



# NOTICE

**The Trinidad and Tobago Securities and Exchange Commission ("the Commission") wishes to inform the public that it has concluded its investigation into certain allegations of insider trading in relation to shares of Trinidad Cement Limited ("TCL") in 2002.**

**The Commission also wishes to inform the public that while our investigation found considerable evidence of unacceptable market conduct, the evidence was insufficient to meet the requirement of the law to prove intent, or to overcome defences provided in the law. As a result, the Commission has accepted the advice and recommendations of its legal counsel and has decided to close the matter.**

## BACKGROUND

On July 5, 2002, the Commission received a complaint from Trinidad Cement Limited (TCL) alleging insider trading in relation to two attempted takeovers of TCL by the Mexican company CEMEX which sought, in February 2002 and again in June 2002, to gain controlling interest in TCL. TCL alleged that insiders and/or connected persons illegally used the "price sensitive" information about the attempted takeovers to trade in TCL shares. TCL therefore requested the Commission to conduct an investigation into possible insider trading in its shares which may have occurred during the periods identified and take the necessary action on the outcome of the said investigation.

## PURSuing INSIDER TRADING UNDER THE LAW

International best practice prohibits trading by insiders, with unpublished price sensitive information as that would give them an unfair advantage over other investors who do not have access to the same information.

Sections 120 to 124 of Part IX of the Securities Industry Act, 1995 ("the Act") deal with insider trading. Section 120 of the Act defines price sensitive information as specific unpublished information, which if known, might materially affect the price or value of the securities and also defines those persons who are connected to the issuer. Sections 121 (5) and (6) make specific impositions where there is a takeover bid for an issuer. However, section 124 provides a number of defences or exceptions for connected persons involved in any trading under sections 121 (5) and (6).

## THE INVESTIGATION

The Commission launched a formal investigation under the provisions of section 138 of the Act on February, 2005. It was the first investigation of its kind under the law and therefore, the Commission appointed an experienced external investigator to lead its team.

The terms of reference of the investigation team were to:

- Investigate all the circumstances surrounding the trading of TCL shares in conjunction with the two takeover bids;
- Perform a complete review of the Commission's preliminary report and supporting documents;
- Conduct further follow up investigations and inquiries;
- Interview witnesses and persons of interest and produce a formal report in the matter.

The Investigation Team submitted a formal Report of the Investigation to the General Manager in March 2006.

## REVIEW OF THE REPORT

On receipt of the Report, the Commission sought external legal advice in respect of the cases that might be brought and opinions were sought from senior counsel in Barbados and Ontario, Canada.

Both opinions stated, among other things, that the Act requires the commission to prove intent which thereby established a higher standard of proof than is usually required for administrative proceedings and that the evidence in the matter did not support the required standard of proof.

Counsel therefore, advised that the probability of success in prosecuting these matters either at an administrative or criminal level was extremely low.

## THE DECISION

The Commission has considered the advice of senior counsel and has decided to take no further action in the matter.

## THE FUTURE OF ENFORCEMENT

Although the evidence gathered during the investigation clearly demonstrated behaviours that were unacceptable and that violated the intent of the law and the principle of fair and transparent markets; it was not sufficient to meet the test of the Act.

The evidence indicates that external advisers and representatives of institutional investors who were taken into confidence at the start of the takeover transactions and/or their colleagues, associates and family members conducted trades in the shares of TCL at a time when price sensitive information, regarding the impending take over, had not been published.

Against this background, the Commission has embarked on a number of initiatives to ensure a greater likelihood of success in taking future enforcement action.

Firstly, the Commission has recommended that the law be revised to ensure that insider trading is not provided with any defences within the securities legislation. This change is included in the draft Securities Bill 2007 that the Minister of Finance has announced will shortly be laid in Parliament.

In addition, the Commission is taking several other steps to strengthen its enforcement capability against insider trading and other forms of market manipulation, including:-

- Issuing new guidelines for disclosure of trading activity by insiders and connected persons,
- Implementing significantly improved technologies for monitoring market activity on a daily basis,
- Introducing further provisions within the Securities Bill 2007 for the conduct of on-site examinations of securities firms and
- Strengthening of the Commission's internal investigative capacity.

The Commission will also re-issue guidelines that were first issued in 2003 on the handling and publication of price sensitive information.

Insider Trading undermines investor confidence in the securities market and is strictly prohibited by all jurisdictions. The Commission assures the investing public that it shall continue to treat with insider trading violations as one of its enforcement priorities.

**Osborne Nurse**

Chairman and Chief Executive Officer  
Trinidad and Tobago Securities & Exchange Commission

**Thursday 20th November 2008**