

REPUBLIC OF TRINIDAD AND TOBAGO

THE SECURITIES INDUSTRY ACT, CHAP. 83:02

**PROPOSED BY-LAWS**

Recommended to the Minister of Finance under section 131(1) of the Securities Industry Act

**THE SECURITIES INDUSTRY (DEPOSITARY RECEIPTS) BY-LAWS, 2008**

**PART I**

**PRELIMINARY**

Citation 1. These By-laws may be cited as the Securities Industry (Depositary Receipts) By-Laws, 2008.

Interpretation 2. In these By-laws, unless the context otherwise requires –

Chap.83:02 “the Act” means the Securities Industry Act;

Schedule 1 “approved jurisdiction” means the jurisdictions specified in Schedule 1;

“acceptable accounting standard” means that the basis of reporting is subject to an internationally accredited accounting and auditing standard setting regime including but not limited to IAS, IFRS and USGAAP standards;

“business day” means any day on which the banks are open for the conduct of business in Trinidad and Tobago;

“Commission” means the Trinidad and Tobago Securities and Exchange Commission, a body corporate established under Section 4 of the Act;

“Custodian” means a body corporate that is authorised by a regulator in an approved jurisdiction to render custody services.

“Depositary” means a body corporate that has depositary receipts outstanding or issues, or proposes to issue depositary receipts to the public;

“Depositary Agreement” means a written agreement between a

Custodian, a Depositary and a TTDR holder in an Un-sponsored TTDR programme or a written agreement between a Foreign Security Issuer, a Custodian, a Depositary and a TTDR holder in a Sponsored TTDR programme.

“Disclosure Documents” means all documents required to be filed by the Depositary under the Act and these By-Laws;

“foreign security ” means a security issued by a foreign security issuer and which is listed or traded on a securities exchange of an approved jurisdiction;

“foreign security issuer” means a body corporate which has issued foreign securities to the public in accordance with the law of an approved jurisdiction.

“Global Custodian” means a Custodian which is in the business of processing of cross-border securities trades, keeping financial assets safe and servicing associated portfolios of such cross border securities trades;

“Issue” means an offer to the public and or distribution of TTDRs within the meaning of “offer to the public” or “distribution” under section 3(1) of the Act,;

“security” has the meaning assigned to it in the Act;

“sponsored TTDR” means a TTDR programme established at the direction of a foreign security issuer and administered in accordance with a Depositary Agreement between the Foreign Security Issuer, a Custodian, a Depositary and a TTDR holder.

“Trinidad and Tobago Depositary Receipt” or “TTDR” means a security issued in Trinidad and Tobago by a Depositary which represents ownership of or interest in a foreign security.

“TTDR programme” or “programme” means the issue of TTDRs by a Depositary to the public.

“un-sponsored TTDR” means a TTDR programme established by a Depositary without the participation of a foreign security issuer and administered in accordance with a Depositary Agreement between a Depositary receipt issuer, a Custodian and a TTDR holder.

- Fees  
Chap.83:02  
Schedule 2
3. The fees payable are those set out in-  
(a) Schedule 1 to the Securities Industry By-Laws excluding the market access fees; and  
(b) Schedule 2 to these By-laws in respect of market access fees.
- Forms  
Schedule 2
4. The forms referred to in these By-Laws are those contained in Schedule 2 to the Securities Industry By-laws and these forms shall be used in all cases to which they are applicable and may be modified by Commission to meet other cases

## PART II

### DEPOSITARY RECEIPT PROGRAMME

- TTDR  
compliance  
with Act and  
By-Laws
5. Every issue to the public of TTDRs must be effected under a TTDR programme for which the Commission has issued a receipt for a prospectus.
- Requirements  
of TTDR  
programme
6. A TTDR programme shall -
- a) be sponsored or unsponsored;
  - b) be eligible for settlement through and listing with one or more self-regulatory organization in the Republic of Trinidad and Tobago;
  - c) be denominated in Trinidad and Tobago dollars;
  - d) contain provisions for cancellation and conversion by TTDR holders;
  - e) provide disclosures in the English Language; and
  - f) satisfy the requirements of these By-laws.
- Approval of  
TTDR  
programme
7. A Depositary shall not issue TTDRs on a foreign security of a foreign security issuer in a TTDR programme if another Depositary is issuing TTDRs on the same foreign security.
- Termination  
or transfer of  
TTDR  
programme
8. A TTDR programme shall not be transferred to another Depositary or terminated unless -
- a) the TTDR holders and the Commission are notified not less than sixty days prior to the proposed transfer or termination; and
  - b) the pro rata market access fees due for the part of the year up to the time of transfer or

termination are paid to the Commission.

### **PART III**

#### **THE DEPOSITARY**

Depository  
responsible  
for TTDR  
programme

9. A Depository shall register a TTDR programme in accordance with the provisions of the Act and these By-laws.

Functions of  
Depository

10. The functions of the Depository are to-

- (a) hold on deposit the foreign securities of the TTDR programme for the exclusive benefit of TTDR holders, with no rights, monies or benefits accruing to TTDR holders to be treated as assets of the Depository or of the Custodian;
- (b) cancel and issue TTDRs in accordance with the Depository Agreement;
- (c) manage the transfer and disbursement of dividend payments and any other beneficial interest payments that may be due and owing to TTDR holders;
- (d) exercise any voting rights or other rights, duties and or obligations attaching to the foreign securities held on deposit, in the interest of the TTDR holders and in accordance with the instructions of the TTDR holders;
- (e) provide for and arrange for the collection and delivery of voting proxies to the foreign security issuer;
- (f) maintain a current list of TTDR holders and the foreign securities held on deposit;
- (g) provide the Commission with the disclosure documents and reporting information as provided for in the Act and these By-Laws;
- (h) maintain current and make publicly available statements that report the number of TTDRs issued and cancelled daily;
- (i) make available for public inspection and in plain English any material information provided by the foreign security issuer to any regulator in the foreign security Issuer's market of incorporation, market of residence and or market of listing within five (5) business days from the date the information is provided; reconcile the holdings of the foreign securities held on deposit by the Custodian;
- (j) deal fairly with the enquiries and complaints of the

- TTDR holders;
- (k) supervise the Custodian; and
  - (l) discharge any other obligation that the Commission may impose

Eligibility  
criteria for  
Depositary

11. (1) A body corporate shall not be authorised to act as a Depositary –unless it:

- a) is registered with the Commission as a Securities Company and authorised to carry on the business of a broker within the meaning of the Act; or
- b) is registered as a Financial Institution within the meaning of the Financial Institutions Act; and
- c) is in good standing with its regulator;
- d) has the technical resources and capacities to perform the business of Depositary as described in these By-laws;
- e) has a reliable relationship with a Custodian with Global Custodian capability in an approved jurisdiction; and
- f) acknowledges the right of the foreign security issuer to replace an unsponsored TTDR programme administered by the Depositary with its sponsored TTDR programme in relation to its foreign securities.

Chap. 79:09

(2) The Commission, in making a determination under paragraph (1), may have regard to any information in its possession or knowledge whether furnished or not by the applicant.

Depositary to  
register as  
reporting  
issuer

12. No Depositary shall carry on the business of issuing, proposing to issue, offering or distributing TTDRs to the public unless it is registered with the Commission as a reporting issuer and authorised to do so pursuant to the Act and these By-laws.

Commission  
may impose  
conditions

13. The Commission may issue a receipt for a prospectus for a TTDR programme to a Depositary subject to such conditions as-

- (a) it may impose in the public interest; or
- (b) may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.

- Commission may deny, suspend or revoke registration
14. The Commission may deny, suspend or revoke the registration of a Depository where-
- a) the registration of the Depository creates such conditions in the securities market that undermines the orderly growth, integrity and development of the capital market;
  - b) the registration is not in the public interest;
  - c) it has contravened any of the provisions of the Act or these By-Laws;
  - a) it is convicted for any offence involving fraud or dishonesty;
  - b) it ceases to meet a requirement of or condition imposed under By-laws 12 to 14;
  - c) it is defaulting or has defaulted in any obligations within the normal course of its business;
  - d) the registration was obtained by the concealment or misrepresentation of any fact which in the opinion of the Commission is material to its application or to its suitability to be registered;
  - e) it is the subject of insolvency and or winding up proceedings or against which a receiving order has been made.

#### **PART IV – FOREIGN SECURITY ISSUER AND FOREIGN SECURITIES**

- Eligibility for TTDR programme
15. A foreign security issuer or a foreign security which meet the criteria set out in this Part may be eligible for inclusion in a TTDR programme.

- Requirements of foreign security
16. The Commission may approve a foreign security for inclusion in a TTDR Programme if it is satisfied that at the time of registration of the TTDR programme the foreign security issuer -
- a) had a minimum market capitalisation of one billion United States Dollars in the previous twelve months;
  - b) its securities had an average daily traded value of \$US10 million in the previous twelve months;
  - c) each class of its securities has a unique identifier; and
  - d) it is otherwise fit for inclusion in the TTDR programme.

- Foreign security issuer to meet certain conditions
17. In determining whether the foreign security is fit for inclusion in a TTDR programme, the Commission must be satisfied that the foreign security issuer -
- (a) is regulated in an approved jurisdiction where it is -
    - i. under an obligation to file disclosure documents on a continuous basis; and
    - ii. required to comply with financial reporting requirements which satisfy an acceptable accounting standard;
  - (b) is in compliance with the requirements of the securities regulatory authority of the jurisdiction where it resident and or listed; and
  - (c) has filed audited accounts which cover at least three years prior to the proposed establishment of the TTDR programme.

#### **PART V – THE CUSTODIAN**

- Requirements of the Custodian
18. Subject to the approval of the Commission a Depositary may appoint a body corporate to be the Custodian of the foreign securities in a TTDR Programme which –
- a) is duly registered, regulated and continues to be in compliance with its respective home regulatory authority in an approved jurisdiction; and
  - b) has provided services as a Global Custodian for at least three years immediately preceding registration of the TTDR programme as evidenced by its annual reports.
- Functions of the Custodian
- 19, The functions of the Custodian appointed under By-law 18 are to-
- a) hold the foreign securities on deposit for the account of the Depositary
  - b) keep safe and segregated the foreign securities from the assets and liabilities of the Depositary, the Custodian and or the foreign security issuer;
  - c) perform services relating to the receipt and payment of dividends and other corporate actions on behalf of the Depositary;
  - d) maintain a register of the foreign securities in custody;

- e) confirm the release and acquisition of foreign securities as instructed by the Depositary;
- f) provide the Depositary with copies of notices of shareholder meetings, annual reports and other shareholder communications that have been published by the foreign security;
- g) provide statements of foreign security balances for reconciliation with the Depositary issuer; and
- h) prepare reports and confirmations as communicated and requested by the Depositary .

Foreign securities to be registered

## PART VI

### REGISTRATION OF DEPOSITARY RECEIPTS

20. No sponsored TTDR may be issued unless the foreign security issuer and foreign securities have been registered in accordance with the Act.

Registration requirements

Form No. 4  
Schedule 2  
Chap. 83:02

21. (1) An application for registration of a TTDR programme under this Part must be made to the Commission by filing a completed registration statement on Form No.4 of Schedule 2 to the Securities Industry By-laws.

(2) The application must be accompanied by the following documents :

- a) a copy of the proposed Depositary Agreement;
- b) a copy of the proposed Prospectus for the distribution of TTDRs;
- c) in a sponsored TTDR Programme copies of the contracts between the foreign security issuer, the Depositary, the Custodian and the TTDR holders;
- d) in an unsponsored programme-
  - i. copies of the contracts between the Depositary and the Custodian and the Depositary and the TTDR holders; and
  - ii. an acknowledgement of the right of the foreign security issuer to replace the unsponsored programme with a sponsored programme;
- (e) the fees set out in By-law 3; and
- (f) any other document that the Commission may require.

Requirements of the

22.The proposed Depositary Agreement shall include details of-



Depository  
Agreement

- a) the obligations and duties of the Depository towards the holders of TTDRs;
- b) the name and particulars of the Custodian;
- c) the voting and other rights of the holders of TTDRs and the nature and extent of those rights;
- d) the dividend rights of the holders of TTDRs and the arrangements for the payment of dividends;
- e) details of the underwriters, legal counsel, investment advisers and any other interested party involved in the arrangement and conduct of the TTDR programme;,
- f) the foreign exchange conversion and other currency related provisions;
- g) arrangements if any for the distribution of additional TTDRs;
- h) charges and fees of the Depository and the Custodian;
- i) provisions for amendment to the Depository Agreement amendment and for termination of the TTDR programme; and
- j) provisions for the issuance or cancellation TTDRs including conversion of the TTDRs into foreign securities.

**PART VII****CONTINUOUS DISCLOSURE OBLIGATIONS**Material  
changes to  
Depository

23. Where a material change is made regarding the terms of a Depository Agreement or a TTDR programme authorized under these By-laws, the Depository must –

- Agreement to be filed (a) file a notice of the change with the Commission; and  
(b) give notice to the TTDR holders,  
of the material change immediately or not later than five business days  
from the decision to implement that material change.
- Continuous disclosure requirements 24. The Depositary shall comply with the provisions for continuous disclosure required by the Act and these By-laws.
- Filing of annual and semi-annual financial reports 25. The Depositary shall file with the Commission its annual and semi-annual financial reports including the issuance and cancellation data relating to the TTDR programme, in accordance with the Act and these By-Laws.
- Foreign security issuer to file certain documents 26. (1) Where a foreign security issuer whose security is the subject of a TTDR programme, files any document required by a regulator, the Depositary shall file a copy of that document and make it available for public inspection at its registered office and on its internet website.  
(2) The Depositary must file any document referred to in paragraph (1) within five business days of the filing by the foreign security issuer.
- Copy of Notice of material change to be filed 27. (1) Where a foreign security issuer files a notice of material change with any regulator, the Depositary shall file with the Commission a copy of the notice and make it available for public inspection at its registered office and on its internet website.  
(2) The Depositary must file the notice referred to in paragraph (1) within five business days of the filing by the foreign security issuer.
- Filing of statements 28. (1) The Depositary shall file with the Commission true copies of  
a) the financial statements of the foreign security issuer; and  
b) an extract of latest audited annual or other financial statements of the foreign security issuer which includes -  
i. income statements;  
ii. balance sheets;  
iii. cash flow statement;  
iv. accounting policies; and  
v. notes to the accounts for the last

financial year.

(2) The Depositary shall make the statements filed under paragraph (1) (a) available for public inspection at its registered office and on its internet website no later than five business days after the foreign security issuer has filed the statements with any securities regulatory authority.

(3) The Depositary shall make the extracts filed under paragraph (1) (b) available for public inspection at its registered office and on its internet website no later than ten business days after the foreign security issuer has filed the statements with any securities regulatory authority.

Statements  
must be  
consistent

### MISCELLANEOUS PROVISIONS

29. The extracts from the statements of the foreign security issuer must be consistent in form with the financial statements of the foreign security issuer.

Disclaimer

30. All financial statements, and other documents of a foreign security issuer filed with the Commission by a Depositary pursuant to these By-Laws must be certified by the Depositary as true copies of the originals that have been filed with the relevant securities regulatory authority but subject thereto the Depositary may disclaim responsibility for the contents of such financial statements and other documents.

## Schedule 1

### LIST OF APPROVED JURISDICTIONS

For the purposes of these Bye-laws the approved jurisdictions are as follows:

- (a) Canada;
- (b) The United States of America; and
- (c) The United Kingdom.

