

		Requirement that a trader be registered and require minimum educational, requirements proficiency requirements and ongoing training.
Recommend the time limit for market misconduct by a senior officer or director of a reporting issuer or market actor match that of the FIA	Section 155 (5) (g) provides a prohibition from becoming a senior officer or director of a reporting issuer or market actor if found to have engaged in market misconduct.	Recommend: no amendment to the SA required to conform to the FIA as section 155 (5) does not contemplate a time limit but a prohibition
STRENGTHENING THE COMMISSION		
What is the SEC's power with respect to the making of By-Laws	Section 150 (2) states the power of the Commission to make By-Laws and (3) may make urgent By-Laws effective for ninety days	Recommend: no amendment to the SA required
Does the SEC have the necessary resources to carry out its regulatory mandate	Sections 10 (6) appointment of temporary Commissioners , section 159 appointment of persons to conduct investigations and, section 161 appointment of persons to examine the records of market actors and in addition the Hearing and Settlement Rules which is designed to make the quasi-judicial role of the Commission more efficient.	Recommend: no amendment to the SA required

ENFORCEMENT		
Is the Commission required to report to the Integrity Commission?	Section 11 (3) requires all Commissioners and the General Manager to report to the Integrity Commission	
Should the five year limitation in section 75 (3) be reduced to three years to match with the provision of the FIA	Section 75 (3) director or senior officer convicted of an offence can be prohibited from been a director or senior officer of a reporting issuer for a period not exceeding five years.	SA has the more stringent provisions. Recommend: no amendment to the SA required but the FIA can be amended to conform to the SA.
OTHER		
In section 2 of the CIS By-Laws CIS is deemed a person. Is there an implied amendment of section 16 of the Interpretation Act since a CIS is organized as a Trust and a trust does not have the capacity to contract	Section (2) CIS By-Laws States ‘ <i>CIS organized as a trust</i> ’ and also states “ <i>for the purpose of these guidelines</i> ” a CIS is deemed a person	CIS is deemed a person for the purpose of the Act. Concept is also used in other legislation such as the Bankruptcy and Insolvent Act. No amendment required
Are there any current plans to amend the Companies Act as there seems to be a direct conflict with the proposed Bill?	Conflicting sections outlined in the Stikeman Elliot Report	Recommend: The Act can operate without a change to the Companies Act but the Companies Act can be brought into conformity at a later date.
Will evidence gathered via MOU’s be admissible in a Court of Law?	Section 20 (4) the Commission has power to enter into an MOU	Yes once it meets the criteria for admission of evidence under Civil or Criminal Rules of Procedure. Recommend: no amendment to the SA required

<p>Does the definition of “government entity” in the proposed Bill include those institutions where the Gov’t has below 50% shareholding? Are the Central Bank and the THA included in this definition?</p>	<p>Section 4 has a catch all provision which states in addition to those entities that have been outlined (e) states ‘any entity that is prescribed as such’. The Central Bank and the THA are included in the definition,</p>	<p>Recommend: No amendment required.</p>
<p>Recommend that the role of General Manager be separated from the CEO to conform with good Corporate governance</p>	<p>Section 23(2) with the approval of the Minister gives the Commission the power to appoint the Chairman or General Manager as its CEO</p>	<p>Good corporate governance requires a separation of these roles. Current international standard is to separate these roles to improve accountability and provide checks and balances Recommend amendment.</p>
<p>Recommend the word “renew” be inserted in line 2 of Section 55 (1) (a) for consistency with the remainder of Sec 55</p>	<p>Section 55 (1) (a) states registration or reinstatement but adds renewal when repeating the requirement</p>	<p>Recommend: no amendment to the SA required</p>
<p>Recommend that the word designate in section 59 (3) be changed to ‘delegate’ to conform with the power of the Commission under section 8</p>	<p>Sec 59 (3) ; Section 8</p>	<p>This section has been mis-numbered. Needs correction.</p>
<p>Should the reference to sub-section (3) in the second line of section 75 (3) be amended to read sub-section (1)?</p>	<p>Section 75 (3) contravention of the act by a reporting issuer</p>	<p>Recommend: no amendment to the SA required</p>
<p>To clarify section 84 (1) (d)</p>	<p>Section 84 (1) (d) exemption to the filing of a prospectus</p>	<p>Recommend rewording. Language at present is difficult</p>

Recommend the insertion of a time limit in section 87 (1)	Section 87(1) issuance of a prospectus in a 'reasonable time'.	Time can be designated in By-laws or guidelines - Recommend: no amendment to the SA required
Request for clarification of section 117 and 118	Section 117 and 118 both deal with disclosure requirements with respect to an order for the sale of a security where the security is not owned by the person who places the order or their principal	Recommend: Both sections are similar except for the requirement that the market actor disclose the information in the written confirmation of sale. Recommend: Sections are repetitious and can be merged for clarity.
Recommend that the agreement referred to be executed prior to the transfer of the securities to a clearing agency. At line 6 subsection 4 'issue' should be replaced with 'transfer'	Section 125 (4) deals with the transfer of a security to a clearing agency and the requirement for written authorization of the beneficial owner	At line 7 'security' should be replaced with 'certificate'
Recommend that the terms 'extraordinary event' and 'reasonable corrective action' be defined	Section 137 deals with the situation where a clearing agency may be unable to effect a pledge or transfer	Minor amendment required to define the term 'extraordinary event' recommend the use of the term "force majeure" as it is universally used to describe extraordinary events. The term 'reasonable' has a legal definition no amendment required
Recommend that the term 'after an interval of time ' in section 143 (1) (c) be defined	143 (1) (c) deals with the liability of a director for misrepresentation in a prospectus.	Recommend minor amendment to Remove 'immediately or after an interval of time'
In the FIA 'significant shareholder' is defined as a person(s) exercising 20% or more of the voting power at any general meeting , Recommend that	Section 57 (5) defines 'substantial shareholder' as person(s) having control over voting securities representing more	Recommended: The threshold under the SA is a higher standard that should be adopted in the draft FIA, and the same term should be used in

<p>the SA and the By-Laws assume the threshold of 20% for consistency and uniformity.</p>	<p>than 10%</p>	<p>both laws for consistency.</p> <p>NB1. Under clause 74(2) of the SA the foreign issuer exemption is not available where the number of voting securities held by T&T residents exceeds 10%.</p> <p>NB2. The Insider Reporting and CIS guidelines and CIS By-Laws put the threshold for a substantial shareholder at 10%.</p>
<p>The definition of ‘limited offering’ in section 77(2) suggests that the below thirty five exemption is to be determined after the completion of the distribution. Does this mean that an offering may fall under this exemption if advertised to many but only subscribed by 35?</p>	<p>Section 77(2) defines “limited offering” in subsection (a) as following the completion of such distribution, the number of the security holders is no greater than thirty five persons ...</p>	<p>Recommended: The practice under the previous legislation of determining whether the security has been offered by solicitation or in any other way to thirty five or less persons in order to establish the private placement or limited offering exemption, should be maintained.</p>
<p>Does section 64(3) suggest that reporting issuers are only public companies and that it is only when a public company becomes private that it is no longer a reporting issuer?</p>	<p>Section 64(3) requires that a reporting issuer that ceases to have its equity publicly traded may be deregistered as a reporting issuer.</p> <p>Under s.65(1) no security may be distributed unless registered. The section does not specify that registration must only be for public companies and in relation to shares only.</p>	<p>Recommended: The use of the phrase ‘to be a public company’ be dropped and replaced with a phrase suggesting ‘ ceases to operate’</p>
		<p>Recommend substantial amendment for protection for whistleblowers.</p>