
PROPOSED TAKE-OVER BY-LAWS PURSUANT TO SECTION 131(2) OF THE SECURITIES INDUSTRY ACT, 1995

STATEMENT OF SUBSTANCE AND PURPOSE

MADE PURSUANT TO SECTION 132(1)(b)

OF THE SECURITIES INDUSTRY ACT, 1995

In accordance with its statutory mandate to review, approve and regulate take-overs the Trinidad and Tobago Securities and Exchange Commission intends to recommend the making of take-over by-laws to the Honourable Minister of Finance.

The objective of the proposed take-over by-laws is to provide a regulatory framework which addresses the issue of a security holder protection by ensuring that security holders have access to information necessary for making a reasoned decision as to whether to accept an offer to acquire their securities, by giving them enough time to assess the information disclosed and by providing that all security holders are to be treated equally with regard to the price at which the offer to acquire is made and with respect to the opportunity to tender their securities under the terms of take-over or issuer bids.

“Take-over bid” is defined as an offer to acquire outstanding securities of a class made to a person who is in Trinidad and Tobago or to any security holder of the offeree issuer whose

last address as shown on the books of the offeree issuer is in Trinidad and Tobago where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate twenty-five percent or more of the outstanding securities of that class of securities at the date of the offer to acquire. The securities acquired in a take-over bid are voting and equity securities.

“Issuer bid” is defined as an offer to acquire or redeem securities of an issuer made by the issuer to any person who is in Trinidad and Tobago or to any security holder of the issuer as shown whose last address on the books of the issuer is in Trinidad and Tobago. Issuer bids include a purchase, redemption or other acquisition of securities by the issuer from any such person, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities.

The Trinidad and Tobago Securities and Exchange Commission recognises that in certain circumstances the public interest does not require the protection of take-over or issuer bid by-laws. It has therefore drafted exemptions from the by-laws in these circumstances.

The proposed by-laws provide for restrictions on acquisitions and sales during take-over bids and issuer bids. There are also restrictions on pre-bid and post-bid acquisitions. The purpose of these restrictions is to prevent an offeror from offering to acquire securities on terms more favourable than those of the take-over bid or issuer bid. The restrictions are intended to ensure that all security holders are treated equally.

The proposed by-laws deal with the financing of bids, the consideration offered to security holders, the content of bid circulars, reporting requirements and limitations on acquisitions of securities. They also provide for a right of a minority security holder to be bought out by an offeror in certain circumstances.

The proposed by-laws contain provisions on defensive tactics which are designed to regulate measures taken by the management of target corporations to thwart an unwelcome take-over bid. These provisions recognise that the interests of management and security holders are not necessarily the same in a take-over bid situation and are designed to ensure that the interests of security holders are addressed.