

**TRINIDAD & TOBAGO
SECURITIES AND EXCHANGE COMMISSION**



**INTERPRETATION OF
“STOCKBROKING ACTIVITY”
IN ACCORDANCE WITH SECTION 54(2)(E)
OF THE SECURITIES INDUSTRY ACT, 1995
(FOR PUBLIC COMMENT)**

*Disclosure, Registration & Corporate Finance
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Table of Contents

Table of Contents	1
The Interpretation of “Stockbroking Activity” in accordance with 2 Section 54(2)(e) of the Securities Industry Act, 1995	2
Legislation in the International Arena	2
Consultation with Registered Brokers	4
Stockbroking Activity	4
Policy	5
Appendix I	7

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The Interpretation of “Stockbroking Activity” in accordance with Section 54(2)(e) of the Securities Industry Act, 1995

The Securities Industry Act, 1995 (“the Act”) prescribes that persons who wish to be registered to undertake securities business in the class of broker in Trinidad and Tobago must first satisfy the prerequisites of Section 54 of the Act.

Section 54 (2) (e) of the Act states that an applicant for registration as a broker shall be a person who, inter alia;

“(ii) has at least two years’ experience of work as a trader or in some other capacity in which he was actively involved in the stockbroking activities of a member company or member firm of a securities exchange in any country within the Commonwealth or the United States of America;”

While the Act is very clear that an individual who has the required experience as a trader may be eligible for registration as a broker, it does not define the term “stockbroking activities”. In the absence of an interpretation of those activities that constitute stockbroking activities, the established route to registration as a broker under the Act was through possession of two years’ work experience as a trader. Entry to this field of securities business was therefore closed to all other individuals.

This board paper seeks to give a clear interpretation of the activities that constitute “stockbroking activities”, which will guide the Staff of the Commission in its handling of future applications for the registration of brokers.

In the preparation of this paper, the Staff was mindful of the need for any interpretation proposed by this paper to reflect the actual work performed by a registered broker on a day-to-day basis. To this end, all securities companies engaged in brokerage business were invited to submit job descriptions for brokers and traders employed in their company. The Staff was also careful to ensure that any interpretation derived through this process was consistent with bodies of international legislation that incorporate activities that may be construed as stockbroking activities.

Legislation in the International Arena

The legislation in several jurisdictions was consulted in drafting the paper to determine which activities are considered as stockbroking activities in other territories. The following excerpts are meant to provide a general guide as to what stockbroking activity in the international arena entails.

Volume 2 of The New York Stock Exchange Guide of 1999 defines a “Registered Representative” as:



“An employee engaged in the solicitation or handling of accounts or orders for the purchase or sale of securities, or other similar instruments for the accounts of customers of his employer or in the solicitation or handling of business in connection with investment advisory or investment management services furnished on a fee basis by his employer.”

Under Section 1031 (b) of the manual of The National Association of Securities Dealers of the U.S.A., a *Registered Representative* is defined as follows:

“(b) Definition of Representative

Persons associated with a member, including assistant officers other than principals, who are engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who are engaged in the training of persons associated with a member for any of these functions are designated as representatives.”

Chapter Four of the Malta Stock Exchange By-Laws lists the Permitted Business activities of a stockbroking firm as follows:

- “(i) brokerage, i.e. the acceptance of clients' orders relating to listed securities and/or the execution of such orders on the Exchange on an agency basis against payment of a commission;
- (ii) arranging/supporting the listing of stocks and shares and assisting the applicant company in all aspects such as coordinating the activities of the professional advisers involved, ensuring that the company is properly presented to the investing public and giving competent advice in confidence to the senior management. Such advice should include the composition of the prospectus, the presentation of the company to prospective investors, the timing and pricing of an issue and arranging for the underwriting of an issue and arranging for the underwriting of an issue;
- (iii) acting as an adviser to clients in relation to any instruments which are quoted on the Exchange;
- (iv) acting as manager of a portfolio in relation to any instruments which are quoted on the Exchange;



- (v) undertaking research into companies traded on the Exchange as well as companies seeking a listing;
- (vi) providing advice on corporate finance requirements.”

In the Trinidad and Tobago Stock Exchange Rules, a stockbroker or broker is defined as “a person licensed to practice in accordance with the Rules and Regulations of the Stock Exchange”.

In the United States a broker is defined in the Securities Exchange Act, 1934 as “someone engaged in the business of effecting transactions in securities for the account of others.”

David A. Lipton in his book, “Broker-Dealer Regulation” argues that central to the definition of “engaged in the business” is the regularity of participation in the business of securities transactions for the account of others.

Consultation with Registered Brokers

One of the requirements for registration as a broker under the Act is two (2) years experience as a trader or some other employment in stockbroking activities. The purpose of this requirement is to ensure that all persons who are registered as brokers have had experience performing specific job functions that will provide an individual with the experience necessary to adequately perform the functions of a broker.

In the preparation of this paper, the Staff of the Commission sought to gain an appreciation for the job functions performed by registered brokers through direct inquiries into the major responsibilities, functions and day-to-day activities performed by brokers. Similar information was also requested for the traders under their supervision.

Of the six (6) companies registered to do brokerage business with the Commission, only three (3) responded to the Commission’s request. The responses from registered Securities Companies can be found in Appendix I.

Stockbroking Activity

After reviewing the responses from the brokers to determine which activities are common to the three companies, and in keeping with the definitions of stockbroking in the legislation presented above, the Staff was able to determine six (6) common job functions from the responses received. These are listed below as follows:

- (I) Solicitation of new business for the company, developing relationships with clients and marketing the company’s products and services;
- (II) Liaising with existing clients and providing Investment Advice to clients;



- (III) Investment Analysis and dissemination of investment information;
- (IV) Executing trades on behalf of clients on the Stock Exchange and maintaining adequate records of these trades;
- (V) Ensuring that the firm maintains compliance with the Rules and Regulations of the Trinidad and Tobago Stock Exchange, the Securities Industry Act, 1995 and the Companies Act, 1995; and
- (VI) Supervision and direction of traders or persons employed in the Trading Department

It should be noted that many brokers also act as Executives/Managers of their respective firms and hence some managerial and administrative functions were also included as major responsibilities for brokers in the responses (e.g., the setting of organizational objectives). For the purposes of this analysis, these functions were excluded from those activities considered to be stockbroking activities.

Upon closer examination of the six job functions listed above, functions I, II and III can be grouped together under the broad heading of “Investment Management and Advisory Services” since each of these three functions contains one or more elements that is closely associated with delivering investment management and investment advisory services to existing and potential clients. Similarly, functions IV, V and VI may be grouped under the nomenclature “Knowledge of the Rules and Conduct of the Profession” since these categories are concerned with the broker’s knowledge of the trading procedures, compliance mechanisms and rules governing the profession.

Policy

An applicant for registration as a broker, who does not possess the required experience as a trader, must present evidence of two years active involvement in stockbroking activity as evidenced by:

1. Experience in the delivery of Investment Analysis and Advisory Services; and
2. Knowledge of the Rules and Conduct of the Profession.

The applicant shall satisfy the experience requirement in each respective category listed above.

ACTIVE INVOLVEMENT IN THE DELIVERY OF INVESTMENT ANALYSIS AND ADVISORY SERVICES

Satisfaction of the requirement of two years active involvement in the delivery of investment analysis and advisory services shall be evidenced by an aggregate of two years involvement in the performance of the following functions:



- (I) Solicitation of new business for the company, developing relationships with clients and marketing the company's products and services;
- (II) Liaising with existing clients and providing Investment Advice to clients;
- (III) Investment Analysis and dissemination of information;
- (IV) Any other activity related to items I to III.

DEMONSTRABLE KNOWLEDGE OF THE RULES AND CONDUCT OF THE PROFESSION

Section 58 of the Act directs that:

- (2) "Every such application shall be signed jointly by the applicant and by a broker of the securities company under whose direction and supervision it is proposed that the applicant operate as a trader"

A broker may thus be required to direct and supervise the activities of a trader. In order to exercise proper direction and supervision over the activities of a trader, it is necessary for a broker to have a sound technical knowledge of the practices and compliance procedures of the profession.

In reference to this point, all applicants for registration as a broker who do not possess the required experience as a trader shall demonstrate an aggregate of two (2) years active involvement in the compliance function of a member company or member firm of a securities exchange in any country within the Commonwealth or the United States of America to ensure that such persons are able to adequately discharge their supervisory responsibilities.

In the absence of a formal compliance department, satisfaction of the requirement for the "Knowledge of the Rules and Conduct of the Profession" shall be evidenced by two (2) years active involvement in the following functions:

- (I) Ensuring the firm maintains compliance with the Rules and Regulations of the Trinidad and Tobago Stock Exchange, the Securities Industry Act, 1995 and the Companies Act, 1995; and
- (II) Supervision and direction, in respect of the regulatory and compliance issues, of traders or persons employed in the Trading Department in a member company or member firm of a securities exchange in any country within the Commonwealth or the United States of America.



Appendix I

Interpretation of “Stockbroking Activity” in accordance with Section 54(2)(e) of the Securities Industry Act, 1995

Member Countries of the Commonwealth:

1. Antigua & Barbuda
2. Australia
3. Bahamas
4. Bangladesh
5. Barbados
6. Belize
7. Botswana
8. Brunei Darussalam
9. Cameroon
10. Canada
11. Cyprus
12. Dominica
13. Fiji Islands
14. The Gambia
15. Ghana
16. Grenada
17. Guyana
18. India
19. Jamaica
20. Kenya
21. Kiribati
22. Lesotho
23. Malaysia
24. Malawi
25. Maldives
26. Malta
27. Mauritius
28. Mozambique
29. Namibia
30. Nauru
31. New Zealand
32. Nigeria
33. Pakistan
34. Papua New Guinea
35. St Kitts and Nevis
36. St Lucia
37. St Vincent
38. Samoa



39. Seychelles
40. Sierra Leone
41. Singapore
42. Solomon Islands
43. South Africa
44. Sri Lanka
45. Swaziland
46. Tanzania
47. Tonga
48. Trinidad & Tobago
49. Tuvalu
50. Uganda
51. United Kingdom
52. Vanuatu
53. Zambia

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