



## **TRINIDAD AND TOBAGO**

### **SECURITIES AND EXCHANGE COMMISSION**

#### **Guidelines for the making of an order declaring that an Issuer is no longer a Reporting Issuer under section 64 (6) of the Securities Industry Act, 1995 ('the Act')**

#### **BACKGROUND**

In the recent past the Commission has authorized the “de-registration” or removal of at least three reporting issuers in accordance with section 64(6) of the Act. A clear policy/procedure to be followed when reviewing applications for declaring that an issuer is no longer a reporting issuer however, has not emerged from those matters.

Such declarations may become necessary as a result of corporate or other actions undertaken by the reporting issuer or other market players. For example, a reporting issuer could repurchase all of its issued securities or other corporate actions (take-overs, amalgamations and/or mergers) could result in its shares being held by a new entity. In such circumstances, the sole remaining shareholder in the reporting issuer may decide that it does not need the protections afforded to it under the Act and may require the Commission to declare that the issuer is no longer a reporting issuer.

This paper sets out certain procedures for declaring that an issuer is no longer a reporting issuer under section 64(6) of the Act. The paper will first identify the relevant sections of the Act which will guide the process and then set out the policy to be followed in future applications.

#### **LEGAL FRAMEWORK FOR THE APPLICATION**

Section 64(6) of the Securities Industry Act, 1995 (“the Act”) provides that:

*“...Where a reporting issuer ceases to be a public company, the Commission may on its own motion or on application by the 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.”*

Section 3(1) of the Act states that a:

*“...“public company” means a company any of whose issued shares or debentures are or were part of a distribution, or an offer, to the public”.*



## *Trinidad and Tobago Securities and Exchange Commission*

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Having regard to the foregoing sections, it appears that where the staff of the Commission is of the view that a reporting issuer is no longer a “public company” or an application has been made by the reporting issuer or interested person to the Commission that the said issuer has ceased to be a public company, then the Commission may make an order that the issuer is no longer a reporting issuer, subject to any conditions as stated above.

The Commission has the power to make such an order under Section 133 (c) of the Act:

*“...The Commission may make an order on its own motion or on application by an interested person-  
(c) respecting any other matter authorised by or required to carry out the purposes of the Act”.*

Section 134 (1) of the Act also states that:

*“...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”.*

Before a final order can be made by the Commission under section 64(6) of the Act, the Commission would have to arrange a hearing in which all affected persons are given an opportunity to voice their concerns in accordance with section 134(1) of the Act.

If the circumstances suggest, however, that the order would be **essentially procedural** or **would not adversely affect the rights and interests of other persons** in keeping with sections 134 (9) (b) and (c) respectively, then a final order could be made without the necessity for a hearing.

### **POLICY POSITION**

Having regard to the foregoing, the following process has been established to treat with applications by entities who no longer wish to be registered as Reporting Issuers with the Commission:

1. Applicants (whether the staff of the Commission on its own motion or by an issuer or interested person) must provide the necessary evidence that the:
  - a. Equity securities of the issuer, for whom the application is being considered, that have been registered with the Commission, have been de-listed or the issuer is applying to be de-listed from the Trinidad and Tobago Stock Exchange Limited on which its shares are publicly traded; and/or



- b. Debt securities of the issuer either:
  - i. Have matured or been repurchased; or
  - ii. Are held by fewer than thirty-five investors each of whom has indicated that he/she would have no problem with the issuer ceasing to be a reporting issuer; that he/she knowingly and willingly foregoes the benefits of continuous disclosure and other protections that are provided as a result of the issuer being a Reporting Issuer. To this end, a service provider for the Debt Security such as the Trustee or Registrar must confirm the number of outstanding investors in the issue.
2. Based on the points raised at (1 above), a case may exist that no person is likely to be negatively affected as a result of the Commission making an order pursuant to section 64(6) of the Act. Accordingly, the provisions of section 134(9) (c) of the Act would have been met and therefore, the Commission could make a final order as aforesaid declaring that an issuer is no longer a reporting issuer, since interested persons would not be adversely affected by the said order. Examples of these instances could include, but not be limited to:
  - a. Issuers that have registered only debt securities with the Commission, which debt securities:
    1. have either matured or been repaid; or
    2. are held by fewer than thirty five investors each of whom has indicated that he/she willingly foregoes the protections afforded under the Act as indicated above (at b.ii); or
    3. have been taken over by virtue of a merger or amalgamation or other corporate action in which the Commission is satisfied that the new entity has become legally responsible for the debts and obligations of the reporting issuer and that the debt securities are held by fewer than thirty five investors as indicated at 2. above.
  - b. Issuers that have been de-listed from the TTSE or applying to be de-listed from the TTSE who have no debt securities or have debt securities as described at 2 above.
3. If the staff is persuaded that the order would not be essentially procedural or that the rights of the parties would be adversely affected, then the Commission may make an interim order under section 133 (1) of the Act and a hearing would have to be conducted in keeping with section 134 (1) as stated above, before making a final order.
4. A report will be prepared by the staff of the Commission outlining the facts and determining whether an interim order by the Commission should be made. An



interim order could be made under section 133 (1) of the Act as discussed above in keeping with section 64(6) and a final order by virtue of section 134 (1) pursuant to a hearing or in accordance with sections 134 (9) (b) or (c) where the applicant has persuaded the Commission that the matter is procedural or that interested persons would not be adversely affected.

## **ACTIONS OF THE COMMISSION**

The Commission will determine whether it agrees with the recommendations of the applicant that the issuer is no longer a public company because the securities are no longer the subject of an offer to the public as indicated above and therefore, declares that the issuer is no longer a reporting issuer under section 64(6) of the Act by making:-

- (i) an interim order under section 133 (1) (c) of the Act that the issuer is no longer a reporting issuer as stated above and a final order under section 134 (1) of the Act based on the outcome of the hearing; or
- (ii) a final order either under section 134(9) (b) or 134(9) (c) of the Act that the issuer is no longer a reporting issuer in accordance with section 64 (6) without a hearing under section 134(1) of the Act if the order is deemed to be essentially procedural or would not adversely affect interested persons with respect to the issuer; or by
- (iii) a final order, after a hearing, in keeping with section 134 (1) of the Act that the issuer has ceased to be a public company and is therefore, no longer a reporting issuer under section 64(6) of the Act.