

SCHEDULE "B"
PROPOSED SIA, 1995

SECURITIES INDUSTRY ACT, 1995

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PART I

PRELIMINARY

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|----------------|--|
| Purpose | <p>1. The purposes of this Act are -</p> <ul style="list-style-type: none">(a) to provide protection to investors from unfair, improper or fraudulent practices;(b) to foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; and(c) to facilitate the development of fair and efficient capital markets in the Caribbean region. |
| Commencement | <p>2. This Act comes into operation on a date to be fixed by the President by Proclamation.</p> |
| Interpretation | <p>3. (1) In this Act and the by-laws -</p> <p>“affiliate” means an affiliated body corporate or affiliated person within the meaning of subsection (2);</p> <p>“approved foreign issuer” means a foreign issuer -</p> <ul style="list-style-type: none">(a) that is at the relevant date a reporting issuer (or equivalent) under the securities laws of a designated foreign jurisdiction;(b) that has been for the three years immediately preceding the relevant date a reporting issuer (or equivalent) under the securities laws of a designated foreign jurisdiction;(c) that is subject to foreign disclosure requirements; and(d) that has a class of securities listed for trading on a recognized stock exchange in a designated foreign jurisdiction; <p>“approved rating” means an investment grade rating or higher from an approved rating organization;</p> <p>“approved rating organization” means those organizations prescribed by by-law;</p> <p>“asset-backed security” means any security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;</p> <p>“associate”, where used to indicate a relationship with any person, means -</p> <ul style="list-style-type: none">(a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling him to ten per cent or more of the voting rights attached to outstanding securities of the issuer:<ul style="list-style-type: none">(i) under all circumstances; or(ii) by reason of the occurrence of an event that has occurred and is continuing; |

(b) a partner of the person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which the person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(d) a spouse or child of the person; and

(e) any other relative of the person, other than a spouse or child of the person, if that relative has the same residence as the person;

“association of securities companies” means an organization of securities companies that -

(a) supervises its members to ensure compliance with this Act and the by-laws;

(b) regulates the conduct of its members or of any other person in the capital market; or

(c) regulates the entry of any person into, or the prices for services in, the capital market;

“beneficial owner” means the beneficial owner of a security at law;

“beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

“block distribution circular” means a prospectus required in connection with a distribution of previously issued securities within the meaning of paragraph (c) of the definition of distribution;

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 124;

“broker-dealer” means a person engaging in, or holding himself out as engaging in, the business of –

(a) effecting transactions in securities for the account of others; or

(b) buying and selling securities for his own account and who holds himself out at, all normal times, as willing to buy and sell securities at specified by him;

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

“by-law” means a by-law made by the Minister on the recommendation of the Commission under this Act;

“Central Depository” means the Trinidad and Tobago Central Depository Limited;

“clearing agency” means a person that -

(a) maintains records of trades of securities for the purpose of settling claims for money and securities;

(b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;

(c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry; or

(d) performs any combination of two or more functions referred to in paragraphs (a) to (c), but does not include a broker-dealer or financial institution acting exclusively in the ordinary course of its customary business,

and includes the Central Depository;

“collective investment scheme” means an issuer, the securities of which entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the issuer;

“Commission” means the Trinidad and Tobago Securities and Exchange Commission established under this Act;

“control” or “controlled” in relation to an issuer means the power of a person, or persons acting jointly or in concert, by virtue of the holding of securities of the issuer, or by virtue of any agreement, arrangement, commitment or understanding with any person or persons, to direct that the business and affairs of the issuer are conducted in accordance with the wishes of such person or persons, and

(a) is deemed to exist where the person or persons exercise more than fifty percent of the voting power in, or in relation to, that issuer; and

(b) is presumed to exist where the person or persons exercise more than thirty percent of the voting power in, or in relation to, that issuer;

“Constitution” means the Constitution of the Republic of Trinidad and Tobago;

“Court” means the High Court;

“designated foreign jurisdiction” means those jurisdictions prescribed by by-law;

“director” where used in relation to a person means, a director of a company or a person acting in a similar capacity, including the trustees of a trust;

“distribution” where used in relation to trading in securities, means -

(a) a trade in securities of an issuer that have not previously been issued, and includes, any trade in previously issued securities of the issuer that have been redeemed, repurchased or otherwise reacquired by the issuer;

(b) a trade by an underwriter, acting as underwriter, in previously issued securities which were purchased from the issuer by such underwriter less than six months prior to the trade;

(c) a trade in previously issued securities of an issuer from the aggregate holdings of any person, or combination of persons or companies, where the number of securities of that class held by the person, or combination of persons or companies:

(i) enables or permits the person, or combination of persons, to exercise control over the board of directors, management or policies of the issuer, or

(ii) is equal to or exceeds thirty percent of the outstanding voting securities of the issuer, or

(d) any trade in securities deemed by this Act or a by-law to be a distribution,

whether or not in the course of any transaction or series of transactions;

“expert” means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him;

“file” or “filed” means to file with the Commission and includes filing;

“filing” means the submission of a document or instrument to the Commission pursuant to a requirement of this Act or a by-law that requires such document or instrument be filed, other than the submission of a document or instrument pursuant to an investigation;

“financial institution” means a company licensed under the Financial Institutions Act, 1993, as amended;

“foreign issuer” means an issuer that is not organized under the laws of Trinidad and Tobago unless -

(a) more than fifty percent of the directors and senior officers of the issuer are resident in Trinidad and Tobago,

(b) more than fifty percent of the assets of the issuer are located in Trinidad and Tobago, or

(c) the business of the issuer is principally administered in Trinidad and Tobago;

“foreign disclosure requirements” means the requirements to which a foreign issuer is subject concerning disclosure made to a competent securities regulatory authority, securities commission or securities exchange in a designated foreign jurisdiction which are made publicly available;

“form of proxy” means a written or printed form that, upon completion and signature by or on behalf of a security holder, becomes a proxy;

“former Act” means the Securities Industry Act repealed by this Act;

“former Stock Exchange” means the Trinidad and Tobago Stock Exchange established under the former Act;

“free capital” means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Commission may prescribe;

“government entity” means -

(a) the Government;

(b) the Central Bank;

(c) the Tobago House of Assembly;

(d) any municipal corporation in Trinidad and Tobago;

(e) any foreign government or any political division thereof that issues bonds, debentures, or other evidences of indebtedness; or

(f) an international agency;

“IFRS” means International Financial Reporting Standards prescribed by the International Accounting Standards Board, as the same may be supplemented, amended, or replaced from time to time;

“interim period” means a completed three, six or nine month period in a financial year;

“international agency” means -

(a) the International Bank for Reconstruction and Development;

(b) the Inter-American Development Bank; and

(c) the Asian Development Bank;

“investment advice” means advice with respect to an investment in, or the purchase, sale or holding of, a security, whether or not provided by an investment adviser;

“investment adviser” means a person engaging in, or holding himself out as engaging in, the business of providing investment advice, and includes a person that provides investment advice or portfolio management services to a collective investment scheme or to the manager of a collective investment scheme;

“investment contract” includes any contract, transaction, plan or scheme, whether or not evidenced by any document, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;

“issuer” means a person that has securities outstanding or issues, or proposes to issue or distribute, a security;

“management discussion and analysis” means a management discussion and analysis on comparative financial statements;

“market actor” means a person registered or required to be registered under Part IV of this Act;

“material change”, where used in relation to the affairs of an issuer, means a change in the business, operations, assets or ownership of the issuer that would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer and includes a decision to implement such a change made by the directors of the issuer;

“material fact”, where used in relation to securities issued or proposed to be issued, means a fact that significantly affects or would reasonably be expected to significantly effect the market price or value of those securities;

“Minister” means the Minister to whom responsibility for finance is assigned;

“misrepresentation” means -

(a) an untrue statement of a material fact; or

(b) an omission to state a material fact that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

“order” means, unless a contrary intention appears, an order or decision of the Commission or its delegatee, the Tribunal or a self-regulatory organization, and includes interim and final orders;

“participant” means a person who receives services from a clearing agency other than exclusively -

(a) through another person who is a participant; or

(b) as a -

(i) pledgee;

(ii) judgement creditor; or

(iii) beneficial owner,

for whom a blocked account has been established;

“prescribe” means prescribe by by-law;

“prospectus” includes a block distribution circular;

“proxy” means a completed and signed form of proxy by means of which a holder of voting securities of an issuer appoints a proxy holder to attend and act on his behalf at a meeting of security holders;

“promoter” means a person that was involved in the organization of an issuer;

“purchase” includes -

(a) any purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, and

(b) any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any of the foregoing,

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

“records” means -

(a) accounts, correspondence, memoranda and any other data or information relating to the property or affairs of a person; or

(b) data or information prepared or maintained in a bound or loose leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form within a reasonable time;

“relative” in relation to a person, means -

- (a) a spouse;
- (b) a child or grandchild;
- (c) a parent, grandparent, brother, sister or the spouse of such person; or
- (d) a step-child;

“reporting issuer” means an issuer -

- (a) that was a reporting issuer on ●, 2004;
- (b) that has filed a prospectus and obtained a receipt for it under this Act;
- (c) any of whose securities are listed on the Stock Exchange; or
- (d) that is the issuer whose existence continues following the exchange of securities of an issuer by or for the account of such issuer with another issuer or the holders of securities of that issuer in connection with a statutory amalgamation or arrangement, or where existing issuers merge into one issuer, that continuing issuer, where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least four months,

but does not include a government entity;

“right to acquire a security” means -

- (a) a security currently convertible into another security;
- (b) a security carrying a warrant or right to acquire another security; or
- (c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (a) or (b);

“sale” includes -

- (a) a sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise, and
- (b) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing,

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;

“Secretary” means the Secretary of the Commission appointed under this Act;

“securities exchange” means a person who maintains or provides -

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale,

and includes the Stock Exchange;

“securities register” means a record or records maintained by or on behalf of an issuer in which the securities issued by it are recorded showing with respect to each class or series of securities -

- (a) the name and address of each registered security holder of the issuer;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security;

“security” means any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person, company or enterprise, and without limiting the generality of the foregoing, includes:

- (a) any bond, debenture, note or other evidence of indebtedness;
- (b) any share, stock, unit, unit certificate, participation certificate, certificate of share or interest;
- (c) any document, instrument or writing commonly known as a security;
- (d) any document, instrument or writing evidencing an option, subscription or other interest in or to a security;
- (e) any investment contract;
- (f) any asset-backed security;
- (g) any document, instrument or writing constituting evidence of any interest or participation in –
 - (i) a profit sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;
- (h) an interest in a collective investment scheme; or
- (i) any right to acquire or dispose of anything specified in paragraphs (a) to (h),

but does not include –

- (i) currency;
- (j) a cheque, bill of exchange, or bank letter of credit; or
- (k) a certificate or document constituting evidence of any interest in a deposit account with –
 - (i) a financial institution;
 - (ii) a credit union within the meaning of the Co-operative Societies Act;
 - (iii) an insurance company; or
 - (iv) a contract of insurance issued by an issuer;

“self-regulatory organization” means an association of securities companies, a clearing agency or a securities exchange registered or required to be registered under this Act in order to carry out its business or function;

“senior officer” means -

(a) the chairman or vice-chairman of the board of directors of an issuer, the managing director, the chief executive officer, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the chief financial officer, the financial controller, the general manager or the deputy general manager of an issuer or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office; and

(b) each of the five highest paid employees of an issuer, including any individual referred to in paragraph (a);

“Stock Exchange” means the Trinidad and Tobago Stock Exchange Limited;

“subsidiary” means an issuer that is controlled by another issuer;

“trade” or “trading” includes -

(a) any sale or purchase of a security;

(b) any participation as a market actor or agent in any transaction in a security; or

(c) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraphs (a) or (b);

“trader” means an individual employed by a broker-dealer to participate in any transaction in securities;

“Tribunal” means the Securities Market Tribunal established by this Act;

“underwriter” means a person who -

(a) as principal, agrees to purchase a security for the purpose of a distribution;

(b) as agent, offers for sale or sells a security in connection with a distribution; or

(c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for consideration,

but does not include -

(d) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or

(e) a company that purchases shares of its own issue and resells them; and

“voting security” means a security carrying voting rights -

(a) under all circumstances; or

(b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right to acquire such a security.

Affiliates

(2) For the purposes of this Act and the by-laws -

(a)

(i) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person, and

(ii) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;

(b)

(i) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(ii) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate;

(c) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other, provided that a person is controlled by another person if,

(i) in the case of a partnership, other than a limited partnership, the second-mentioned person owns or holds more than fifty percent of the interest in the partnership; and

(ii) in the case of a limited partnership, the general partner is the second-mentioned person; and

(iii) in the case of the first-mentioned person other than a body corporate, an individual, a partnership, or a limited partnership, securities of the first-mentioned person carrying more than fifty percent of the interests in such person, are held or owned, by or for the benefit of the second-mentioned person.

Trading in Trinidad and
Tobago

(3) For the purposes of this Act and the by-laws, a trade or trading shall be deemed to occur in Trinidad and Tobago where -

(a) in the case of an act, advertisement, solicitation, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, solicitation, conduct or negotiation is -

(i) made by mail or courier, telephone or facsimile transmission, with or to a person resident in Trinidad and Tobago, whether or not solicited by such person;

(ii) made by e-mail correspondence, where the recipient of the e-mail correspondence is resident in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail correspondence is a resident of Trinidad and Tobago, or after reasonable inquiry, should have known, that the recipient of such e-mail correspondence is a resident of Trinidad and Tobago, whether or not solicited by such person; or

(iii) in the case of securities offerings made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in Trinidad and Tobago, unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the

offering is qualified to be made, and that Trinidad and Tobago is or is not such a qualified jurisdiction, and reasonable precautions are taken to ensure that no actual sales occur to persons resident in Trinidad and Tobago unless done in compliance with this Act and the by-laws; or

(b) the purchaser of the security is resident in Trinidad and Tobago.

Advising in Trinidad and Tobago

(4) For the purposes of this Act and the by-laws, a person shall be deemed to be providing investment advice in Trinidad and Tobago where -

(a) such person contacts or solicits by telephone or facsimile a resident of Trinidad and Tobago for the purpose of offering or providing investment advice, whether or not solicited by such person;

(b) such person sends correspondence by e-mail, for the purpose of offering or providing investment advice, where the recipient of the e-mail correspondence is resident in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail correspondence is a resident of Trinidad and Tobago, or after reasonable inquiry, should have known, that the recipient of such e-mail correspondence is a resident of Trinidad and Tobago, whether or not solicited by such person;

(c) such person sends correspondence by mail or courier for the purpose of offering or providing investment advice to an address in Trinidad and Tobago, whether or not solicited by any person resident at such address; or

(d) such person provides investment advice to a person resident in Trinidad and Tobago.

PART II

THE SECURITIES AND EXCHANGE COMMISSION

Division 1 – Establishment, Functions and Powers

Establishment of the Commission

4. There is hereby established a body corporate to be known as the “Trinidad and Tobago Securities and Exchange Commission”.

Functions of the Commission

5. The functions of the Commission are to -

(a) advise the Minister on all matters relating to the securities industry and marketplace;

(b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;

(c) regulate and supervise the timely, accurate, fair and efficient disclosure of information to the securities industry and the capital markets;

(d) protect the integrity of the capital market against any abuses arising from market manipulating practices, insider trading, conflicts of interest and other unfair and improper practices;

(e) promote an understanding by the public of the capital markets, the securities industry, and the benefits, risks, and liabilities associated with investing in securities and financial products;

(f) co-operate and provide assistance to regulatory authorities in Trinidad and Tobago, or elsewhere; and

(g) create and promote such conditions in the capital markets and the securities industry as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital markets and securities industry and to further the purposes of this Act.

Powers of the Commission

6. (1) For the purpose of the discharge of its functions the Commission has power, subject to this Act, to -

(a) formulate principles for the guidance of the securities industry and capital markets;

(b) deal with such matters as may be referred to it by any person from time to time;

(c) register and regulate, in accordance with this Act and the by-laws, self-regulatory organizations and market actors with a view to maintaining proper standards of conduct and

professionalism in the securities industry;

(d) monitor the solvency of market actors and self-regulatory organizations and take measures to protect the interest of customers where the solvency of any such person is in doubt;

(e) regulate reporting issuers, including reporting issuers which are collective investment schemes;

(f) adopt measures to supervise and minimize any conflict of interests that may arise in the case of market actors or reporting issuers;

(g) review and regulate takeovers in accordance with this Act and the by-laws;

(h) review the contents of prospectuses and issue receipts therefore, and review any form of solicitation, advertisement or announcement by which securities are proposed to be distributed;

(i) take enforcement action against any person for failing to comply with the this Act and the by-laws;

(j) prepare and recommend by-laws to the Minister;

(k) formulate, prepare and publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act or any by-law;

(l) make any order which the Commission may make under this Act or the by-laws;

(m) undertake such other activities as are necessary or expedient for giving full effect to this Act and the by-laws; and

(n) do all things, and take all actions, which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act and the by-laws.

(2) Where the Commission takes any disciplinary action against a financial institution or an employee of any such institution, the Commission shall forthwith inform the Inspector of Banks of the disciplinary action so taken.

Delegation of powers

7. (1) The Commission may, by order, delegate any power or function conferred on it by this Act or the by-laws, except the powers to recommend by-laws to the Minister and to hear appeals within its jurisdiction, to any self-regulatory organization registered under this Act or to any senior officer of the Commission.

(2) A delegation pursuant to subsection (1) shall not preclude the exercise by the Commission of any power, duty, function or responsibility so delegated.

(3) All decisions made, and minutes of all meetings held, by a delegatee under subsection (1) shall be recorded in writing.

(4) A delegatee shall forthwith notify the Commission of every decision made by him.

Commission review of delegated decision

(5) The Commission may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Commission shall, within thirty days of the decision, notify the delegatee and the person directly affected by the decision of the date, time and venue of the hearing to review the decision.

(6) Except for matters for which an appeal may be had to the Tribunal under section 38, any person aggrieved by a decision of a delegatee may, within fourteen days of the decision, apply to the Commission for a review of that decision.

(7) Within seven days of the receipt of an application under subsection (6), the Commission shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.

(8) Pending the review of a decision, the Commission may, on the application ex parte of the applicant, grant a stay of the decision under review and shall notify forthwith the delegatee of any stay so granted.

(9) Upon reviewing the decision, the Commission may vary or confirm the decision under review or make such other decision as it considers proper.

Custody and use of seal

8. (1) The seal of the Commission shall be kept in the custody of the Chairman or the Secretary, as the Commission may determine, and may be affixed to instruments in the presence of the Chairman and of the Secretary.

(2) The seal of the Commission shall be attested by the signature of the Chairman and the Secretary.

(3) All documents other than those required by law to be under seal, made by, and all orders and decisions of the Commission may be signified under the hand of, the Chairman or the Secretary.

(4) Service upon the Commission of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary at the office of the Commission.

(5) Subject to section 9(4), the functions of the Chairman under this section may, in the event of his absence or inability, be performed by a Commissioner authorized by the Commission to act in that behalf.

Division 2 - Membership

Constitution of
Commission

9. (1) The Commission shall consist of not more than five nor less than three individuals (hereafter referred to as "Commissioners") who shall be appointed by the President.

(2) The Commissioners shall be selected from among persons who appear to the President to have wide experience and ability in legal, financial, business, investment or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing.

(3) Upon the commencement of this Act, the President shall appoint all the Commissioners and shall appoint one of their number to be its Chairman.

(4) Where a Commissioner is by reason of illness, absence from the country or otherwise, unable to perform his functions as a Commissioner, or where an office of Commissioner is vacant, the President may appoint a temporary Commissioner to act in place of that Commissioner during his illness, absence or incapability, or until the office is filled, as the case may be.

(5) A temporary Commissioner shall have qualifications similar to those of the Commissioner for whom he is appointed to act.

Disqualification for
appointment

10. (1) A person shall not be appointed or continue as Commissioner if directly or indirectly, as owner, security holder, director, officer, partner, employee or otherwise, he -

(a) is engaged in the securities business; or

(b) has a material pecuniary or proprietary interest in-

(i) a reporting issuer;

(ii) a market actor; or

(iii) a self-regulatory organization.

(2) If an interest mentioned in paragraph (1)(b) vests in a Commissioner by gift or will or succession for his own benefit, he shall forthwith

disclose the interest to the Chairman and shall within three months thereafter absolutely dispose of the interest.

(3) A person who is appointed Commissioner or General Manager under this Act shall, forthwith after the appointment, declare every interest he has in any security and thereafter he shall not, while holding office as Commissioner or General Manager, as the case may be -

(a) in the case of the General Manager, engage in any other business, vocation or employment other than that of serving as General Manager; or

(b) participate, directly or indirectly, in any securities market operation or transaction in which he has a material interest and which is subject to regulation by the Commission pursuant to this Act.

Offence

(4) A person who contravenes subsection (3) is liable on summary conviction to a fine of up to one hundred thousand dollars or imprisonment for up to six months, or both.

Term of office

11. (1) Subject to this section, the Chairman and the other Commissioners shall hold office for three years but shall be eligible for reappointment.

(2) The Chairman of the Commission may resign his membership by notice in writing addressed to the President.

(3) A Commissioner, other than the Chairman, may at any time resign his membership by notice in writing addressed to the President and transmitted through the Chairman.

(4) A Commissioner may be removed from membership of the Commission by the President where he -

(a) becomes a person of unsound mind;

(b) is absent from three consecutive meetings of the Commission without the permission of the Minister or reasonable cause;

(c) is guilty of misconduct in relation to his duties as a Commissioner;

(d) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving fraud or dishonesty;

(e) is declared bankrupt in accordance with the law of Trinidad and Tobago or any other country;

(f) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than

at his own request, from practicing his profession in Trinidad and Tobago or in any other country by an order of any competent authority made in respect of him personally;

(g) is unable to perform his functions because of illness or for any other reason; or

(h) contravenes this Act or any by-law.

Remuneration of
Commissioner

12. A Commissioner shall be paid such remuneration and allowances in respect of his office as the President may determine from time to time.

Protection of
Commissioners,
employees or agents

13. No action or other proceeding for damages shall be instituted against a Commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a power under this Act.

Confidentiality

14. (1) No Commissioner and no person employed or retained by the Commission shall make use of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than -

(a) an official or employee of the Government;

(b) an expert hired or retained by the Commission;

(c) a duly authorized representative of the government of another country, or an agency of a government of another country, in connection with the enforcement of this Act, the by-laws or similar legislation of any foreign jurisdiction;

(d) as is necessary to carry out the functions of the Commission under this Act; or

(e) as required or permitted by by-law;

and in each case only in the discharge of his functions under the Act and the by-laws.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

Offence

(4) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of up to one hundred thousand dollars or to imprisonment for up to twelve months, or both.

Division 3 – Proceedings of the Commission

Meetings

- 15.** (1) The Commission shall ordinarily meet for despatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.
- (2) The Chairman shall at the request in writing of not less than two Commissioners, call an extraordinary meeting of the Commission within seven days of the receipt of such request.
- (3) Subject to subsection (4), the Chairman shall preside at every meeting of the Commission and in his absence a Commissioner designated by the Chairman shall preside at the meeting.
- (4) Where no Commissioner is so designated the members of the Commission present shall elect one of their number to preside as Chairman at the meeting.
- (5) The quorum at every meeting of the Commission shall be three.
- (6) All questions proposed at a meeting of the Commission shall be determined by a simple majority of the Commissioners present and voting, and where the votes are equal the Chairman or the Commissioner presiding shall have a second or casting vote.
- (7) The Commission may request the attendance of any person to act as adviser or expert at any of its meetings but such person shall not vote on any matter for decision by the Commission.

Committees

- 16.** (1) Subject to subsection (3), where under this Act, the by-laws, or any other written law, the Commission is empowered or required to perform any function, the Commission may by resolution appoint, for the purpose of doing any thing required or deemed expedient or necessary for the purpose of performing such function, a committee of the Commission and the performance by the committee of any such thing shall be deemed to be done and performed by the entire Commission.
- (2) Without prejudice to the generality of subsection (1) and subject to subsection (3), where any function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act or the by-laws assigned to the Commission, such investigation or hearing may be conducted by a committee appointed under this section and shall be fully, duly and validly conducted as if conducted by the entire Commission.
- (3) A committee appointed under this section shall, upon the completion of the function for which it was so appointed, report in writing to the Commission thereon and the performance by the committee of that function and any act or thing done by it in relation

thereto shall be complete and shall be a decision or due exercise by the Commission of the function in question when, and not before, the Commission by resolution adopts the recommendation or the decisions by the committee, whereupon that function shall be deemed to have been performed by the Commission itself.

Minutes

- 17.** (1) Minutes, in proper form, of each meeting of the Commission, or a committee thereof, shall be kept under the direction of the Secretary.
- (2) All decisions, resolutions, orders, rules and by-laws recommended by the Commission or a committee thereof, as the case may be, shall be recorded in the minutes.
- (3) The minutes shall be confirmed at the next meeting of the Commission, or the committee, as the case may be, and a copy of the minutes both when prepared and confirmed shall, in the case of a committee, be forwarded to the Commission.
- (4) The Minister is entitled, upon request, to have access to the minutes of the Commission or a committee thereof, and to receive from the Commission a copy of any of those minutes.

Declaration of interest

- 18.** (1) A Commissioner who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission.
- (2) The Commission, excluding the Commissioner whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.
- (3) In the event that the Commission finds that the interest is such as to constitute a conflict of interest the Commissioner shall not take part in any deliberations or vote on that matter, and shall leave the room during such deliberations.
- (4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if he, or his spouse, or his nominee, is a shareholder or partner in, or an officer of, a company or other body of persons having an interest or being involved in a matter before the Commission.

Offence

(5) Any person who fails to comply with subsection (1) is liable on summary conviction to a fine of up to twenty thousand dollars, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

Consultation with
Central Bank and other
agencies

- 19.** (1) The Commission shall consult and co-operate with the Central Bank or any other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other body in order to minimize duplication of effort and to maximize the protection of investors.

(2) The Commission may co-operate with an agency of a foreign government in connection with the investigation or prosecution of a contravention of this Act, the by-laws or any similar written law whether the activities in question occurred in or outside of Trinidad and Tobago.

(3) The Commission may enter into memorandum of understanding with any agency of a foreign government, foreign securities regulator or other regulatory body which regulates the financial services industry, in furtherance of the purposes of this Act or any matter under this Act or the by-laws.

(4) The Commission may co-operate in the work of national, regional or international organizations dealing with the regulation of securities markets.

Annual report

20. (1) The Commission shall within four months of the end of the financial year send an annual report to the Minister who shall cause it to be laid in Parliament within thirty days after he receives it or, if Parliament is not then sitting, on any of the first thirty days thereafter that Parliament is sitting.

(2) Copies of an annual report shall be available to the public on or before the expiration of fourteen days after it is required to be laid in Parliament under subsection (1).

Regulation of business

21. (1) Subject to subsection (2), the Commission may make rules -

- (a) respecting the calling of and conduct of business at meetings of the Commission;
- (b) respecting procedures for the initiation and holding of hearings by the Commission;
- (c) prescribing the procedure for appeals and review of decisions of delegates and self-regulatory organizations;
- (d) with the approval of the Minister, establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable; and
- (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Commission.

(2) As soon as practicable after the making of any rule or amendment under subsection (1), the Commission shall forward to the Minister a copy of the rule or amendment and where the Minister objects to any rule or amendment, the Commission shall revoke or amend that rule or

amendment in accordance with the directions of the Minister.

Division 4- Staff

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| Appointment of General Manager and Chief Executive Officer | <p>22. (1) The Commission shall appoint a General Manager who shall hold office on such terms and conditions as the Minister shall approve.</p> <p>(2) The Commission may, with the approval of the Minister, appoint the Chairman or the General Manager as its Chief Executive Officer.</p> |
| Appointment of experts | <p>23. (1) The Commission may appoint, hire or retain, on such terms and conditions as the Minister shall approve, an expert to assist it in any manner that it considers necessary.</p> <p>(2) Where the Commission appoints an expert to advise it on the development of specific policies, by-laws or other regulatory proposals of the Commission or a self-regulatory organization, the expert shall formulate and report his views to the Commission in writing and the Commission may, if it thinks fit, make it available to the public.</p> |
| Appointment of other staff | <p>24. The Commission may appoint, at such remuneration and on such terms and conditions as the Minister shall approve, a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.</p> |
| Transfer of officers to the public service and vice versa | <p>25 (1) An officer in the public service or in the service of a statutory authority may, with the approval of the appropriate service commission and the Commission, consent to be appointed on transfer to the service of the Commission.</p> <p>(2) The officer shall, upon transfer, have preserved his superannuation or pension rights accruing at the time of the transfer.</p> |
| Transfer on secondment | <p>26. (1) An officer or employee in the public service, a statutory authority, any public or private body, national or international, or the Commission may, with the consent of the Commission and with the approval of the appropriate service commission or the relevant body, consent to be transferred on secondment to the service of the Commission, or from the service of the Commission to the public service or a statutory authority or other body, as the case may be.</p> <p>(2) Where a transfer on secondment is effected, such arrangements as may be necessary shall be made to preserve the rights of the officer or employee transferred to any pension, gratuity or other allowance for which he would have been eligible had he not been transferred.</p> |

Division 5 - Financial Provisions

- Funds and resources of the Commission
- 27.** The funds and resources of the Commission shall consist of -
- (a) such sums as may be appropriated by Parliament;
 - (b) all fees and other sums from time to time paid, or otherwise payable, to the Commission under this Act and the by-laws; and
 - (c) all other sums or property that may in any manner become payable in any matter incidental to its functions and powers.
- Financial powers
- 28.** For the purpose of carrying out its functions, the Commission may, with the prior approval in writing of the Minister -
- (a) charge fees for any function performed by the Commission under this Act or the by-laws;
 - (b) charge fees for the filing of any document or instrument with the Commission;
 - (c) charge fees for obtaining registration as a market actor or self-regulatory organization under this Act; and
 - (d) charge fees for transactions effected on a self-regulatory organization.
- Application of funds
- 29.** The funds of the Commission shall be applied in defraying the following expenditure:
- (a) the remuneration, fees and allowances of the members of the Commission;
 - (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the officers and employees of the Commission;
 - (c) the capital and operating expenses, including maintenance and insurance of any property of the Commission; and
 - (d) any other expenditure authorized by the Commission in the discharge of its functions and contractual obligations.
- Cash deposits and payments
- 30.** (1) All moneys of the Commission received under the Act or the by-laws shall be paid into a bank appointed by the Commission, and such money shall as far as practicable be paid into the bank from day to day.
- (2) All payments made out of the funds of the Commission shall be made by the person fixed to do so by the rules made under section 21.

made by the person fixed to do so by the rules made under section 21.

Accounts and audit

31. (1) The Commission shall keep proper books of accounts of -

(a) all monies received and expended by the Commission and shall record the matters in respect of which such monies have been received and expended; and

(b) the assets and liabilities of the Commission.

(2) Where assets are held upon any special trust, the receipts and expenditure relating to such trust shall be kept in an account separate and apart from all other receipts and expenditure.

(3) All accounts shall be kept in the principal office of the Commission for a period of six years after the last entry therein, and shall be open to inspection by Commissioners and by the auditors of the Commission.

(4) Within four months after the end of each financial year, the Commission shall cause to be prepared in respect of that year, financial statements which include -

(a) an account of the revenue and expenditure of the Commission;

(b) a balance sheet;

(c) a report setting out the activities of the Commission; and

(d) such other accounts as the Commission may require.

(5) The Commission may include the financial statements required under subsection (4) in its annual report under section 20.

(6) Accounts prepared in accordance with this section shall -

(a) be audited by an auditor who is a member of, and in good standing with, the Institute of Chartered Accountants of Trinidad and Tobago and who is appointed by the Commission with the approval of the Minister; and

(b) be signed by the Chairman and not less than two other Commissioners.

(7) The Secretary shall cause copies of the signed accounts to be sent to every member of the Commission, the auditor and the Minister, and the Minister shall cause copies thereof to be laid before Parliament.

(8) The Minister may at any time request the Commission to provide him with information concerning any aspect of its administration of this Act, the by-laws, and the Commission shall provide the

information requested within fourteen days.

Division 6 - Filing of Documents

Filing of documents
with Commission

- 32.** (1) All documents or instruments required to be filed with the Commission, shall be filed with the Commission as prescribed.

Public availability of
filed documents

- 33.** (1) Unless the Commission determines disclosure would not be in the public interest, the Commission shall make all documents or instruments required to be filed with it under the Act or the by-laws available for public inspection during the normal business hours of the Commission.

(2) In addition to subsection (1), the Commission may also make all documents or instruments filed with it available to the public by posting such documents to the Internet website of the Commission.

PART II.A

THE SECURITIES MARKET TRIBUNAL

Division 1 – Functions, Establishment and Powers

- Establishment of Tribunal **34.** (1) The Securities Market Tribunal is hereby established as a body corporate for the purpose of exercising the jurisdiction conferred upon it by this Act, the by-laws or by any other written law.
- (2) The Tribunal shall consist of a Chairman and such other members (including a Vice-Chairman) as may be appointed under section 35.
- (3) The Tribunal shall be a superior court of record and have an official seal which shall be judicially noticed.
- (4) The Tribunal shall have jurisdiction to hear and determine –
- (a) appeals from decisions of the Commission, or a delegatee of the Commission, set forth under section 38;
 - (b) market misconduct proceedings instituted under section 41; and
 - (c) such other matters as may be prescribed by or under this Act, the by-laws or any other written law.
- (5) A Registrar of the Tribunal and such other officers, clerks, employees and agents as may be required to carry out the business of the Tribunal shall be appointed in a manner authorized by law.
- Constitution of Tribunal **35.** (1) The Chairman and any Vice-Chairman of the Tribunal shall each be a judge of the Court or an attorney-at-law of not less than ten years standing appointed by President.
- (2) The members of the Tribunal, other than the Chairman and Vice-Chairman (hereinafter referred to as “ordinary members”), shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of or experience in law, securities and futures markets, commerce, finance, industry or accountancy.
- (3) Ordinary members may be appointed to act in relation to any specified proceedings or for such term, as may be determined by the President at the time of their appointment, and are eligible for reappointment.
- (4) An ordinary member may, at any time by notice in writing to the President, resign his office.

(5) The President may remove from office any ordinary member for inability or misbehaviour, or on the ground of any employment or interest which appears to the said commission to be incompatible with the functions of a member of the Tribunal.

(6) Where an ordinary member is ill, or otherwise unable to act, or where his office is vacant, the President may appoint a temporary member to act in the stead of such member during his illness, or incapability, or until the office is filled, as the case may be.

(7) No defect in the qualification or appointment of any member of the Tribunal shall vitiate any proceedings or orders thereof.

(8) Where a person who is a judge of the Court is appointed as the Chairman of the Tribunal, neither the appointment nor the service or removal of the person as the Chairman affects –

(a) the tenure of office of, and the exercise of powers by, the person as a judge;

(b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office; or

(c) the terms and conditions to which the person is subject as a holder of that office.

Conflict of Interest -
Commission

(9) No member of the Tribunal shall concurrently be a member of the Commission.

Conditions of Service

36. (1) With the exception of a Chairman who is a judge of the Court, a Chairman, Vice Chairman and ordinary members of the Tribunal shall be paid such remuneration and allowances as the President may determine from time to time and such salary or remuneration and allowances shall be a charge on the Consolidated Fund.

(2) Such other conditions of service shall be applicable to the Vice-Chairman and ordinary members of the Tribunal as may be prescribed by order of the President.

Procedure

37. (1) Subject to subsection 3(2) of the Constitution, the jurisdiction and powers of the Tribunal may be exercised by the Chairman or the Vice-Chairman, and two other members selected by the Chairman or Vice-Chairman, as the case may be.

(2) Notwithstanding subsection (1), the jurisdiction of the Tribunal may be exercised with respect to -

(a) any matter by the Chairman or Vice-Chairman sitting alone or with one other member if the parties consent thereto;

(b) any matter of practice or procedure by the Chairman or Vice-Chairman or any member of the Tribunal who is assigned for that purpose by the Chairman; and

(c) any matter of practice or procedure which is uncontested by any member of the Tribunal assigned generally or specifically for that purpose by the Chairman.

(3) The Tribunal may sit in more than one division at such times and in such places in any part of Trinidad and Tobago as may be most convenient for the determination of proceedings before it.

(4) Unless rules made under this section otherwise provide, fourteen days notice shall be given to the appellant and to the respondent of the date fixed for the hearing of a matter by the Tribunal.

(5) The Chairman, when present, shall preside, and, in the absence of the Chairman, the Vice-Chairman shall preside.

(6) Parties may appear before the Tribunal in person or by counsel.

(7) The Tribunal, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction, has all such powers, rights and privileges as a vested in the Court on the occasion of an action.

(8) A summons signed by the Registrar of the Tribunal shall have the same force and effect as any formal process capable of being issued in any action taken in the Court for enforcing the attendance of witnesses and compelling the production of documents.

(9) The Tribunal may order that written submissions be filed in addition to or in place of an oral hearing.

(10) The decision of the Tribunal shall be that of the majority of the members present, but the opinion of the presiding member, on any matter arising in the course of any proceedings which, in his opinion, is a question of law, shall prevail.

(11) The decision of the Tribunal in any proceedings shall be delivered by the presiding member.

(12) The Tribunal may, subject to the approval of the President, make rules not inconsistent with this Act governing the carrying on of the business of the Tribunal and the practice and procedure in connection with appeals and disciplinary hearings, including regulating any matters relating to cost of proceedings before the Tribunal, but no such rule shall have effect until it has been published in the Gazette.

(13) The presiding member may, subject to the rules of the Tribunal and to this Act, determine the procedure to be followed in an appeal or a disciplinary hearing.

(14) Where by any written law there is conferred on the Tribunal jurisdiction which was previously exercised by another court, tribunal, authority or person (hereinafter called the “former tribunal”), then, subject to any rules made under this section -

(a) the procedure which governed the exercise of the jurisdiction by the former tribunal shall continue, mutatis mutandis, to govern such exercise by the Tribunal;

(b) the decisions of the Tribunal in relation to such exercise are enforceable in the same way as those of the former tribunal; and

(c) the effect of things done in or for the purpose of that jurisdiction by the former tribunal is preserved.

Division 2 – Notices Of Appeal, Hearings, Statements Of Case

Appeals to Tribunal

38. (1) Where -

(a) an application of a person for registration under Part III or IV of this Act is refused or denied;

(b) an application of a person for registration under Part III or IV of this Act is granted subject to conditions with which he is dissatisfied;

(c) conditions are attached or amended under Part III or IV of this Act to the registration of a market actor or self-regulatory organization, and the market actor or self-regulatory is dissatisfied with the conditions or, as the case may be, the amendment;

(d) the registration of any registered market actor or self-regulatory organization is revoked or suspended under Part III or IV of this Act;

(e) the Commission refuses to issue a receipt for a prospectus filed with it under section 96 of this Act; or

(f) the Commission makes an order, that is a final order, under sections 113, 153, 154 or 155 of this Act,

the person, market actor or self-regulatory organization may appeal to the Tribunal against the refusal, denial, condition, decision, order, revocation or suspension, as the case may be.

Notice of Appeal

- 39.** (1) The provisions of this section shall apply to every appeal to the Tribunal under section 38 and to every other appeal to the Tribunal under any other provisions of this Act, the by-laws or of any other written law.
- (2) The appeal shall be instituted by filing with the Registrar of the Tribunal a notice of appeal and serving a copy thereof on the Commission within twenty-eight days of the notification to, or the service on, the person appealing, of the decision of the Commission, or within such other time as may be prescribed by rules made under subsection 37(12).
- (3) Notwithstanding subsection (2), an appeal may be instituted out of time if the Tribunal is satisfied that there was a reasonable cause for not appealing within the time limited and that the appeal was filed thereafter without unreasonable delay.
- (4) The notice of appeal shall specify the grounds of appeal, and subject thereto, the appeal shall be in such form as may be prescribed by rules of the Tribunal.
- (5) If on the hearing of the appeal the appellant desires to go into any ground of appeal which was not specified in the notice of appeal, and the omission of that ground from the notice was in the opinion of the Tribunal not wilful or unreasonable, the Tribunal shall not by reason of anything in subsection (4) be precluded from allowing the appellant to go into that ground or taking it into consideration.
- (6) Within seven days after receiving the notice of appeal the Commission shall forward to the Tribunal copies of all documents relevant to the decision appealed from.

Hearings

- 40.** (1) An appeal shall be heard in public, unless the Tribunal, on the application of the appellant, otherwise directs.
- (2) The Tribunal may dispose of an appeal by -
- (a) confirming, varying or setting aside the original order, and, where the original order is set aside, substituting for the original order any other order which the Tribunal considers appropriate;
 - (b) remitting the matter in question to the Commission with the directions it considers appropriate, which may include a direction to the relevant authority to make a decision afresh in respect of any matter specified by the Tribunal; or
 - (c) making any other order which the Commission or self-regulatory organization may have made under this Act or the by-laws.
- (3) Where the Tribunal varies, or substitutes any order for, a specified order under paragraph (2)(a), the order as varied or the order substituting for the specified order (as the case may be) may be any order (whether more or less onerous) that the Commission had power to make in respect of the person making the application for review in question, whether or not under the

same provision as that under which the specified order has been made.

(4) The standard proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

No appeal

(5) Notwithstanding anything to this contrary in this Act, the order of the Tribunal on an appeal instituted or commenced under section 38 shall be final and no appeal shall be had therefrom.

Market Misconduct Proceedings

41. (1) If it appears to the Commission that market misconduct is, has or may have taken place, the Commission may institute proceedings before the Tribunal concerning the matter.

(2) For purposes of this Part, “market misconduct” means -

(a) use or disclosure of undisclosed price sensitive information contrary to sections 138 or 139;

(b) breaches of sections 100 (false trading and artificial prices on a securities exchange), 101 (price rigging), 102 (dissemination of a misrepresentation in connection with a trade), 103 (securities exchange manipulation), 104 (use of fraud and deceptive devices), 105 (excessive trading), and 106 (market actor restrictions on recommendations);

(d) failure of a person to be registered in a category of market actor contrary to section 65;

(e) failure of an issuer to prepare, file and have receipted, a prospectus, in connection with a distribution of securities contrary to section 87;

(f) the inclusion in a prospectus of a misrepresentation or the failure of a prospectus to comply with subsection 90(1);

(g) failure of a reporting issuer to comply with Part V of the Act, or to make a misrepresentation in any document filed, or required to be filed, under Part V of the Act, contrary to section 85; and

(h) a breach of any provision of the Act which is an offence under section 166.

(3) The Commission shall institute proceedings before the Tribunal by giving the Tribunal a notice in writing which shall contain a statement specifying such matters as are prescribed by rules made under subsection 37(12).

(4) Without limiting the generality of subsection (3), the object of the proceedings instituted under subsection (1) is for the Tribunal to determine -

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

Orders of the Tribunal

(5) Where market misconduct is proven the Tribunal may order that a person identified as having engaged in market misconduct -

- (a) pay a fine;
- (b) be censured, including by means of publishing a written notice;
- (c) compensate or pay restitution to any person on such terms as the Tribunal may direct;
- (d) account for, in such form and on such terms as the Tribunal may direct, such amounts as the Tribunal determines to be profits arising from the market misconduct or any other form of unjust enrichment determined by the Tribunal;
- (e) cease and desist from such activity as the Tribunal may stipulate;
- (f) do any act or thing;
- (g) be prohibited from being, or becoming, a senior officer or director of a reporting issuer or market actor; or
- (h) pay a specified amount, being all or part of the costs of the proceedings, including those of any other party to the proceedings.

(6) Subject to subsections (7) and (8), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (4)(b) if -

- (a) he has perpetrated any conduct which constitutes the market misconduct;
- (b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct -
 - (i) the Tribunal identifies another person which is an issuer as having engaged in market misconduct pursuant to subsection (4)(b); and
 - (ii) the market misconduct occurred with his consent or connivance as a director or senior officer of the issuer; or
- (c) notwithstanding that he has not perpetrated any conduct which constitutes market misconduct -

(i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (4)(b); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(7) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (4)(b) if it is provided under any provision of this Part that the person shall not by reason of that market misconduct be regarded as having engaged in market misconduct.

(8) The Tribunal shall not identify a person as having engaged in market misconduct without first giving the person a reasonable opportunity of being heard.

(9) The standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings before the Court.

(10) Nothing in subsection (1) prevents the Commission from referring any matter to the Director of Public Prosecution, if it appears to the Commission, that market misconduct is, has, or may have taken place.

Statement of Case for
Opinion of Court of
Appeal

42. (1) Subject to subsection 40(5), the appellant or the Commission or other respondent, if dissatisfied with an order of the Tribunal as being erroneous in point of law, may, within twenty-one days after the delivery of the order or within such other time as may be prescribed by rules of court made under section 43, appeal against such order

(a) on a point of law; or

(b) with leave of the Court of Appeal, on a question of fact.

(2) The appeal shall be instituted by filing with the Registrar a notice in writing, in the prescribed form, requesting the Tribunal to state and sign a case for the opinion of the Court of Appeal and serving a copy of the said notice on the respondent.

(3) The case shall set forth the facts and the determination of the Tribunal and the party requiring it shall transmit the case, when stated and signed, to the Court of Appeal within twenty-eight days after receiving the same.

(4) At or before the time when he transmits the case to the Court of Appeal, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(5) The Court of Appeal shall hear and determine any question or questions arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the

Tribunal with the opinion of the Court of Appeal thereon, or may make such other order in relation to the matters as the Court of Appeal may seem fit.

(6) The Court of Appeal may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

Rules of Court

43. The Rules Committee under the Supreme Court of Judicature Act may, subject to the provisions of this Act, make rules governing appeals to the Court of Appeal.

Rules

44. The Tribunal may make rules generally for carrying out the provisions of this Part.

PART III

**THE TRINIDAD AND TOBAGO STOCK EXCHANGE AND
OTHER SELF-REGULATORY ORGANIZATIONS**

Division 1 - The Stock Exchange

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|---------------------------------------|---|
| Transfer of property, assets, etc. | <p>45. (1) Upon the commencement of this Act, all the property, assets and rights and all the liabilities and obligations to which the former Stock Exchange was, immediately before the commencement of this Act, entitled or subject, are transferred to, vested in and conferred or imposed upon, as the case may be, the Stock Exchange.</p> <p>(2) A reference in any written law, deed, contract or other document to the former Stock Exchange shall, upon the commencement of this Act, be construed as a reference to the Stock Exchange.</p> |
| Continuation of legal proceedings | <p>46. Legal proceedings pending immediately before the commencement of this Act by or against the former Stock Exchange may be continued on and after that day by or against the Stock Exchange as the party to the proceedings instead of the former Stock Exchange.</p> |
| Deemed registration of Stock Exchange | <p>47. The Stock Exchange is deemed to be duly registered under this Act as a self-regulatory organization.</p> |
| Rules of the Stock Exchange | <p>48. (1) The rules of the Stock Exchange (hereafter referred to as "the existing rules") shall upon the commencement of this Act be deemed to be approved by the Commission under this Act subject to such amendments as the Commission may direct in order to bring the existing rules in conformity with this Act.</p> <p>(2) The existing rules shall be reviewed by the Commission within two years after the commencement of this Act, to determine whether they are in conformity with this Act.</p> <p>(3) Subject to subsection (1), the Stock Exchange shall not change or amend the existing rules except in accordance with this Act.</p> |

Division 2 – Self-Regulatory Organizations

- | | |
|--|---|
| Registration of self-regulatory organization | <p>49. (1) No person shall carry on business or activities as a self-regulatory organization unless registered as a self-regulatory organization under this Part.</p> <p>(2) Application for registration pursuant to subsection (1) shall be made to the Commission in such form as may be prescribed.</p> |
| Registration requirements | <p>50. (1) A person shall not be registered as a self-regulatory organization unless that person -</p> <ul style="list-style-type: none">(a) proposes to engage in the securities industry;(b) proposes to conduct activities as a clearing agency, securities exchange or association of securities companies;(c) is a body corporate with its own corporate seal which can sue and |

be sued;

(d) is incorporated in Trinidad and Tobago or incorporated under the laws of any other jurisdiction and registered in Trinidad and Tobago;

(e) has a body of rules for the governance of its members that comply with the requirements of this Part; and

(f) is fit and proper for registration as a self-regulatory organization.

Fit and proper

(2) In considering whether an applicant for registration under this Part is fit and proper for registration, the Commission shall consider his -

(a) financial condition and solvency;

(b) ability to perform his proposed activities efficiently, honestly and fairly;

(c) ability to comply with the requirements of the Act and the by-laws applicable to self-regulatory organizations; and

(d) the reputation, character, and integrity of the persons that are the directors of the applicant.

Applications; surrender of registration

51. (1) Forthwith after receipt of an application for registration as a self-regulatory organization under this Part, the Commission shall publish in a daily newspaper circulating in Trinidad and Tobago, a notice inviting any interested person to submit written comments on the application.

(2) Subject to subsections (3) and (4), the Commission shall grant an application for registration as a self-regulatory organization.

(3) Subject to subsection (5), the Commission shall refuse an application for registration where -

(a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act or the by-laws and to enforce compliance by its members and their employees with its rules;

(b) the applicant does not comply with section 50;

(c) the rules of the applicant do not comply with section 52; or

(d) the Commission determines that it would not be in the public interest to grant the registration.

(4) The Commission may refuse an application for registration if the applicant or a director or officer of the applicant would be refused registration as a market actor under Part IV.

(5) Where the Commission grants an application for registration as a self-regulatory organization, it may require a change in the rules of the applicant to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this Act and the by-laws.

(6) In considering whether to grant an application for registration, the Commission shall, in particular, take into account the rules of the applicant that relate to -

(a) prices, fees or rates charged by members of the applicant for services;

- (b) conditions of entry into the securities market through membership in the applicant or otherwise;
- (c) the structure or form of a member or participant;
- (d) the quantity or quality of services furnished by a member or participant; and
- (e) any type of restraint on competition.

Voluntary surrender of registration

(7) On application by a registered self-regulatory organization, the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of registration of a self-regulatory organization, if the Commission is satisfied that the voluntary surrender of registration of the self-regulatory organization would not be prejudicial to the public interest.

Obligatory rules of all applicants

52. (1) The rules of an applicant for registration as a self-regulatory organization shall contain provisions -

- (a) for the protection of investors and the public interest;
- (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate, process information about, and facilitate trades in securities;
- (c) ensuring fair representation of its members in the administration of its affairs;
- (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
- (e) relating to the disciplining of a member or employee of a member who contravenes its rules or this Act or the by-laws and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of, or exclusion from employment; and
- (f) specifying the procedure required by section 56 for disciplinary proceedings, denial of membership, exclusion from employment, or denial or limitation of access to services furnished by it or its members.

Obligatory rules of applicants as a securities exchange or association of securities companies

(2) Without prejudice to subsection (1), the rules of an applicant for registration as a securities exchange or association of securities companies shall also contain provisions designed -

- (a) to prevent deceptive, fraudulent and manipulative acts and practices;
- (b) to promote fair trading practices and to facilitate an efficient market; and
- (c) to ensure that a broker-dealer may become a member of the securities exchange or association of securities companies.

Obligatory rules of applicants as a clearing agency

(3) Without prejudice to subsection (1), the rules of an applicant for registration as a clearing agency shall also contain provisions designed -

- (a) to develop and operate a prompt and accurate clearance and settlement system;

(b) to safeguard money and securities in its custody or under its control or for which it is responsible; and

(c) to provide, subject to section 56, that a broker-dealer, a financial institution, another clearing agency or a person or class of persons designated by the Commission may become a participant in the clearing agency.

(4) The rules of an applicant for registration as self-regulatory organization shall not -

(a) permit unfair discrimination among persons who use its facilities; or

(b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure on proposed amendment to rules

53. (1) A self-regulatory organization may only amend its rules in accordance with this section.

(2) Where a self-regulatory organization proposes to amend its rules, it shall file with the Commission a copy of the proposed amendment and a concise statement of its substance and purpose.

(3) Forthwith after receipt of a proposed amendment under subsection (2) the Commission shall publish in a daily newspaper circulating in Trinidad and Tobago a notice inviting any interested person to submit written comments on the amendment and the cost of the publication shall be borne by the self-regulatory organization.

(4) Subject to subsection (5), the Commission may make an order approving a proposed amendment to the rules of a self-regulatory organization.

(5) The Commission may make an order refusing a proposed amendment to the rules of a self-regulatory organization if -

(a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules as amended;

(b) the amended rules would not comply with section 52; or

(c) the amended rules would be inconsistent or conflict with this Act or the by-laws.

(6) Where the Commission determines that a proposed amendment filed pursuant to subsection (1) -

(a) makes no material substantive change in an existing rule; or

(b) relates exclusively to the administration of the self-regulatory organization,

it may approve the amendment without providing an opportunity for a hearing pursuant to section 156.

Power of Commission to require change in rules

54. (1) The Commission may make an order requiring a change in the rules of a self-regulatory organization to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of this Act or the by-laws.

- (2) Where the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the self-regulatory organization a notice that complies with section 156(1) prior to making the order.
- 55.** (1) A self-regulatory organization shall not require its members to comply with a schedule of commissions or other fees for their services or limit in any way the income of a member.
- (2) Nothing in this section shall prevent a self-regulatory organization from issuing, from time to time, a notice to its members indicating what, in its opinion, is the market price, fee or rate charged for any particular service.
- 56.** (1) Subject to subsections (2) and (3), a self-regulatory organization shall grant an application for membership or for approval as an employee of a member.
- (2) A self-regulatory organization may refuse membership or impose conditions on membership or prohibit or limit access to services furnished by it or its members to a person who -
- (a) lacks the financial responsibility or operational capability required by its rules;
 - (b) does not meet the criteria for membership specified in its rules; or
 - (c) does not carry on the type of business that its rules require a member to carry on,
- but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules on the basis of the volume of the required business or any other business that the person carries on.
- (3) A self-regulatory organization may refuse membership to, impose conditions of membership on, prohibit or limit access to services furnished by it or its members, or prohibit employment by a member or impose conditions on such employment of, a person who -
- (a) lacks the training, experience or competence required by its rules; or
 - (b) contravenes this or another similar Act, the by-laws, or a rule of a self-regulatory organization registered under this or another similar Act.
- (4) A self-regulatory organization shall, before refusing membership or imposing conditions on such membership or before approving employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for orders under section 156(1), (4) to (7) and (8)(a) and (8)(b).
- (5) A self-regulatory organization shall publish in a daily newspaper circulating in Trinidad and Tobago a decision disciplining a member or an employee of a member unless the Commission directs otherwise.
- (6) Subject to subsection (7), a self-regulatory organization may, without holding a hearing as required by subsection (4) -
- (a) suspend -
 - (i) a member who has been expelled or is under suspension from; or

(ii) an employee of a member who has been expelled or is under suspension from employment by the member by,

another self-regulatory organization that is registered under this or another similar Act;

(b) suspend a member if the self-regulatory organization reasonably believes it necessary for the protection of investors, creditors, members or the self-regulatory organization because of financial or operational difficulties of the member;

(c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and

(d) prohibit or limit access to services furnished by it or its members to a person -

(i) to whom paragraph (a), (b) or (c) applies;

(ii) who does not meet the criteria for access specified in its rules; or

(iii) where such action is necessary for the protection of investors, creditors, members or the self-regulatory organization.

(7) Where a self-regulatory organization acts in accordance with subsection (6), the organization shall provide an opportunity for such a hearing within fifteen days of its order and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.

Filing of copy of decision with Commission

57. (1) Where a self-regulatory organization makes an order under subsection 56(2) or (3) refusing membership or imposing conditions on membership or prohibiting employment by a member or imposing conditions on the employment by a member, it shall at once file with the Commission a copy of the decision, the reasons therefor and any other information requested or prescribed by the Commission.

Appeals

(2) A person aggrieved of an order of a self-regulatory organization made under subsection 56(2) or (3) may appeal to the Commission any such order within fourteen days of receipt of the decision.

(3) On an appeal or review of an order of a self-regulatory organization made under subsection 56(2) or (3), the Commission shall affirm the order if it finds that -

(a) the order is in accordance with the rules of the self-regulatory organization, this Act and the by-laws; and

(b) the rules of the self-regulatory organization, this Act and the by-laws were applied in a manner that furthers the objectives specified in section 52 and the purposes of this Act,

but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in subsections 52(1) to (3), it may set aside the order or require the self-regulatory organization -

(c) to admit the person affected to membership;

(d) to permit the person to become an employee of a member;

(e) to grant the person access to services furnished by it or its members; or

(f) to take any other action not inconsistent with the objectives specified in section 52.

(4) On an appeal or review of an order of a self-regulatory organization disciplining a member or an employee of a member, the Commission may -

(a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of the self-regulatory organization or this Act or the by-laws;

(b) set aside the sanction imposed if it does not so find; or

(c) remand the matter to the self-regulatory organization for further proceedings.

(5) On an appeal or review referred to in subsection (4), the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in subsections 52(1) to (3).

(6) An order made by the Commission under subsection (4) or (5) setting aside or modifying a sanction does not affect the validity of any action taken by the self-regulatory organization as a result of the sanction before the order was made, unless the action contravened this Act or the by-laws or the rules of the self-regulatory organization.

De-listing of securities

58. (1) No securities exchange shall de-list a security admitted for quotation by it, unless it obtains an order from the Commission authorizing the de-listing and imposing, for the protection of investors, such conditions, if any, as it thinks fit.

(2) The Commission shall not refuse to authorize the de-listing of a security, unless the de-listing is in breach of -

(a) the rules of the self-regulatory organization; or

(b) an agreement entered into by the issuer of the security with the self-regulatory organization.

Appointment of auditor

59. (1) A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.

(2) A self-regulatory organization shall require each of its members to appoint an auditor who shall -

(a) examine the financial affairs of the member in accordance with the rules of the self-regulatory organization; and

(b) report the results of the examination to the self-regulatory organization.

(3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of the Institute of Chartered Accountants of Trinidad and Tobago.

(4) The auditor of a self-regulatory organization shall deliver to the Commission on request a copy of a report made by him under subsection (2).

Keeping and inspection of records, etc.

60. (1) A self-regulatory organization shall -

(a) make and keeps such records in such form and for such periods,

- (i) as is required by this Act and the by-laws;
- (ii) as the Commission may prescribe; and
- (iii) as are reasonably necessary in the conduct of its business and operations, including to document compliance with this Act and the by-laws;

(b) file with, or deliver to, the Commission any document, instrument, writing or report that may be prescribed; and

(c) disseminate to the public any report referred to in paragraph (b),

and shall upon request, in writing, deliver to the Commission a copy of, or an extract from, any record kept under this subsection.

Record keeping: securities exchange

(2) In addition to subsection (1), a self-regulatory organization that is a securities exchange shall keep a record of each trade effected through its facilities showing the time when it took place and any other information prescribed by the Commission.

(3) On the request of a person who produces a written confirmation of a trade executed through its facilities, a securities exchange shall furnish to him -

(a) forthwith, if the trade was executed within thirty days of the request; and

(b) within a reasonable time if the trade was executed more than thirty days before the request,

details of when the trade took place and of any other matter contained in the confirmation of which the securities exchange acquired knowledge in the ordinary course of its business.

(4) The Commission may at any time authorize a person in writing to -

(a) inspect the records of a self-regulatory organization and to examine the financial affairs of that organization or any of its members; and

(b) prepare such financial or other reports as the Commission requires.

(5) A self-regulatory organization shall -

(a) produce and furnish a person authorized by the Commission under subsection (4) with a copy of any record referred to in subsection (1) or (2) or any other record that he reasonably requests; and

(b) answer any question he asks concerning those records.

Contingency fund – association of securities companies

61. (1) A self-regulatory organization that is an association of securities companies, or a securities exchange, shall maintain a contingency fund, in the manner prescribed by the Commission, to compensate customers for losses resulting from the insolvency, bankruptcy or default of a member of the association of securities companies or of a market actor who contributes to the fund.

Settlement fund – clearing agencies

(2) A self-regulatory organization that is a clearing agency shall maintain a fund, in the manner prescribed by the Commission, to address the failure by any of its participants to deliver securities or monies required by the rules of the clearing agency.

(3) A self-regulatory organization shall file with the Commission every document that relates to the creation, administration and operations of a fund required by

this section.

(4) Where after consultation with the administrator of a fund referred to in subsection (1) and (2) -

(a) the Commission reasonably believes that the fund does not contain sufficient assets to meet claims which may be made against the fund or to meet its purpose; and

(b) the self-regulatory organizations fail to contribute or cause their members to contribute to the fund an increased amount sufficient to maintain the assets of the fund at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

then the Commission may make an order requiring the self-regulatory organization to contribute or collect from their members or market actors who contribute to the fund such amount required to attain the level that the Commission believes necessary to pay the claims.

(5) The administrator of a fund required under this section shall at any time -

(a) permit a person authorized by the Commission in writing to inspect the records and assets of the fund;

(b) produce and furnish to that person any document or record that he reasonably requests; and

(c) answer any questions he asks concerning those records or assets.

(6) A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit the financial affairs of its fund and, as soon as practicable after the end of its financial year, the administrator of the fund shall file with the Commission a report on the operations and financial conditions of the fund in such form and containing such information as the Commission may prescribe.

(7) Monies held in the contingency fund in accordance with this section shall not be made available for payment of the debts or expenses or other obligations of the self-regulatory organization or its members, or be liable to be paid or taken in execution under an order or process of any court.

Sanctions re: self-regulatory organizations

62. (1) Where a self-regulatory organization -

(a) contravenes its rules, this Act or the by-laws;

(b) is unable to comply with its rules, this Act or the by-laws;

(c) fails or is unable to enforce its rules or a provision of this Act or the by-laws that it is required to administer or enforce, or fails to comply with an order of the Commission made under this Part;

(d) fails to observe standards of solvency prescribed by the Commission;

(e) any of its members is guilty of negligence or fraud; or

(f) is no longer fit and proper for registration as a self-regulatory organization;

the Commission may make an order -

- (f) censuring the self-regulatory organization;
- (g) limiting the activities, functions or operations of the self-regulatory organization; or
- (h) suspending or revoking the registration of the self-regulatory organization.

(2) Where a director, officer or employee of a self-regulatory organization contravenes the rules of the self-regulatory organization or this Act or the by-laws, the Commission may make an order censuring him or suspending or removing him from office or employment with the self-regulatory organization.

Complaints re: self-regulatory organizations and market actors

63. (1) Subject to subsection (3) -

- (a) any person who is aggrieved by any act or omission of a self-regulatory organization, a member thereof, or by any other market actor, may lodge a complaint in respect thereof with the Commission;
- (b) the Commission may investigate and adjudicate upon the complaint; and
- (c) section 160 shall have effect in relation to such investigation and adjudication.

(2) The Commission may, following receipt of a complaint made under subsection (1), make such order as it thinks just, including an order for the payment by the self-regulatory organization, the member of the self-regulatory organization or the market actor, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

(3) Subject to subsection (4), where a person aggrieved as mentioned in paragraph (1)(a) makes any complaint against a self-regulatory organization, a member of a self-regulatory organization or market actor he shall, if the Commission proceeds to an adjudication upon it, be thereafter debarred and precluded from pursuing the complaint or making it the basis of any suit, action or proceeding in any court of law.

(4) A person shall not be debarred or precluded under subsection (3), unless he has, before the Commission proceeds to any hearing of and adjudication upon the complaint, been informed in writing to that effect.

Dispute between members

64. (1) Where a dispute involving transactions in securities arises between members of a self-regulatory organization, such dispute shall be referred to the board of the self-regulatory organization, and the board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.

(2) It shall be the duty of each of the parties to the dispute forthwith to inform the Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the party or parties to the dispute, within twenty-four hours of such notice to the Commission, a copy of the notice given to the Commission of the dispute.

(3) Where a member of a self-regulatory organization is aggrieved by the decision of the board under subsection (1), the member of the self-regulatory organization may, within fourteen days of the receipt of such decision, appeal to the Commission.

(4) Where the Commission adjudicates in a matter referred to it under subsection (3), the decision of the Commission shall be final and no appeal shall be brought in respect thereof.

(5) The Commission may, by any adjudication under this section, make any order it thinks just, including an order for the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Commission require.

PART IV

REGISTRATION OF MARKET ACTORS

- Registration requirement **65.** (1) Subject to this Act and the by-laws, no person shall carry on business or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of -
- (a) a broker-dealer;
 - (b) an investment adviser; or
 - (c) an underwriter;
- unless registered as such in accordance with this Act and the by-laws, and the person has received written notice of the registration from the Commission.
- Financial institutions (2) Subsections (1)(b) and (c) do not apply to a financial institution.
- Individual registration (3) An individual who is a director or senior officer or employee of a person that is required to be registered under subsection (1) shall register in accordance with this Act and the by-laws, in such category as may be prescribed, subject to such terms and conditions as the Commission may determine.
- (4) An individual who is not registered under subsection (3) shall not perform any of the functions or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of the person that is required to be registered under subsection (1).
- (5) Subsection (3) does not apply to -
- (a) an employee performing functions which are administrative in nature, including without limitation, technology support, facilities support, human resources management, and clerical support;
 - (b) a non-executive director; or
 - (c) any person prescribed.
- Temporary broker-dealer or investment adviser (6) Notwithstanding subsections (1) and (3), a person may carry on business, or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer or investment adviser, for the period of time prescribed by the Commission, which shall not exceed thirty days in any one calendar year, where such person is not registered under subsection 65(1) or 65(3), provided such person is registered under this subsection 65(6).
- Registration required for membership or licensing (7) No self-regulatory organization registered under this Act may admit to membership or grant a licence to any person who is not a market actor duly registered under this Part.
- Registration by Commission **66.** (1) Where an applicant under this Part -
- (a) is considered by the Commission to be fit and proper for registration or reinstatement of registration in the category applied for;
 - (b) complies with the prescribed registration requirements; and

	(c) pays the prescribed fee,
	the Commission shall register, renew or reinstate the registration of the applicant and issue to such applicant a certificate of registration in the prescribed form provided that the Commission may refuse to register, renew or reinstate the registration of an applicant where such registration is not in the public interest.
Terms and conditions	(2) The Commission may in its discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities.
Compliance with terms and conditions	(3) Where the registration of a market actor under this Part is subject to terms and conditions, the registered market actor shall comply with such terms and conditions.
Fit and proper	(4) In considering whether a person is fit and proper for registration under this Part, the Commission shall consider his - <ul style="list-style-type: none"> (a) financial condition and solvency; (b) educational and other qualifications; (c) ability to perform his proposed business efficiently, honestly and fairly; (d) ability to comply with the requirements of the Act and the by-laws applicable to the category of registration for which he is applying; and (e) his reputation, character, financial integrity and reliability, and for the purpose of this subsection the Commission may have regard to any information in its knowledge or possession whether furnished by the applicant or not.
Right to be heard	(5) The Commission shall not refuse to register, renew or reinstate the registration of an applicant without giving the applicant an opportunity to be heard and where the Commission refuses to register, renew or reinstate the registration of an applicant, it shall notify the applicant in writing of the reasons for so doing.
Annual list of registered market actors	(6) The Commission shall by the 31st day of March of every year prepare a list of all registered market actors, by class of registration, which shall be published in the Gazette and the annual report of the Commission under section 20.
Register	(7) The Commission shall maintain a register of all market actors registered with the Commission under this Part.
Annual return	(8) Every market actor shall prepare and file an annual return with the Commission in the form prescribed no less than thirty days prior to the anniversary date of his registration.
Transitional provisions – former Act	67. (1) Notwithstanding subsection 65(1), persons who immediately before the commencement of this Act – <ul style="list-style-type: none"> (a) were licensed as stockbrokers under the former Act are deemed to be registered as brokers under this Act;

(b) were licensed as dealers under the former Act are deemed to be registered as traders under this Act; and

(c) were registered as members of the Stock Exchange under the former Act are deemed to be registered as securities companies under this Act.

(2) A person who is deemed to be registered under subsection (1) shall, within six months of the commencement of this Act, comply with the requirements of this Act and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.

Transitional - persons

(3) Notwithstanding subsection 65(1), until the day that is twelve months following the enactment of subsection 65(1), a person registered or deemed registered as a -

(a) broker is deemed to be duly registered as a broker-dealer;

(b) dealer is deemed to be duly registered as a broker-dealer;

(c) investment adviser is deemed to be duly registered as an investment adviser;

(d) trader is deemed to be duly registered under subsection 65(3);

(e) underwriter is deemed to be duly registered as an underwriter; and

(f) securities company is deemed to be duly registered as a broker-dealer.

(4) A person who is deemed to be registered under subsection (3) shall, within twelve months of the commencement of subsection 65(1), comply with the requirements of subsection 65(1) and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.

Transitional – individuals

(5) Notwithstanding subsection 65(3), an individual required to obtain registration under subsection 65(3) is not required to comply with the registration requirements of subsection 65(3) until the day that is twelve months following its enactment.

Restrictions on substantial shareholder and directors of market actors

68. (1) A person shall not become and continue to be a substantial shareholder or a director of a market actor required to obtain registration under subsection 65(1) without first being approved by the Commission.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant –

(a) to become; or

(b) to continue to be,

as the case may be, a substantial shareholder or a director of a market required to obtain registration under subsection 65(1).

(3) The Commission shall refuse to approve an applicant to become or continue to be, as the case may be, a substantial shareholder or a director of the market actor concerned unless the applicant satisfies the Commission that the market actor will remain a fit and proper person to be licensed if the application is

approved.

(4) In this section, “substantial shareholder” means any person that beneficially owns, or has control or direction over, or proposes to own or acquire control or direction over, voting securities of a market actor representing more than ten percent of the outstanding voting securities of the market actor.

Termination of employment

69. The termination of the employment of an individual with a market actor that is registered under subsection 65(1) of the Act shall operate as a suspension of the registration of such individual under subsection 65(3) of the Act until notice in writing has been received by the Commission from another market actor registered under subsection 65(1) of the Act of the employment of such individual by the other registered market actor, and the reinstatement of the registration has been approved by the Commission.

Application for registration

70. (1) An application for registration under this Part shall be made in writing in such form as may be prescribed by the Commission and shall be accompanied by such fee as is prescribed and such other documents or information as may be prescribed or requested by the Commission.

Change in information

(2) If at any time between the filing of an application and the notice of registration, the applicant becomes aware of a material change in the information contained in the application, then the applicant shall forthwith inform the Commission in writing of such material change.

Additional information

(3) The Commission may require any further information or material to be submitted by an applicant or a market actor within a specified time and may require verification by affidavit or otherwise of any information or material fact then or previously submitted, or may require the applicant or the market actor or any partner, officer, director, or trustee of, or any person performing a like function for, or any employee of, the applicant or of the market actor, to submit to examination under oath by a person designated by the Commission.

Notification of changes

(4) Subject to the by-laws, every market actor registered under subsection 65(1) shall, within five business days of the event, deliver to the Commission in such form as may be required by the Commission of -

(a) any change in address for service in Trinidad and Tobago, or any business address;

(b) any change in the directors or senior officers of the market actor and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor;

(c) any change in the information required under section 68;

(d) the commencement and termination of employment of every individual registered under subsection 65(3) and, in the case of termination of employment, the reason therefor;

(e) the opening or closing of any branch office in Trinidad and Tobago and, in the case of the opening of any branch office in Trinidad and Tobago, the name and address of the person in charge thereof;

(f) any change in the name or address of the person in charge of any branch office in Trinidad and Tobago; and

(g) the failure by the market actor, at any time, to maintain the prescribed levels of capitalization.

Suspension of registration

71. (1) The Commission may, where it considers it to be in the public interest, issue a warning, private reprimand or public censure or may suspend the registration of a market actor registered under subsection 65(1), 65(3) or 65(6) if -

(a) such market actor ceases to carry on the business of a market actor;

(b) such market actor had obtained registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to the application for registration or to suitability to be registered;

(c) the registration of such market actor under this Act or the former Act has been made by mistake, however such mistake arose;

(d) such market actor has defaulted in the payment of any moneys due to a self-regulatory organization or to the Commission;

(e) in the case of a market actor that is not an individual, a levy of execution in respect of such person has not been satisfied;

(f) the market actor fails to maintain the prescribed level of capitalization;

(g) such market actor is convicted of an offence involving fraud or dishonesty;

(h) such market actor contravenes, or fails to comply with, any term, condition or restriction applicable in respect of his registration, or with a provision of this Act or the by-laws;

(i) in the case of a market actor that is not an individual, such market actor fails adequately to supervise or to conduct the activities of any other person acting on or on behalf of such market actor;

(j) such market actor is prosecuted for breach of this Act or the by-laws;

(k) such market actor is charged with an offence involving fraud or dishonesty;

(l) such market actor ceases to meet a registration requirement, or a term or condition of registration, applicable to such person;

(m) in the opinion of the Commission, such market actor is guilty of misconduct or is no longer fit and proper for registration.

Assessment of fit and proper criteria

(2) In considering at any time whether a registered market actor is no longer fit and proper for registration under paragraph 71(1)(m), the Commission shall have regard to the criteria set forth in subsection 66(4).

(3) In this section “misconduct” means:

(a) a contravention of any provision of the Act or by-laws;

(b) a contravention of the terms and conditions of any registration or licence; or

(c) any act or omission relating to carrying on the business requiring

registration which in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.

(4) Subject to subsection (5), the Commission shall not suspend the registration of a market actor under this section without giving the person an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may suspend the registration of a market actor for a period of 30 days where it considers that immediate suspension is in the public interest or that any delay may be prejudicial to the public interest.

(6) The Commission may, where it considers it to be in the public interest, revoke or rescind any suspension it has made of the registration of a market actor made under this section, whether on its own determination or on application by a market actor.

Effect of suspension

(7) Where the Commission has suspended the registration of any market actor, or the registration otherwise expires, that market actor shall forthwith cease activities in the area of activity for which he was registered, and, any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith be suspended.

(8) Where a suspension of the registration of any market actor under this Part is revoked or rescinded for any reason, the registration of such market actor and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization held by the market actor, shall be reinstated with the full terms, conditions, rights, privileges and obligations of such registration, licence or membership.

Revocation of registration

72.

(1) The Commission may, where it considers it to be in the public interest, revoke the registration of a market actor registered under subsection 65(1), 65(3) or 65(6) for any reason set forth in section 71 other than paragraph 71(1)(j) or 71(1)(k).

(2) Where the Commission has suspended the registration of a market actor for a reason set forth in paragraph 71(1)(j) or 71(1)(k), the Commission may revoke the registration of such market actor following the conviction of such market actor for an offence involving fraud or dishonesty or of a breach of this Act or the by-laws.

(3) The Commission shall not revoke the registration of a market actor under this section without giving the person an opportunity to be heard.

(4) Where the Commission has revoked the registration of any market actor that market actor shall forthwith cease activities in the area of activity for which he was registered, and, any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith become invalid.

Surrender of Registration

73.

On application by a market actor, the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the market actor if the Commission is satisfied that the financial obligations of the market actor to his clients have been discharged and the surrender of the registration would not be prejudicial to the public interest.

Contribution to
contingency fund

- 74.** (1) Every market actor registered under this Act, other than an individual, shall participate in and contribute to a contingency fund approved by the Commission and established by a self-regulatory organization under section 61.
- (2) The amount contributed by the market actor to a fund referred to in subsection (1) shall, subject to subsection (3), be the amount required by the fund or self-regulatory organization.
- (3) The Commission may vary the amount required to be contributed by any participant in a fund under subsection (1) if it considers that it would not be prejudicial to the public interest to do so.

Offence

- 74.1** (1) A person who makes a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Part is guilty of an offence and is liable -
- (a) on indictment to a fine of up to four hundred thousand dollars and to imprisonment for up to two years, or both; or
 - (b) on summary conviction to a fine of up to two hundred thousand dollars and to imprisonment for up to six months, or both.
- (2) A person who contravenes subsection 65(1) or 65(3) is guilty of an offence and is liable -
- (a) on indictment to a fine of up to four hundred thousand dollars and to imprisonment for up to two years, or both; or
 - (b) on summary conviction to a fine of up to two hundred thousand dollars and to imprisonment for up to six months, or both.

PART V

DISCLOSURE OBLIGATIONS OF REPORTING ISSUERS

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| Ceasing to be a reporting issuer | 75. (1) The Commission may on its own motion or on application by a reporting issuer, make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer. |
| Non-application of part | 76. (1) This Part shall not apply to any issuer which is a government entity. |
| Application to collective investment schemes | (2) A reporting issuer that is a collective investment scheme shall comply with this Part and such other disclosure obligations as are prescribed. |
| Annual reports | 77. (1) A reporting issuer shall, within the time period prescribed, after the end of its financial year -

(a) file with the Commission, a copy of its annual report containing the information prescribed by the Commission and any other information that is not of a type prohibited by by-law; and

(b) send to each holder of its securities, other than debt securities, to the latest address as shown on the securities register of the reporting issuer, the annual report. |
| Material changes | 78. (1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall forthwith, and in any event within one day of the change, issue a press release that is authorized by a senior officer and that discloses the nature and substance of the material change, and, within seven days of the change, file with the Commission a report disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer.

(2) Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that the disclosure required by subsection (1) would be unduly detrimental to its interests and advises the Commission in writing forthwith after the change and the reasons why it is of the opinion that there should not be a press release.

(3) Where the Commission is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a reporting issuer, it may, after giving the reporting issuer an opportunity to be heard,

(a) require disclosure to the public of the material change in accordance with subsection (1); or

(b) permit non-disclosure of the material change by the reporting issuer provided such period does not exceed the time set forth in subsection (5).

(4) A decision of the Commission under subsection (3) is final and no appeal from such a decision shall be available to a reporting issuer. |

(5) Where a reporting issuer has not disclosed a material change which is required to be disclosed under subsection (1) by the application of subsections (2) and paragraph (3)(b), the reporting issuer shall, notwithstanding such subsections, comply with subsection (1) in respect of such material change no later than the forty-sixth day following the date on which the reporting issuer would have had to have issued a press release in respect of the material change under subsection (1).

Annual financial statements

79. (1) Every reporting issuer shall prepare and file with the Commission annually within the time period prescribed comparative financial statements relating separately to -

(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be; and

(b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by by-law and prepared in accordance with IFRS or such other generally accepted accounting principles permitted by by-law.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer, without reservation of opinion, prepared in accordance with the by-laws.

(3) No person shall act as the auditor of a reporting issuer unless such person is a member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago or such other professional accounting body prescribed by by-law.

Officer Certification

(4) At the time a reporting issuer files comparative financial statements with the Commission under this section it shall concurrently file a certificate in the form prescribed by the Commission and signed by its chief executive officer and its chief financial officer, or any other two senior officers if the reporting issuer does not have a chief executive officer or chief financial officer, certifying the accuracy of the comparative financial statements.

Audit Committee

(5) A reporting issuer shall have an audit committee composed of not less than three directors of the reporting issuer, a majority of whom are not senior officers or employees of the reporting issuer or any of its affiliates.

(6) The audit committee of a reporting issuer shall review the comparative annual financial statements of the reporting issuer before such financial statements are approved by the directors of the reporting issuer.

(7) The auditor of a reporting issuer is entitled to receive notice of every meeting of the audit committee of the reporting issuer and, at the expense of the reporting issuer, to attend and be heard thereat, and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

Interim financial statements

80. (1) Every reporting issuer shall prepare and file with the Commission within the time period prescribed interim financial statements -

(a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively before the date on which that year ends, but no interim financial statement is required to be filed for any period that is less than three months in length; and

(b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up and certified as required by by-law and prepared in accordance with IFRS or such other generally accepted accounting principles permitted by by-law for each interim period of each financial year beginning on or after January 1, 2005.

(2) An interim financial statement prepared and filed under subsection (1) need not include an auditor's report, but if an auditor has been associated with that statement, his audit report or his comments on the unaudited financial information shall accompany the financial statement.

Filing and delivery of financial statements

81. (1) Every financial statement required to be prepared and filed with the Commission pursuant to section 79 or section 80 shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt securities, to the latest address as shown on the securities register of the reporting issuer at the time such financial statements are filed with the Commission.

(2) A reporting issuer satisfies the obligation in subsection (1) with respect to interim financial statements by publishing the financial statements in a daily newspaper circulating in Trinidad and Tobago.

Management discussion and analysis

82. (1) A reporting issuer shall prepare and file with the Commission annually within the time period prescribed after the end of its financial year, a management discussion and analysis for each financial year ending on or after January 1, 2005.

(2) The management discussion and analysis of a reporting issuer shall contain and discuss such matters prescribed by by-law.

(3) A reporting issuer shall send the management discussion and analysis to each holder of its securities, other than debt securities, to the latest address as shown on the securities register of the reporting issuer, concurrently with the sending to those securityholders of its annual comparative financial statements to which the management discussion and analysis relates.

Proxy solicitation

83. (1) In this section “solicit” and “solicitation” includes -

- (a) a request for a proxy, whether or not accompanied with or included in a form of proxy;
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy;
- (c) the sending of a form of proxy or other communications to a securityholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
- (d) the sending of a form of proxy to a securityholder under subsection (2);

but does not include -

- (e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a securityholder;
- (f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
- (g) the sending by a broker-dealer of documents to a beneficial owner; or
- (h) the solicitation by a person in respect of securities of which he is the beneficial owner.

(2) A reporting issuer shall, concurrently with the giving of notice of a meeting of its security holders, send a form of proxy in the prescribed form to each holder of voting securities who is entitled to receive notice of the meeting, to the latest address as shown on the securities register of the reporting issuer.

(3) A person shall not solicit proxies under subsection (2) unless there is sent to each such securityholder whose proxy is solicited and to the reporting issuer if the solicitation is not by or on behalf of the management of the reporting issuer, concurrently with the solicitation,

- (a) a proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by the management of the reporting issuer; or
- (b) a dissident’s proxy circular in the prescribed form stating the purpose of the solicitation when the solicitation is not by the management of the reporting issuer.

(4) A person sending a proxy circular or dissident's proxy circular shall file a copy of such document with the Commission together with the form of proxy concurrently with the mailing thereof.

Exemption

(5) Where a reporting issuer is complying with the requirements of the law of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this section, the requirements of this section do not apply.

Exemptions for certain foreign issuers

84. (1) A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 83, provided that it -

(a) had a market capitalization of no less than the amount prescribed on the date it became a reporting issuer under this Act calculated as prescribed;

(b) complies in all respects with the foreign disclosure requirements of a designated foreign jurisdiction regarding -

(i) the disclosure of material changes on a timely basis,

(ii) the preparation, filing and delivery of annual comparative financial statements and an auditor's report thereon,

(iii) the preparation, filing and delivery of interim financial statements, and

(iv) the preparation, filing and delivery of a management discussion and analysis on the reporting issuer's annual comparative financial statements;

(c) files with the Commission all such documents it files with the securities regulatory authority in a designated foreign jurisdiction in respect of the items described in paragraph (1)(b); and

(d) delivers to each securityholder resident in Trinidad and Tobago, at the latest address shown on the securities register of the reporting issuer, the documents that such securityholder would be entitled to received under securities laws of the designated foreign jurisdiction if such securityholder were resident in that jurisdiction.

(2) Subsection (1) is not available to an approved foreign issuer if as at the last financial year-end of the approved foreign issuer, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by residents of Trinidad and Tobago would exceed ten percent of the number of voting securities outstanding of the issuer on such date.

(3) A reporting issuer which is an approved foreign issuer shall certify annually to the Commission in writing, concurrently with the filing of its annual comparative financial statements, that it is an approved foreign issuer and is permitted to rely on the exemption provided by this section.

(4) The condition in paragraph 84(1)(a) does not apply to a collective investment scheme that is an approved foreign issuer.

Offence

85. (1) A reporting issuer that -

(a) contravenes this Part; or

(b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

is, subject to subsection (2), guilty of an offence and is liable on summary conviction to a fine of up to two hundred thousand dollars.

(2) Despite subsection (1), a person who is guilty of an offence under paragraph 85(1)(a) solely by reason of his failing to file a document or instrument with the Commission within the time period set forth in this Part, shall, on summary conviction, only be liable -

(a) where the failure to file is seven days or less, to a fine of twenty thousand dollars; and

(b) where the failure to file is more than seven days, but less than fourteen days, to a fine of sixty thousand dollars.

Director liability

(2) Where a reporting issuer is convicted of an offence under subsection (1), each director of the reporting issuer, who knowingly authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to a fine of up to two hundred thousand dollars or a imprisonment for up to two years, or both, provided that the defence available to a director under subsection 167(3) is also available to a director in respect of this subsection.

(3) Where a director is convicted of an offence under subsection (2), the Commission may order, if it is in the public interest, that the director be prohibited from being a director of a reporting issuer for a period not exceeding five years.

Auditor liability

(4) An auditor of a reporting issuer which knowingly makes or provides a false or misleading audit report in respect of financial statements of a reporting issuer is guilty of an offence and is liable on summary conviction to a fine of up to two hundred thousand dollars.

(5) Where an auditor is convicted of an offence under subsection (4), the Commission may order, if it is in the public interest, that the auditor be prohibited from being the auditor of a reporting issuer for a period not exceeding five years.

PART VI

DISTRIBUTIONS

Definition and construction

86. (1) For the purpose of this Part, an advertisement offers securities if -

(a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or

(b) it contains information calculated to lead, directly or indirectly, to a person entering into such an agreement.

(2) In this Part -

"limited offering" means a distribution where -

(a) following the completion of such distribution the number of securityholders of the issuer is not greater than fifty persons exclusive of directors, officers and employees or former directors, officers and employees of the issuer and its affiliates; and

(b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by an issuer;

"offer to sell" includes an attempt or offer to dispose of, and a solicitation of an offer to buy, a security;

"sophisticated purchaser" means -

(a) a person who has access to substantially the same information concerning the issuer that is required in a prospectus under this Part;

(b) an officer or director of the issuer;

(c) a bank, insurance company, loan or trust company incorporated, governed, or regulated under the laws of Trinidad and Tobago;

(d) a registered market actor;

(e) a government entity;

(f)

(i) an individual who has net financial assets of no less than five hundred thousand dollars or such higher amount as may be prescribed by the Commission; or

(ii) any other person, including a collective investment scheme, that has net financial assets of no less than five million dollars or such higher amount as may be prescribed by the Commission; and

(g) any person outside of Trinidad and Tobago that is analogous to persons referred to in subsection (c), (d), and (f).

Prospectus required

87. (1) Unless exempted by this Act or by by-law, no person shall trade in a security where such trade would be a distribution unless a prospectus has been filed with the Commission and a receipt therefore has been issued by the

	Commission.
Distribution of asset-backed securities	(2) Notwithstanding subsection (1) no person shall trade in a security which is an asset-backed security, where such trade would be a distribution, except under an exemption provided for in section 93, unless such security has received an approved rating from an approved ratings organization.
Offers to sell a security	<p>88. No person shall trade a security in connection with a distribution unless the offer is made by means of -</p> <p>(a) a prospectus for which a receipt has been issued by the Commission; or</p> <p>(b) an advertisement -</p> <p>(i) identifying the security distributed;</p> <p>(ii) stating that a receipt has been issued by the Commission for a prospectus offering the security;</p> <p>(iii) identifying a person from whom a document specified in paragraph (a) may be obtained, and identifying a person through whom orders will be executed; and</p> <p>(iv) containing such other information prescribed.</p>
Delivery of prospectus	<p>89. (1) An issuer, or a market actor not acting as agent for the purchaser, who receives an expression of interest, order or subscription for a security offered in a distribution, shall send or deliver to such person a prospectus within two business days after the expression of interest, order or subscription is received.</p> <p>(2) An agreement of purchase and sale is not binding on the purchaser if the issuer or the market actor not acting as agent for the purchaser, receives not later than two business days after the day the purchaser received a prospectus or an amended prospectus, written notice that the purchaser intends not to be bound by the agreement.</p> <p>(3) A person who files a prospectus with the Commission pursuant to section 87 shall provide copies during the period of distribution upon request and shall furnish to a market actor a reasonable number of copies of it without charge.</p> <p>(4) For the purposes of this section, the receipt of a prospectus by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is deemed to be a receipt by the purchaser as of the date on which the agent received the prospectus.</p>
Contents of prospectus	<p>90. (1) A prospectus shall contain full, true and plain disclosure of all material facts concerning the issuer and the securities to be distributed, and shall comply with the requirements prescribed by by-law.</p> <p>(2) In addition to subsection (1) a prospectus distributing securities of a collective investment scheme shall comply with all such additional requirements prescribed by by-law.</p>
Amended prospectus	<p>91. (1) Where a prospectus has been filed with the Commission under section 87 in respect of any proposed distribution of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer, or during the period of distribution thereunder -</p> <p>(a) there is a material change affecting any matter contained in the</p>

prospectus; or

(b) a material fact occurs, the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared,

then the person who filed the prospectus with the Commission shall file with it an amended prospectus containing particulars of that material change or material fact as the case may be, and every prospectus thereafter sent or delivered to any person shall include such amended prospectus.

(2) Where the person who filed the prospectus with the Commission is not aware of the material change or material fact in question he shall not be under any duty to comply with subsection (1) unless he is notified of it by a person responsible for the prospectus, but any person responsible for the prospectus who is aware of that material change or material fact shall be under a duty to give him notice of it.

(3) Where an amended prospectus is required to be prepared and filed with the Commission under subsection (1), the distribution of securities under the prospectus shall cease until such time as the Commission has issued a receipt for the amended prospectus.

(4) An issuer, or a market actor not acting as agent for the purchaser, who sent a prospectus to a purchaser under subsection 89(1) shall send to each such purchaser an amended prospectus forthwith after a receipt is issued by the Commission in respect of such amended prospectus.

Expert's consent

92. (1) A prospectus that includes a statement purporting to be made by an expert shall not be received by the Commission unless -

(a) that expert has given, and has not before delivery of a copy of the prospectus withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent,

and accordingly, a person is not to be deemed to have authorized or caused the receipt of a prospectus by reason only of his having given the consent required by paragraph (1)(a) to the inclusion in the prospectus of a statement purporting to be made as an expert.

(2) The written consent of an expert under subsection (1) shall be filed as prescribed by by-law.

Exemptions

93. (1) Subject to subsection (2), section 87 does not apply to a distribution -

(a) by an issuer where the purchaser is an affiliate of the issuer acting as principal;

(b) by an issuer of a security that is distributed to holders of its securities as a dividend;

(c) by an issuer of a security to holders of its securities as incidental to a reorganization or winding up or to a distribution of its assets for the purpose of winding up its affairs;

(d) by an issuer of a security pursuant to the exercise of a right to acquire a security of its own issue, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a market actor;

(e) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right -

(i) if the issuer files with the Commission a notice that is to be sent to its security holders, and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; or

(ii) the issuer files with the Commission and sends to its security holders any information relating to the securities that is satisfactory to the Commission;

(f) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to -

(i) a statutory amalgamation or arrangement; or

(ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

(g) by an issuer pursuant to a take-over bid;

(h) by an issuer of securities of its own issue or that of an affiliate to its directors, officers or employees, or directors, officers or employees of an affiliate, if -

(i) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and

(ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;

(i) where the Commission makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the order subject to any conditions it considers appropriate including conditions determining the standards of civil liability applicable to the distribution;

(j) of securities issued or guaranteed by a government entity;

(k) by a person declared an exempt purchaser by order of the Commission who purchases as principal or as trustee for accounts fully managed by it;

(l) to any sophisticated purchaser of securities of a reporting issuer provided -

(i) the distribution is not accompanied by an advertisement other than an announcement, as prescribed by the Commission, of its completion;

(ii) no selling or promotional expenses are paid in connection with the trade except for professional services or services performed by a market actor; and

(iii) if the sophisticated purchaser is an individual, other than an individual described in paragraphs (b) or (d) of the definition of sophisticated purchaser, the individual has obtained investment advice in respect of the distribution from -

(A) a registered market actor; or

(B) any person prescribed,

who receives no remuneration from the issuer or selling securityholder in connection with the distribution.

(m) to any sophisticated purchaser of securities of a non-reporting issuer provided -

(i) following the distribution the number of securityholders of the issuer is not greater than fifty exclusive of directors, officers and employees and former directors, officers and employees of the issuer and its affiliates;

(ii) the distribution is not accompanied by an advertisement other than an announcement, as prescribed by the Commission, of its completion;

(iii) no selling or promotional expenses are paid in connection with the trade except for professional services or services performed by a market actor; and

(iv) if the sophisticated purchaser is an individual, other than an individual described in paragraphs (b) or (d) of the definition of sophisticated purchaser, the individual has obtained investment advice in respect of the distribution from -

(A) a registered market actor; or

(B) any person prescribed,

who receives no remuneration from the issuer or selling securityholder in connection with the distribution.

(n) in a limited offering; or

(o) in such other circumstances as the Commission may prescribe.

Exempt distribution of
asset backed securities

(2) An asset-backed security may only be distributed pursuant to an exemption in subsection (1) where a risk disclosure statement in the form prescribed by the Commission has been delivered to each purchaser of the asset-backed security.

Exemption for
controlling security
holders

(3) The certificate for any security distributed under an exemption in subsection (1) shall contain a legend in a form prescribed by the Commission.

(4) Subject to subsection (6), section 87 does not apply to a distribution by a person or company within the meaning of clause (c) of the definition of distribution if the distribution is a trading transaction.

(5) For purposes of subsections (4) and (6), a distribution is a trading transaction where -

(a) the distribution is conducted by or through a registered market actor;

(b) the issuer of the security being distributed has been a reporting issuer for at least twelve months immediately preceding the distribution;

(c) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by the market actor;

(d) the distribution takes place through the facilities of the Stock Exchange;

(e) at the time of the distribution, the selling securityholder does not have knowledge or possession of any undisclosed price sensitive information in respect of the reporting issuer;

(f) where the securities being distributed have been acquired by the selling securityholder under a prospectus exemption, at least six months have elapsed from the date of the initial exempt distribution; and

(g) notice of the intention to distribute securities in a trading transaction is disclosed by press release and filed with the Commission no less than three business days and no more than ten business days prior to the first sale by the selling securityholder.

(6) Subsection (4) is not available in a distribution that is a trading transaction unless -

(a) the first sale takes place no less than three business days and no more than ten business days after the date of issuance of the press release required by paragraph 93(5)(g); and

(b) the final sale takes place no later than the sixtieth day after the date of issuance of the press release required by paragraph 93(5)(g).

Exemptions for certain
foreign issuers

94. (1) In connection with a distribution of securities, an issuer that is an approved foreign issuer may satisfy the requirements of sections 87 to 92 of this Part by -

(a) filing with the Commission -

(i) a certificate signed by a senior officer of the issuer certifying that it is an approved foreign issuer;

(ii) a copy of the receipt or other evidence that the prospectus or offering document to be used in connection with a distribution of securities has become final for purposes of a distribution of securities in a designated

foreign jurisdiction;

(iii) a copy of all documents incorporated or deemed incorporated by reference in the prospectus or offering document;

(iv) a copy of all reports or valuations filed in the designated foreign jurisdiction in connection with the distribution;

(v) a form of submission to jurisdiction and appointment of agent for service of process of the issuer in the form prescribed by the Commission; and

(vi) a copy of the prospectus or offering document including a certificate of a senior officer of the issuer certifying that the prospectus or offering document constitutes full, true and plain disclosure of all material facts relating to the issuer and the securities being distributed; and

(b) delivering to each purchaser in Trinidad and Tobago -

(i) the offering document or prospectus, and each supplement or amendment thereto; and

(ii) an addendum to the offering document or prospectus containing the information prescribed by by-law.

(2) Subsection (1) is not available to an approved foreign issuer if -

(a) following the distribution, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by residents of Trinidad and Tobago would exceed ten percent of the total number of voting securities outstanding of the issuer; or

(b) the approved foreign issuer had a market capitalization of less than the amount prescribed on the date the documents required to be filed under subsection (1) are filed with the Commission, calculated as prescribed; or

(c) the documents required to be filed by the issuer under subsection (1) are not filed in the English language.

(3) Subject to subsection (2), where an approved foreign issuer files with the Commission the documents and material required under subsection (1) the Commission shall issue a receipt for such prospectus or offering document unless the Commission determines it is not in the public interest to do so.

(4) The condition in paragraph 94(2)(b) does not apply to a collective investment scheme that is an approved foreign issuer.

Resale restrictions

95. (1) The first trade in securities previously acquired pursuant to an exemption contained in paragraphs (a), (d), (e), (k), (l), (m), or (n) of subsection 93(1), other than a further trade exempted by this Act or by by-law is a distribution, unless -

(a) the issuer is and has been a reporting issuer for the twelve months immediately preceding date of the trade;

(b) the trade is not a distribution within the meaning of paragraph (c) of the definition of distribution;

(c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(d) no extraordinary commission or consideration is paid to a person or company in respect of the trade;

(e) if the seller is a person connected to a reporting issuer within the meaning of Part IX, such seller has no reasonable grounds to believe that this issuer is in default under the Act or the by-laws; and

(f) at least six months have elapsed from the date of distribution.

(2) A person who purchases a security pursuant to an exemption from the prospectus requirement under this Act or the by-laws at a time when the condition set forth in paragraph (1)(f) has not been satisfied, such person shall be in the same position as the seller for the remainder of the period specified in such paragraph.

(3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition set forth in paragraph (1)(f) has not been satisfied in respect of the convertible or exchangeable security, a person who takes such underlying security shall be in the same position for the remainder of the period specified in such paragraph as if such conversion or exchange had not occurred.

Receipt for prospectus

96. (1) Subject to subsections (2), (3) and (4), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the filing of the prospectus.

(2) The Commission shall refuse to issue a receipt for a prospectus -

(a) if the prospectus or any document filed therewith -

(i) contains a misrepresentation;

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;

(iii) fails to disclose any material fact which may be required under this Act or the by-laws;

(iv) fails to comply in any material respect with any requirement of this Act or the by-laws; or

(v) the distribution in connection with which it is filed is deceptive;

(b) if an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;

(c) if the past conduct of the issuer, or any director, officer, promoter, or person holding securities sufficient to affect materially the control of the issuer, or any other person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or policies, suggests to the Commission that the business or affairs of the issuer are likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;

(d) if the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;

(e) if an expert who has prepared or certified a part of the prospectus or report used in connection with it, or who has filed a consent with the Commission, is not acceptable to the Commission;

(f) if the issuer is in default in filing any document with the Commission required under the Act or the by-laws, or under any other written law, by or under which it is incorporated or organized;

(g) if an underwriter named in the prospectus is not registered under Part IV as a market actor;

(i) if, where a minimum amount of funds is required by an issuer, the prospectus does not indicate that the distribution will cease if the minimum amount of funds is not subscribed within ninety days of the commencement of the distribution;

(h) if the Commission considers that the distribution would be prejudicial to the public interest; or

(i) for any other reason prescribed.

(3) The Commission shall not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

(4) The Commission may in connection with the issuance of a receipt for a prospectus impose any condition which in the opinion of the Commission is necessary for the protection of investors including, without limiting the generality of the foregoing -

(a) a condition that outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;

(b) a condition that the proceeds of a distribution which is payable to the issuer may be held in trust until such amount as may be specified are received for the issuer; and

(c) a condition that no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

Cessation of distribution

97. (1) For the purposes of this Part, a distribution commences on the date on which a receipt for a prospectus is issued by the Commission.

(2) Where in the first ninety days following the commencement of a distribution, less than twenty five percent of the securities proposed to be distributed and sold under the prospectus are actually sold and paid for, the distribution shall cease until such time as a new prospectus is filed and a receipt therefore issued by the Commission.

(3) Where a minimum amount of funds is required by an issuer, and such minimum amount of funds are not raised by the issuer in the first ninety days following the commencement of the distribution, the distribution shall cease and the funds returned to subscribers until such time as a new prospectus is filed and a receipt therefore issued by the Commission.

(4) Subject to subsections (5) and (6), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the prospectus relating to it unless the Commission issues a new receipt for a current prospectus in which case the period runs from the date of the latter receipt.

(5) The Commission may prescribe that the period specified in subsection (3) shall be reduced to not less than six months.

(6) Subsections (2) and (3) do not apply to a distribution of securities by a collective investment scheme.

Registration statement

98. (1) A person who distributes a security, other than a security which is issued by a collective investment scheme -

(a) under a prospectus which has been filed with the Commission and receipt obtained therefore under this Act; or

(b) pursuant to an exemption from the requirement to file a prospectus with the Commission and obtain a receipt therefore,

shall within ten days of the completion of the distribution file a registration statement in respect of the securities distributed with the Commission in the prescribed form.

(2) Where the period of distribution of securities exceeds ten days in length, an issuer shall comply with subsection (1) within ten days of the first distribution of securities thereunder notwithstanding that such distribution may not be complete, and thereafter shall file a registration statement with the Commission in respect of the remaining securities distributed within ten days of the completion of the distribution.

(3) An issuer shall pay the fee prescribed by by-law when filing a registration statement.

(4) An issuer may include in a registration statement any information that is not prohibited by this Act or by-law.

(5) A registration statement shall be signed by the a senior officer of an issuer and at least two directors of the issuer, or where the issuer does not have a senior officer or board of directors, by any two persons authorized to sign on behalf of such issuer.

PART VII

MARKET CONDUCT AND REGULATION

Division 1 – Stamp Duty

Exemption from stamp duty

- 99.** Notwithstanding the Stamp Duty Act, no stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of any stock exchange or clearing agency.

Division 2 – Market Manipulation Offences

False trading and artificial prices on a securities exchange

- 100.** (1) No person shall do anything, take part in, carry out, or cause anything to be done, whether direct or indirect or in one or more transactions, with the intention that or being reckless, has or is reasonably likely to have, the effect of creating a false or misleading appearance of trading activity on a securities exchange.

(2) No person shall do anything, take part in, carry out, or cause anything to be done, whether direct or indirect or in one of more transactions, with the intention or being reckless, has or is reasonably likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial a price for a security on a securities exchange.

(3) Without limiting the generality of subsections (1) and (2) where a person -

(a) enters into or carries out, directly or indirectly, any transaction which purports to be a transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of them;

(b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of the them;

(a) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is not being conducted on a securities exchange, the person shall, for the purposes of subsection (1) be regarded as doing something or causing something to be done, with the intention that, or being reckless, has or is likely to have, the effect of creating a false or misleading appearance of trading activity on a securities exchange, or creating or maintaining at a level that is artificial a price for a security on a securities exchange.

Defence

(4) Where a person is charged with an offence in respect of a contravention of subsection (1) or (2) taking place through the commission of an act referred to in paragraphs (3)(a), (b), or (c), it is a defence to the charge for the person to prove that the purpose for which he committed the act was not, nor, where there was more than one purpose, the purposes for which committed the act did not include, the purpose of creating a false or misleading appearing for active trading in securities, or to the creation or maintenance of an artificial price for a security on a securities exchange.

Price rigging

101. (1) No person shall -

(a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a securities exchange; or

(b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities on a securities exchange.

(2) For the purposes of paragraph (1)(b), the fact that a transaction is, or at any time was, intended to have the effect according to its terms is not conclusive in determining whether the transaction is, or was not, fictitious or artificial.

Defence

(3) Where a person is charged with an offence in respect of the contravention of subsection (1) taking place through any transaction of sale or purchase of securities, it is a defence to the charge for the person to prove that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

Dissemination of information containing a misrepresentation

102. (1) A person shall not, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to induce another person to buy, sell or otherwise trade in securities, whether or not such purchase, sale or trade is with such person, where the information contains a misrepresentation, and the person knows, or is reckless as to whether, the information contains a misrepresentation.

Defence

(2) No person is liable under subsection (1) and it is a defence to a charge in respect of the contravention of subsection (1) that, the person had reasonable grounds to believe and did believe that the information disclosed, circulated or disseminated did not contain a misrepresentation.

(3) In this section, disclosure, circulation and dissemination include, without limitation, disclosure, circulation and dissemination, whether -

(a) by any visit in person;

- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures or pamphlets;
- (e) by way of sound or broadcasting, including television or radio broadcasting;
- (f) by any information system or electronic device; or
- (g) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium.

Securities exchange
manipulation

103. A person shall not -

- (a) enter into or carry out, directly or indirectly, two or more transactions in securities of an issuer that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a securities exchange, with the intention of inducing another person to trade, or to refraining from trading, in securities of the same issue;
- (b) enter into or carry out, directly or indirectly, two or more transactions in securities of an issuer that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a securities exchange, with the intention of inducing another person to trade, or to refraining from trading, in securities of the same issue; or
- (c) enter into or carry out, directly or indirectly, two or more transactions in securities of an issuer that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a securities exchange, with the intention of inducing another person to trade, or to refraining from trading, in securities of the same issue.

Use of fraudulent or
deceptive devices

104. A person shall not, directly or indirectly, in connection with a trade in securities -

- (a) employ any device, scheme or artifice with intent to defraud or deceive; or
- (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.

Excessive trading

105. (1) No market actor shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to exercise determinative influence.

(2) No person who has discretionary authority over or is a trustee for an account of another, shall effect trades that are excessive in volume and frequency.

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the market actor, employee or other person in relation to the size of the customer's account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.

Restrictions on recommendation

106. (1) A market actor shall not recommend a trade in a security to any person unless -

(a) he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the market actor; and

(b) he discloses in writing to any such person all conflicts of interest or potential conflicts of interest he has, or may have, in respect of the security or the issuer of the security, including any conflict or potential conflict of interest arising from:

(i) his holding of securities of the issuer as beneficial owner;

(ii) his acting as underwriter in any distribution of securities of the issuer in the three immediately preceding years; or

(iii) any direct or indirect financial or other interest in the security or issuer held by the market actor.

(2) Subsection (1) does not apply to a market actor in respect of the publication of a research report which is not prepared for a specific client or customer that recommends generally a trade in a security, provided that the research report discloses the information required by paragraph (1)(b).

Offence

107. A person who contravenes sections 100, 101, 102, 103, 104, 105 or 106 is guilty of an offence and is liable -

(a) on summary conviction to a fine of up to two hundred thousand dollars or imprisonment for up to six months, or both; or

(b) on conviction on indictment to a fine of up to four hundred thousand dollars or imprisonment for up to two years, or both.

Division 3 – Market Practices

Trust accounts

108. (1) A broker-dealer shall establish and keep in a financial institution one or more trust accounts designated as such into which it shall pay -

(a) all amounts (less any commission and other proper charges) that are received from or on account of any person, other than another broker-dealer, for the purchase of securities not delivered to the broker-dealer, within such time as prescribed by the Commission; and

(b) all amounts (less any commission and other proper charges) that are received on account of any person, other than a broker-dealer, from the sale of securities and not paid to that person or as that person directs within such time after receipt of such amounts as may be prescribed by the Commission.

(2) No money shall be withdrawn from a trust account established under subsection (1), except for the purpose of making payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorized by law.

(3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in a trust account, or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into a trust account.

(4) Every director of a broker-dealer that fails to comply with, or contravenes, any of the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of up to one thousand dollars or to imprisonment for one year, or both.

Market actor to send documents to beneficial owner

109. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by a market actor or his nominee, the market actor shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document need not be sent.

(2) A person who sends a document to registered security holders pursuant to this Act or the by-laws shall furnish to a market actor forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and shall pay or reimburse the reasonable costs of him doing so.

Confirmation to be sent to customer

110. (1) Subject to subsection (2), a market actor who trades in security with or for a customer shall send him immediately after the completion of the trade a written confirmation containing the information prescribed by the Commission.

(2) The Commission may prescribe that a market actor who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at the end of each three month period or at

such other shorter times and containing such information as may be prescribed.

Notification to
Commission

111. A market actor who has acted as a broker-dealer in connection with a trade in a security shall on the request of the Commission disclose to it the name of the person with or through whom the security was traded.

Restriction on trading at
residence

112. (1) In this section, "residence" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

(2) No person shall -

(a) attend at any residence without being invited by an occupant of the residence; or

(b) make an unsolicited communication to any residence including by telephone, facsimile or e-mail communication,

within Trinidad and Tobago for the purpose of trading in a security.

(3) Subsection (2) shall not apply where the person calls at or telephones the residence -

(a) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading securities; or

(b) of a person who has received a copy of a prospectus for which a receipt has been obtained under this Act and has requested that information respecting a security offered in that prospectus be furnished to him by the person calling or telephoning.

Control of advertisement

113. (1) The Commission may make an order requiring a market actor to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least seven days before it is used, if the Commission reasonably believes that the past conduct of the market actor in connection with such advertisements makes review of them by it necessary for the protection of investors.

(2) The Commission may make an order prohibiting the use of an advertisement sent to it pursuant to subsection (1) or requiring that it be altered before it is used if the Commission is of the view that the advertisement is likely to mislead the public.

(3) In this section "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus.

Seller of security to
declare non-ownership

114. A person who places an order with a market actor to sell a security that he does not beneficially own or, if acting as agent, that he knows his principal does not beneficially own shall, when he places the order, declare that he or his principal, as the case may be, does not beneficially own the security.

as the case may be, does not beneficially own the security.

Declaration as to short position

115. (1) A person who places an order for the sale of a registered security through a registered market actor acting on his behalf and who -

(a) does not beneficially own the security; or

(b) if he is acting as agent knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to the registered market actor that he or his principal, as the case may be, does not beneficially own the security, and that fact shall be disclosed by the market actor in the written confirmation of sale.

(2) Subject to this Act and the by-laws, for the purposes of subsection (1), a security which is not beneficially owned by a person includes, but is not limited to, a security that -

(a) has been borrowed by that person;

(b) is held by a nominee, custodian or trustee; or

(c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

Prohibition on use of name of another registrant

116. A market actor shall not use the name of, or hold himself out as, another market actor on letterheads, forms, advertisements or signs, as a correspondent or otherwise, unless he is a partner, director, officer or agent of, or is authorized in writing by, the other market actor.

Representation as to registration

117. (1) A person shall not represent that he or any other person is registered under this Act or the by-laws unless -

(a) the representation is true; and

(b) in making the representation, he specifies his or the other person's category of registration under this Act or the by-laws.

(2) A person who is not registered under this Act or the by-laws shall not, directly or indirectly, hold himself out as being registered.

Approval by Commission not to be advertised

118. A person shall not represent, orally or in writing, that the Commission or a person authorized by the Commission, has in any way approved the financial standing, fitness or conduct of any market actor or evaluated the merits of any security or issuer.

PART VIII

SIMPLIFIED CLEARING FACILITIES

- Application of Part **119.** Notwithstanding any other written law, this Part shall apply to any securities for which a registration statement has been filed with the Commission.
- Definitions **120.** In this Part -
- "interested person" means a person who has an interest in a security in an account of a participant in a clearing agency;
- "in writing" includes production in machine readable form;
- "pledge" means a contractual interest in a security that is delivered to, retained by, or deemed to be in the possession of, a creditor to secure payment of a debt or other obligation and includes a mortgage or mortgage and pledge of a security;
- "registered owner" means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security or security certificate issued by it; and
- "security certificate" means an instrument issued by or on behalf of an issuer that is evidence of a security.
- Use of clearing agency as registered owner of security **121.** (1) On the issue of a security, an issuer may deliver a security certificate directly to a clearing agency as registered owner of the security if -
- (a) the issuer has written authorization signed by or on behalf of the beneficial owner; and
- (b) the delivery of the certificate is evidenced by a written confirmation signed by the clearing agency and sent at once to the beneficial owner or his agent.
- (2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a clearing agency as registered owner by means of record entries if -
- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent; and
- (c) the issue is recorded at once in the securities register of the issuer and the records of the clearing agency.
- (3) The requirement to obtain the written authorization of a beneficial owner required by subsections (1)(a) or (2)(a) is satisfied if the beneficial owner acknowledges in any agreement or document entered into with a registered market actor, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security

contemplated in this section.

(4) A written confirmation referred to in subsection (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

(5) A clearing agency shall not make an entry in its records under this section in respect of a security that is not fully paid.

Transfer of securities
through clearing agency

122. (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency.

(2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if -

(a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;

(b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent; and

(c) the transfer is recorded at once in the securities register of the issuer and the records of the clearing agency.

(4) The requirement to obtain the written authorization of a beneficial owner required by subsection (3)(a) is satisfied if the beneficial owner acknowledges in any agreement or document entered into with a registered market actor, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security contemplated in this section.

(5) A written confirmation referred to in subsection (3)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is beneficial owner of the securities described therein.

Transfer by record entry -
participants

123. (1) On receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from the participant to another participant by making an entry in its records.

(2) If -

(a)

(i) a security shown in the records of a clearing agency is evidenced by a security certificate identifying the clearing agency as the registered owner; and

(ii) such security certificate is in the custody of the clearing

Transfer by record entry
- beneficial owners

agency; or

(b) the clearing agency is the registered owner of the security by means of record entries contemplated by subsections 121(2) or 122(3);

then on receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from one beneficial owner to another beneficial owner by making an appropriate entry in its records in addition to any other method permitted by law, and such transfer shall have the effect of transferring all rights, title and interest in such security to the beneficial owner.

Blocked account

124. (1) A clearing agency shall establish a procedure whereby it or an interested person may exercise control over a participant's account in the clearing agency where -

(a) the interested person is, in relation to a security in the participant's account, a beneficial owner, a pledgee, or a judgment creditor of the beneficial owner; or

(b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 133(3), a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

Effecting pledge by record entry

125. (1) On receipt of instructions in writing from a participant and if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with the instructions, effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

(2) On receipt of instructions in writing from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to realize the securities in the blocked account, a clearing agency shall in accordance with the instructions transfer the securities unless -

(a) it knows that the pledgee is not entitled to realize the securities; or

(b) its procedure established pursuant to section 124(1) specifies otherwise.

(3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

Effecting blocked account by record entry

126. On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency may in accordance with the instructions make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

Security subject to restriction

127. A clearing agency may refuse to open an account in respect of a security that is subject to -

(a) a lien in favour of its issuer; or

(b) a restriction or constraint on its transfer.

(2) A clearing agency may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person.

Blocking account by Court order

128. (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, the Court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of, or instructions in writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 132 claims to be entitled to a security held for a beneficial owner in a clearing agency, the Court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation on rights of participants

129. A participant has no right to pledge, transfer or otherwise deal with a security held by a clearing agency except through the facilities of the clearing agency.

Withdrawal of security

130. (1) On the receipt of a demand in writing from a participant for whom a security is held other than in a blocked account, for withdrawal of that security, a clearing agency shall within a reasonable time, subject to any proceedings under section 135, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

(2) On receipt of instructions in writing from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

Issuer's duty to request list of participants

131. (1) Where a clearing agency is the registered owner of a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled -

(a) to receive notice of or to vote at a meeting of securityholders;

(b) to receive payment of a dividend or interest; or

(c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the clearing agency such notice as may be prescribed of its intention to close its securities register or fix a

record date.

(2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants and beneficial owners for whom the clearing agency holds securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of participants and beneficial owners for whom it holds securities of a class issued by the issuer, a clearing agency shall within ten days provide the issuer with a list setting out -

(a) the names and addresses of; and

(b) the number or amount of securities of the class held for,

each such participant and beneficial owner made up as of the date specified in the demand.

(4) On receipt of a demand from an issuer under subsection (3), a clearing agency shall send notice of the demand to each participant.

(5) A participant that receives a notice sent pursuant to subsection (4) shall within five days -

(a) furnish to the clearing agency or the issuer a list containing the name and address of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

(b) instruct the clearing agency to furnish the list to the issuer or inform the clearing agency that it has done so itself.

(6) Where a participant that receives a notice sent pursuant to subsection (4) does not provide a clearing agency or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each such beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.

(7) A clearing agency that receives lists of participants and beneficial owners under subsection (5) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not permit association of a beneficial owner with a participant and the clearing agency may charge participants a reasonable fee for the consolidation.

(8) A clearing agency shall treat as confidential any information it receives under subsection (5) concerning the beneficial ownership of securities.

(9) After receipt of a demand in writing from an issuer that has received a list of participants and beneficial owners under subsection (3), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for a participant since the date as of which the list under subsection (3) was made up.

(10) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants and beneficial owners under subsection (3) with respect to each class of securities held by the clearing agency, and the issuer shall pay the clearing agency a reasonable amount for -

(a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or

(b) any additional list.

(11) An issuer is entitled to presume conclusively that a person named in a list obtained under this section is the beneficial owner of the securities of the issuer referred to in the list.

Access to clearing agency records

132. (1) After submitting a request in writing to a clearing agency, a beneficial owner of a security of an issuer and the beneficial owner's agent may during usual business hours examine a list of the records of the clearing agency that relate to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of a reasonable fee.

(2) A list referred to in subsection (1) shall be made up as of a specific date within a reasonable time after submission of the request.

Incorrect entry by clearing agency

133. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the clearing agency may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

Liability in extraordinary circumstances

134. Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

Application to Court to rectify records

135. (1) Where an entry is alleged to have been incorrectly made or retained in or omitted or deleted from the records of a clearing agency, other than in the circumstance outlined in section 133(3), the clearing agency or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order-

(a) determining who is an interested person and the notice to be given to such a person;

(b) dispensing with notice to any person;

(c) determining the right of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency;

(d) directing that the records of a clearing agency be rectified;

(e) directing that a clearing agency make an entry in its records to block an account; or

(f) compensating any person.

Participation by financial institution

- 136.** (1) A clearing agency may hold securities for a financial institution that is authorized under the law applicable to financial institutions to deliver or transfer any securities held by it into the custody of a clearing agency.
- (2) A company incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of a clearing agency.
- (3) The Commission may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

PART IX

DEALING BY PERSONS CONNECTED WITH ISSUERS

Price sensitive information

- 137.** (1) A reference in this Part to undisclosed price sensitive information means, in relation to securities of a reporting issuer, any undisclosed information which, if generally disclosed, would significantly affect, or would reasonably be expected to significantly affect, the price or value of the securities of the reporting issuer.

Connected persons

- (2) A person is deemed to be connected to a reporting issuer if -
- (a) the person is a director or senior officer of the reporting issuer;
 - (b) the person is a director or senior officer of:
 - (i) an affiliate of the reporting issuer, or
 - (ii) any person who beneficially owns, directly or indirectly, or exercises control or direction over, voting securities of the reporting issuer, or a combination of both, carrying more than ten percent of the votes attached to all voting securities of the reporting issuer outstanding;
 - (c) the person beneficially owns, directly or indirectly, or exercises control or direction voting over, voting securities of the reporting issuer, or a combination of both, carrying more than ten percent of the votes attached to all voting securities of the reporting issuer outstanding;
 - (d) the person is contemplating or proposing, whether alone or with any other person, to make a take-over bid for any securities of the reporting issuer, or is contemplating or proposing, whether alone or with any other person, to become a party to any amalgamation, merger or similar business combination with the reporting issuer, or is contemplating or proposing any other material transaction with or including the reporting issuer;
 - (e) the person is engaging or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer, or any person identified in paragraph (d);
 - (f) the person learns, directly or indirectly, of undisclosed price sensitive information with respect to a reporting issuer from any person described in this subsection, including a person described in this clause, and knows, or ought reasonably to have known, that the other person is connected to the reporting issuer; or

(g) the person is an expert retained or hired by a reporting issuer;

provided that a person deemed to be connected to a reporting issuer by application of a clause of this subsection continues to be deemed to be connected to a reporting issuer -

(h) in the case of clauses (a) to (c), (e) and (g) of this subsection, until the day that is six months following the day that the person otherwise ceases to be deemed to be connected to a reporting issuer by application of such clauses of this subsection;

(i) in the case of clause (d) of this subsection, until the time any transaction described in clause (d) is generally disclosed; and

(j) in the case of clause (f) of this subsection, until such undisclosed price sensitive information is generally disclosed.

(3) In this Part, "take-over bid" has the meaning prescribed by by-law.

(4) In this Part, undisclosed price sensitive information shall be deemed to be generally disclosed at the time which is twenty-four hours following the time of public dissemination of the price sensitive information through a press release.

Knowledge and possession

(5) In this Part, a person who trades in a security at a time when he has knowledge or possession of undisclosed price sensitive information is presumed to have traded in the security as a result of his knowledge or possession of the undisclosed price sensitive information unless shown to the contrary by him.

(6) In this Part, persons other than individuals, are deemed to have knowledge or possession of undisclosed price sensitive information at and from the time such undisclosed price sensitive information comes into the knowledge or possession of any director or senior officer of such person.

Prohibition of buying or selling of securities by certain persons

138. No person that is connected to a reporting issuer shall, directly or indirectly, buy, sell, or otherwise trade in securities of such reporting issuer, whether in a transaction on a securities exchange or otherwise, with knowledge or possession of undisclosed price sensitive information, however obtained, until such information has been generally disclosed.

Prohibition on disclosing price sensitive information

139. (1) No person connected to a reporting issuer shall, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise trade in any securities of a reporting issuer, whether in a transaction on a securities exchange or otherwise, during the time such person has knowledge or possession of undisclosed price sensitive

information.

(2) A person connected to a reporting issuer shall not, directly or indirectly, communicate or otherwise disclose any undisclosed price sensitive information to any person until such information is generally disclosed, unless in the necessary course of business.

Reports by certain
connected persons

140. (1) A person who is connected to a reporting issuer as a result of paragraphs 137(2)(a), (b) or (c) shall, within five business days of the day that he becomes connected to the reporting issuer, file a report with the Commission in the prescribed form as of the day on which he became connected to a reporting issuer disclosing any direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates.

(2) A person who has filed or is required to file a report under this section and whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates changes from that shown or required to be shown in the report or in the latest report filed by the person under this section, shall within five business days from the day on which the change takes place, file a report of direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates as of the day on which the change took place and the change or changes that occurred, giving any details of each transaction as may be required by by-law.

(3) No person to whom this section applies shall transfer or cause to be transferred any securities of the reporting issuer to which they are connected into the name of an agent, nominee or custodian without filing with the Commission a report of such transfer in accordance with the by-laws except for a transfer for the purpose of giving collateral for a genuine debt.

(4) Despite subsection (1) a person is not required to file a report under this section where the person does not beneficially own, or exercise control or direction over, any securities of the reporting issuer.

Derivative, convertible,
and exchangeable
securities

(5) For purposes of this section, a person has beneficial ownership of, or control or direction over, securities of a reporting issuer including where that person has beneficial ownership of, or control or direction over -

(a) securities which are third-party derivative securities related to the reporting issuer;

(b) securities that are convertible or exchangeable for securities of a reporting issuer, whether or not on condition;
or

(c) rights to subscribe for, or otherwise receive, securities of a reporting issuer;

reporting issuer;

in each case whether or not such securities are securities issued by the reporting issuer.

Definition of Derivative Securities

(6) For purposes of this section, “derivative securities” means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to, or based on, an underlying security, interest, benchmark or formula.

Notification to reporting issuer

(7) Any person who files a report with the Commission under this section shall forthwith thereafter delivery a copy of the report that he has filed with the Commission under this section to the reporting issuer.

Disclosure of beneficial interest in share capital

141. (1) A reporting issuer may by notice in writing require any holder of its securities within such reasonable time as is specified in the notice not exceeding ten days -

(a) to indicate in writing the capacity in which he holds any securities of the issuer; and

(b) if he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in them (either by name and address or by other particulars sufficient to enable that person to be identified) and the nature of that person’s interest.

(2) Where a reporting issuer is informed in pursuance of a notice given to any person under subsection (1) or paragraph (b) of this subsection, that any other person has an interest in any securities of the reporting issuer, the reporting issuer may by notice in writing require that other person within such reasonable time as specified in the notice not exceeding ten days -

(a) to indicate in writing the capacity in which he holds that interest; and

(b) if he holds it otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person’s interest.

(3) Any reporting issuer may by notice in writing require any holder of its securities to indicate in writing, within such reasonable time as is specified in the notice not exceeding ten days, whether any of the voting rights carried by any securities of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or

arrangement and the parties to it.

(4) Where a reporting issuer is informed in pursuance of a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the reporting issuer may by notice in writing require that other person within such reasonable time as is specified in the notice to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever a reporting issuer receives information from a person in pursuance of a requirement imposed on him under this section it shall keep a record of -

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in pursuance of the requirement.

(6) The Commission may request that a reporting issuer deliver to it a copy of the record kept by the reporting issuer under subsection (5).

Exceptions to section 138
and 139

142.

(1) Sections 138 and 139 do not prohibit a person by reason of his having knowledge or possession of any undisclosed price sensitive information from -

(a) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver, receiver-manager or trustee in bankruptcy; or

(b) acquiring securities through employee profit sharing plans and employee stock ownership plans established to provide for the ownership of such securities by all employees provided the participation of the person in such plans -

(i) is established prior to the time that the person acquired knowledge or possession of the undisclosed price sensitive information, and

(ii) provide for the automatic acquisition of securities by participants in such plans.

(2) A person is not, by reason only of his having knowledge or possession of undisclosed price sensitive information relating to any particular transaction prohibited by section 138 or 139 -

(a) from buying or selling or participating in any transaction on any securities exchange or otherwise, or

(b) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities exchange or otherwise,

if he does that thing only in order to facilitate the completion or carrying out of the transaction that was agreed to before the time that the person acquired knowledge or possession of the undisclosed price sensitive information and the transaction is completed on the same terms.

Defence not available

143. Where a person is accused of an offence under section 138 or 139, it shall not be a defence to the charge that the undisclosed price sensitive information in respect of which the accusation has been made came to his knowledge or possession without having been solicited by him or that he made no effort to procure the acquisition of such information.

Offences

144. (1) Any person who commits a breach of any section in this Part, other than section 138 or 139, or who, in complying with any other section of this Part, makes a statement or files a report which he knows to be false, or recklessly makes a statement or files a report which is false, or fails to supply any particulars which he is required to supply shall be guilty of an offence and liable -

(a) on summary conviction to a fine of up to fifty thousand dollars or to imprisonment for three months, or both; or

(b) on conviction on indictment to a fine of up to one hundred thousand dollars or to imprisonment for up to six months, or both.

(2) A person who contravenes section 138 or 139 is liable -

(a) on summary conviction -

(i) to a fine of not less than the greater of two hundred thousand dollars and the profit made or loss avoided by him; and

(ii) to imprisonment for up to six months,

or both, or

(b) on conviction on indictment -

(i) to a fine of not less than the greater of four hundred thousand dollars and double the profit made or loss avoided by him; and

(ii) to imprisonment for up to two years,

or both.

(3) No transaction is void, or voidable by the person who has knowledge or possession of undisclosed price sensitive information, by reason only that it was entered into in contravention of section 138 or 139.

PART X

CIVIL LIABILITY

Liability for
misrepresentation in
prospectus - damages

145. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action for damages against each of the following persons for any loss or damage sustained by him by reason of any misrepresentation in the prospectus, and each such person shall be liable for any such loss or damage, namely -

(a) the issuer or the selling security holder on whose behalf the distribution is made;

(b) a person who is a director of the issuer at the time of the filing of the prospectus;

(c) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four month period immediately preceding the date of filing of the prospectus;

(e) a person whose consent has been filed as required by section 92 but only with respect to misrepresentations in a prospectus derived from, or based on, reports, opinions, valuations or statements that have been made by such person; and

(f) any other person who signed a certificate in the prospectus other than a person referred to in clauses (a) to (e) of this subsection.

(2) Notwithstanding subsection (1), where the consent of an expert is required in connection with the filing of a prospectus and such expert has given that consent, the expert is not, by reason only of the consent, liable, except in respect of a misrepresentation in a prospectus derived from, or based on, reports, opinions, or valuations purporting to be made by such person of which he had knowledge.

Defence

(3) No person, other than the issuer or the selling security holder on whose behalf the distribution is made, is liable under subsection (1) -

(a) who, having consented to become a director of the issuer, withdrew his consent before the filing of the prospectus and the prospectus was filed without his authority or consent;

(b) who, when the prospectus was filed without his knowledge or consent, gave reasonable public notice of that

fact forthwith after becoming aware of it;

(c) who, after the filing of the prospectus and before the sale of securities under it, became aware of a misrepresentation and withdrew his consent, and gave reasonable public notice of the withdrawal of the consent and the reasons for it; or

(d) who, as regards every misrepresentation, not purporting to be made on the authority of an expert or a public official document or statement, had conducted such reasonable investigation as to provide reasonable grounds to believe and did believe, up to the time of the distribution of the securities, that the prospectus did not contain a misrepresentation.

(4) No person is liable under subsection (1) -

(a) if, as regards a misrepresentation in a prospectus made by an expert or to be based on a statement made by an expert, the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report or valuation of the expert, and that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus, that the expert making the statement was competent to make it, and had given his, her or its consent as required under section 92 and had not withdrawn that consent before delivery of a copy of the prospectus for filing, nor had the expert, to the person's knowledge, withdrawn that consent before the sale of any securities under the prospectus;

(b) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase; or

(c) if, as regards a misrepresentation purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(5) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(6) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

(7) Notwithstanding subsections (5) and (6), no underwriter is liable for more than the total public offering price represented by the portion of

the distribution of securities underwritten, or sold by or to, the underwriter.

(8) In no case shall the amount recoverable under this section exceed the price at which the securities were sold to the public.

(9) The right of action for damages conferred by this section is in addition to and not in derogation of any other right the purchaser may have.

(10) No action may be brought under this section more than two years after the date of the receipt for the prospectus under which securities were sold to the person bringing an action.

Action by security holders for rescission for misrepresentation in a prospectus

146. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action against the issuer or the underwriter that has sold securities under a prospectus for the recession of the sale and the repayment to such purchaser of the issue price that has been paid in respect of the security, if the prospectus contained a misrepresentation, provided that if the purchaser elects to exercise a right of rescission against the issuer or underwriter under this section, such person shall have no right of action for damages against such issuer or underwriter under section 145.

(2) In an action brought under this section or section 145, the person bringing such action need not prove that such person was in fact influenced by the misrepresentation or that he relied on the misrepresentation in purchasing the security.

(3) No action may be brought under this section more than two years after the date of the receipt for the prospectus under which securities were sold to the person bringing the action.

(4) No person shall be liable under subsection (1) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(5) An action may not be dismissed if there are several persons bringing an action, when the issuer or underwriter proves that it has a defence under subsection (4) against each of them, and in any case in which the issuer or underwriter proves that it has a defence against the person bringing an action or all the persons bringing an action, the Court may, instead of dismissing the action, substitute some other purchaser of the same class as the person bringing an action.

(6) This section applies to securities sold under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if

any, to be paid by the issuer.

Liability for
misrepresentation in
other offering document

147. (1) Subject to this section, where an offering document, other than a prospectus, contains a misrepresentation, a purchaser who purchased a security in reliance on the offering document has a right of action for damages against the issuer and the selling security holder on whose behalf the distribution is made.

(2) For purposes of this section “offering document” means any document purporting to describe the business and affairs of an issuer which has been prepared primarily for delivery to and review by a prospective purchaser so as to assist such purchaser in making an investment decision, but does not include a prospectus or general advertisement.

(3) In this section a purchaser who receives an offering document whether prior to or following the purchase of a security shall be deemed to have relied on the offering document in making his investment decision.

Defences

(4) An issuer is not liable under subsection (1) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(5) In no case shall the amount recoverable under this section exceed the price at which the securities were sold to the purchaser.

Civil Liability for
Trading Contrary to
Section 138

148. (1) Subject to this section, a purchaser of a security who purchases a security from another person where the trade made by such other person is made contrary to section 138 has -

(a) a right of action for damages against the seller and such other person shall be liable for any losses or damages sustained; or

(b) a right of action for rescission against the seller for rescission of the transaction and repayment of the security,

but not both.

(2) Subject to this section, a seller of a security who sells a security to another person where the trade made by such other person is made contrary to section 138 has -

(a) a right of action for damages against the purchaser and such other person shall be liable for any losses or damages sustained; or

(b) a right of action for rescission against the purchaser for rescission of the transaction and repayment of the security,

but not both.

(3) No action may be brought under this section more than two years after the date of the trade.

(4) A person may bring an action under subsection(1) or (2) in respect of a contravention set forth in subsection (1) or (2) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) No person shall be liable under this section if the person bringing the action violated section 138 in respect of the trade that is the subject of the action.

(6) The rights in this section are in addition to and not in derogation of any other right a purchaser, or seller, as the case may be, has at law.

Civil liability for market misconduct offences

149. (1) Subject to this section –

(a) a person who contravenes any of sections 100, 101, 102, 103, 104, 105 or 106, whether or not he also incurs any other liability, shall be liable to pay compensation by way of damages to any other person for any loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention; and

(b) each person who sustained a loss as a result of the contravention by a person of any of sections 100, 101, 102, 103, 104, 105 or 106, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention, has a right of action for damages under paragraph (1)(a) against the contravening person.

(2) A defence available to a person under sections 100, 101, 102, 103, 104, 105, or 106 is also a defence in an action brought under subsection (1) in respect of the same contravention.

(3) A person may bring an action under subsection (1) in respect of a contravention set forth in paragraph (1)(a) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

Commission may seek leave to bring action or appear or intervene in an action

150. (1) The Commission may apply to a judge of the Court for leave to bring an action under this Part in the name and on behalf of an issuer and the judge may grant leave on any terms as to security for costs or otherwise that he or she considers proper if the judge is satisfied that -

(a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and

(b) the Commission gave reasonable notice to the issuer who refused or failed to commence an action.

(2) The Commission may apply to a judge of the Court for leave to bring an action under this Part in the name and on behalf of a security holder and the judge may grant leave on any terms as to security for cost or otherwise that he or she considers proper if the judge is satisfied that -

(a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and

(b) the security holder has failed or is unable to commence the action.

(3) The Commission may apply to a judge of the Court for leave to appear or intervene in an action under this Part and the judge may grant leave on such terms as he considers appropriate.

(4) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a regular periodical published by it, or in a newspaper of general circulation in Trinidad and Tobago.

PART XI

ENFORCEMENT

Division 1-By-laws

By-laws

- 151.** (1) The Minister may, on the recommendation of the Commission, make by-laws -
- (a) prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of suspension, revocation, cancellation or reinstatement of registration of market actors and self-regulatory organizations;
 - (b) prescribing categories or subcategories of market actors, classifying market actors into categories or sub-categories and prescribing the conditions of registration, or other requirements for market actors or any category or sub-category, including -
 - (i) standards of practice and business conduct of market actors in dealing with their customers and clients and prospective customers and clients;
 - (ii) standards of conduct in relation to a customer of a market actor to prevent conflicts of interest or the fair treatment of customers;
 - (iii) standards for the conduct of a market actor in relation to the custody or lending of any money or security held for a customer;
 - (iv) requirements in respect of membership in a self-regulatory organization;
 - (v) standards of conduct of a market actor who is not a member of a self-regulatory organization;
 - (vi) the making, keeping and retention of books and records by a market actor, including the keeping and filing of a record of trades executed by the market actor through the facilities of a securities exchange;
 - (vii) requirements for a market actor to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained;
 - (viii) requirements and standards of conduct for market actors to document and record cash transactions, and to comply with money laundering laws;
 - (ix) standards for the conduct of a market actor who exercises investment discretion with respect to a customer account,

including disclosure to the customer of the policies and practices relating to the payment of commissions for trades in securities; and

(x) filing information in respect of missing, lost, counterfeit or stolen securities or securities which are in the custody or control of the market actor, or are his responsibility;

(c) prescribing the terms and conditions of policies of insurance which market actors shall be required to obtain indemnifying such market actor against any liability that may be incurred as a result of any act or omission of the market actor or any of its officers or employees;

(d) extending any requirements prescribed for market actors to unregistered directors, partners, salespersons and officers of market actors;

(e) prescribing requirements in respect of the residence in Trinidad and Tobago of market actors;

(f) prescribing requirements for persons in respect of calling at, telephoning or delivering correspondence to, or otherwise communicating by any means, including electronic means, at residences for the purposes of trading in securities or providing investment advice;

(g) prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by market actors or providing for exemptions from or varying the requirements under the Act or the by-laws in respect of the disclosure or furnishing of information to the public or the Commission by market actors;

(h) providing for exemptions from the registration requirements under the Act or the by-laws or for the removal of exemptions from those requirements;

(i) prescribing requirements in respect of the books, records and other documents required to be kept by market actors and self-regulatory organizations, including the form in which and the period for which the books, records and other documents are to be kept;

(j) regulating all aspects of the listing or trading of publicly traded securities including requiring reporting of trades and quotations;

(k) regulating self-regulatory organizations, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, guideline, interpretation or practice of the self-regulatory organization;

(l) regulating all aspects of the operation in Trinidad and Tobago of self-regulatory organizations which are organized under the laws of

another jurisdiction;

(m) regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;

(n) prescribing categories or subcategories of issuers for purposes of the prospectus requirements under the Act and the by-laws and classifying issuers into categories or subcategories;

(o) varying the Act and the by-laws to facilitate, expedite or regulate the distribution of securities or the issuing of receipts for prospectuses, including by establishing -

(i) requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference;

(ii) requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure or offering document;

(iii) requirements in respect of distributions of securities on a continuous or delayed basis;

(iv) requirements in respect of pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation thereto;

(v) provisions for the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary perspective, of modifying or superseding statements;

(vi) requirements for the form of a prospectus certificate, including providing for alternative forms;

(vii) provisions for eligibility requirements to obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility; and

(viii) provisions for rights of investors;

(p) designating activities, including the use of documents or advertising, in which market actors or issuers are permitted to engage or are prohibited from engaging in connection with distributions;

(q) providing for exemptions from the prospectus requirements under the Act and the by-laws and for the removal of exemptions from those requirements;

(r) prescribing the circumstances in which the Commission must refuse to issue a receipt for a prospectus and prohibiting the Commission from issuing a receipt in those circumstances;

(s) prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act and the by-laws, including requirements in respect of -

(i) an annual information form; and

(ii) supplemental analysis of financial statements;

(t) exempting reporting issuers from any requirement of the Act or the by-laws under circumstances that the Commission considers justify the exemption including that the reporting issuer is subject to oversight in an appropriate jurisdiction;

(u) requiring issuers or other persons and companies to comply, in whole or in part, with continuous disclosure requirements under the Act or by-laws made in respect thereof;

(v) regulating the distribution, sale and trading of asset-backed securities;

(w) prescribing requirements in respect of financial accounting, financial reporting and auditing for purposes of the Act and the by-laws, including -

(i) defining accounting principles and auditing standards acceptable to the Commission;

(ii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and pro forma financial statements;

(iii) standards of independence and other qualifications for auditors;

(iv) requirements respecting a change in auditors by a reporting issuer or a market actor; and

(v) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under the Act;

(x) regulating take-over bids and related party transactions including, issuer bids, insider bids, and going-private transactions and varying the requirements of the Act and the by-laws in respect thereof, including -

- (i) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all holders of securities of the class shall become mandatory and the conditions applying to such offers;
 - (ii) the requirements of the offeror and offeree issuers in respect of information to be disclosed to securityholders of both issuers;
 - (iii) the requirements as regards equitable treatment of securityholders of the same class or cash alternatives in offers or both;
 - (iv) the timing of offer procedures and circulation of documentation;
 - (v) conditions observable in the dealing of securities by the offeror or by persons in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree issuer during the take-over period;
 - (vi) the minimum period within which an unsuccessful offer may not be renewed; and
 - (vii) the requirements to protect minority interests;
- (y) prescribing standards or criteria for determining when a material fact or material change has occurred or has been generally disclosed;
- (z) prescribing time periods under or varying or providing for exemptions from any requirement related to trading on undisclosed price sensitive information or market manipulation;
- (aa) regulating collective investment schemes and all aspects of the distribution and trading of the securities of collective investment schemes, including -
- (i) varying the prospectus requirements in the Act or the by-laws by prescribing additional disclosure requirements in respect of collective investment schemes and requiring or permitting the use of particular forms or types of prospectuses or additional offering or other documents in connection with the collective investment schemes;
 - (ii) prescribing permitted investment policy and investment practices for collective investment schemes and prohibiting or restricting certain investments or investment practices for collective investment schemes;
 - (iii) prescribing requirements governing the custodianship of assets of collective investment schemes;

(iv) prescribing minimum initial capital requirements for any collective investment schemes making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of collective investment schemes;

(v) prescribing matters affecting collective investment schemes that require the approval of security holders of the fund or Commission, including, in the case of security holders, the level of approval;

(vi) prescribing requirements in respect of the calculation of the net asset value of collective investment schemes;

(vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to the securities of collective investment schemes;

(viii) respecting sales charges imposed on purchasers of securities of collective investment schemes, and commissions or sales incentives to be paid to market actors in connection with the securities of collective investment schemes;

(ix) prescribing procedures applicable to collective investment schemes and any other person or company in respect of sales and redemptions of collective investment scheme securities and payments for sales and redemptions; and

(x) prescribing requirements in respect of, or in relation to, promoters, managers, advisers or persons and companies who administer or participate in the administration of the affairs of collective investment schemes;

(bb) prescribing requirements relating to the qualification of a market actor to act as an investment adviser to a collective investment schemes;

(cc) varying the Act or the by-laws with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers, and the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes of the Act;

(dd) requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents, instruments or information required under or governed by the Act or the by-laws and all documents, instruments or information determined by the by-laws to be ancillary to the documents;

(ee) respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of the Act, including, self-regulatory organizations;

(ff) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under the Act and the by-laws, including, the conduct of investigations and examinations and the conduct of hearings;

(gg) prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of the securities law of Trinidad and Tobago;

(hh) varying the Act or the by-laws to permit or require the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of -

(i) documents, instruments or information required under or governed by the Act or the by-laws; and

(ii) documents, instruments or information determined by the by-laws to be ancillary to documents required under or governed by the Act or the by-laws;

(ii) establishing requirements for and procedures in respect of the use of, an electronic or computer-based system for the filing, delivery, furnishing or deposit of documents, instruments or information;

(jj) prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of the Act or the by-laws;

(kk) specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;

(ll) varying the Act or the by-laws to permit or require methods of filing or delivery, to or by the Commission, issuers, market actors, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by the securities laws of Trinidad and Tobago;

(mm) providing for exemptions from or varying the requirements under the Act or the by-laws in respect of amendments to prospectuses, or prescribing circumstances under which an amendment to a preliminary prospectus or prospectus must be filed;

(nn) regulating trading in securities that have been distributed but are not listed on a securities exchange;

(oo) providing for standards in respect of the governance of reporting issuers;

(pp) establishing requirements for reporting issuers to appoint audit committees and prescribing requirements relating to their functions, responsibilities, their composition, the independence of their members, the qualifications of their members and its review of an audit; and

(qq) prescribing, providing for exemptions from, or varying any or all of the time periods in the Act or the by-laws,

in addition to any other matter which may be prescribed under this Act.

General by-law power

(2) In addition to subsection (1), the Minister may, on the recommendation of the Commission, make by-laws in respect of any matter advisable for carrying out the purposes of this Act.

(3) By-laws made under this section shall be subject to negative resolution of Parliament.

(4) The Commission may establish a committee under section 16 to administer the by-laws made under subsections (1) and (2) and may make rules for the conduct of the business of that committee.

(5) By-laws may provide that a contravention thereof shall be punishable on summary conviction by a fine of up to one hundred thousand dollars or imprisonment for up to two years, or both.

Publication of proposed by-laws

152. (1) The Commission shall publish in the Gazette, in a daily newspaper of general circulation in Trinidad and Tobago, or in any regular periodical published by the Commission, at least sixty days before the proposed effective date thereof -

(a) a copy of any by-law that it proposes to recommend to the Minister;

(b) a concise statement of the substance and purpose of the proposed by-law; and

(c) a reference to the authority under which the by-law is proposed.

(2) After a proposed by-law is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed by-law.

(3) The Commission, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed by-law.

(4) The Commission is not required to comply with subsections (1) and (2) if -

(a) all persons who will be subject to the by-law are named and the information required by subsection (1)(a) to (c) is sent to each of them;

information required by subsection (1)(a) to (c) is sent to each of them;

(b) the by-law only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;

(c) the by-law makes no material substantive change in an existing by-law; or

(d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.

(5) Any person may petition the Commission to recommend the making, amendment or revocation of a by-law.

Division 2 – Orders of Commission

Power to order cessation
of trading - distributions

153. (1) Where the Commission considers that -

(a) a security is being traded in connection with a distribution contrary to this Act or the by-laws;

(b) a prospectus contains a misrepresentation;

(c) any of the circumstances specified under this Act or the by-laws as the basis for a refusal to issue a receipt for a prospectus exists; or

(d) an issuer, selling security holder or market actor fails to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Commission,

the Commission may order, subject to such conditions as it considers appropriate, that all trading in connection with the distribution cease at the time and for the period specified by the Commission.

Power to order cessation
of trading - general

(2) Where the Commission considers that -

(a) a material change relating to an issuer of a security has not been generally disclosed;

(b) trading in a security or fluctuations in the price of a security requires or require explanation;

(c) a reporting issuer has failed to comply with, or contravenes, any provision of this Act or the by-laws; or

(d) it is otherwise in the public interest or necessary for the protection of investors,

protection of investors,

the Commission may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security at the time and for the period specified by it.

(3) Where the Commission considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act or the by-laws from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 156, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed.

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 156, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Commission may extend it until the material change is disclosed and becomes public.

(6) The Commission shall forthwith give notice of an order under this section to -

(a) each person named in the order;

(b) the issuer of the security specified in the order;

(c) any other person the Commission believes is directly affected by the order; and

(d) if the order is made pursuant to subsection (1) or (2), every market actor registered under Part IV,

and shall include the text of the order in a regular periodical published by it, or in a daily newspaper circulating in Trinidad and Tobago.

(7) No person shall trade in contravention of an order under this section.

Orders in the public interest

154. (1) Where the Commission, on its own motion or on application by an interested person, considers it to be in the public interest, it may order, subject to such conditions as it considers appropriate -

(a) that a person comply with or cease contravening, or that the directors and senior officers of the person cause the person to comply with or cease contravening -

(i) this Act or the by-laws;

- (ii) an order of the Commission; or
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;
- (b) that a person not act as a director or senior officer of a reporting issuer;
- (c) that a market actor or reporting issuer -
 - (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;
 - (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the business or affairs of the market actor or issuer that the Commission considers must be disseminated;
 - (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;
- (d) that a market actor be reprimanded or that the registration of a market actor be suspended or revoked in accordance with sections 71 and 72;
- (e) that the any exemption contained in the Act or the by-laws do not apply to any person permanently or for such period specified in the order;
- (f) that a market actor submit to a review of his practices and procedures and institute such changes as may be ordered by the Commission;
- (g) that any person be reprimanded;
- (h) a person, security, trade, distribution, or registration be classified under Parts III, IV or VI, and the requirements appropriate to the class;
- (i) any person, market actor, self-regulatory organization or issuer be exempted from any requirement of this Act or the by-laws; and
- (j) any documents filed with another government agency be filed with the Commission.

(2) The Commission shall send written notice of every order made under this section to any person that is directly affected by the order.

(3) An order granting an exemption is effective against all persons, but the Commission shall make an order revoking or modifying such an order when it finds that a determination reflected in it is no longer consistent with the facts.

(4) The Commission shall forthwith give notice of an order under this section to -

(a) each person named in the order; and

(b) any other person the Commission believes is directly affected by the order; and

and shall include the text of the order in a regular periodical published by it, or in a daily newspaper circulating in Trinidad and Tobago.

Order for penalty

155. (1) Notwithstanding any other provision of this Act or the by-laws, where the Commission after a hearing determines that a person has contravened this Act or any by-law or an order of the Commission and considers it to be in the public interest to make the order, the Commission may order the person to pay to the State a penalty of not more than fifty thousand dollars.

(2) Where the Commission makes an order under subsection (1) the Commission shall file in the registry of the Court a copy of the order certified by the Chairman of the Commission and on being filed the order shall have the same force and effect, and all proceedings may be taken on it as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 158 or with the Tribunal pursuant to section 38.

(3) Every penalty imposed by the Commission in the exercise of its powers under this Act or the by-laws shall be payable into the general revenue and may be recovered by the State as a civil debt and for the purposes of the proof of such debt a certificate under the hand of the Chairman or the Chief Executive Officer of the Commission shall be receivable in evidence as sufficient proof of such debt.

Division 3 - Hearings

Conduct of hearings

156. (1) 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 and to any interested market actor or self-regulatory organization including -

(a) a statement of the time, place and purpose of the hearing;

(b) a reference to the authority under which the hearing is to be held;

(c) a concise statement of the allegations of fact and law; and

(d) a statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

Commission may proceed without giving him further notice.

(2) The Commission may -

(a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Trinidad and Tobago; and

(b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(2A) Notwithstanding subsection (2), no person giving evidence before the Commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Court is entitled in respect of evidence given by him before such Court.

(3) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.

(4) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to rules made under section 21, may present evidence and argument and may cross-examine witnesses at the hearing.

(5) A witness at a hearing under subsection (1) may be advised by counsel.

(6) The Commission may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

(7) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(8) The Commission shall -

(a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;

(b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing, and

(c) publish a copy of the order and reasons or a summary thereof in a periodical published by it or in a daily newspaper but the Commission may omit the name of an affected person from an

order so published.

(9) Subsection (1) does not apply to -

- (a) an appointment that is made under section 160(1) or 161(1);
- (b) an order that is essentially procedural;
- (c) an order that does not adversely affect the rights or interests of any person; or
- (d) an interim order.

Division 4 - Appeals

Appeals for review re:
section 7 or 56

- 157.** (1) A person directly affected by a final order made pursuant to authority delegated under section 7, or by an order of a self-regulatory organization under section 56, may appeal the order to the Commission.
- (2) The Commission may of its own motion review an order made pursuant to authority delegated under section 7 or made by a self-regulatory organization under section 56 and shall provide a reasonable opportunity for a hearing and give reasonable notice to each person, including a self-regulatory organization, directly affected by the order.
- (3) On an appeal or review under this section the Commission may, but subject to subsections 57(3), (4) and (5) in the case of an appeal of an order of a self-regulatory organization made under section 56, confirm the order or make such orders as it considers appropriate.
- (4) An order that is subject to appeal or review under this section takes effect immediately, but the Commission or the person who made the order may grant a stay pending the decision of the Commission.

Appeals for review to
Court of Appeal

- 158.** (1) Unless an appeal of such order lies to the Tribunal under subsection 38, and subject to subsection 40(5), a person directly affected by a final order of the Commission may appeal the order to the Court of Appeal.
- (2) No appeal may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 157.
- (3) An order that is subject to appeal under this section takes effect immediately, but the Commission or the Court of Appeal may grant a stay pending the hearing of the appeal.
- (4) The Commission is entitled to appear and be heard on the merits on an appeal under this section or on any other application to the Court of Appeal relating to the exercise by the Commission of its powers.

(5) On an appeal under this section, the Court of Appeal may make or may direct the Commission to make any order that the Commission is authorized to make and which that Court of Appeal considers just and proper, or it may remand the case to the Commission for further proceedings subject to any conditions which that Court of Appeal thinks fit.

Appeal to Court of
Appeal against by-law

159. (1) A person affected by a by-law of the Commission may appeal to the Court of Appeal against the application of that by-law to him.

(2) A by-law that is subject to appeal under this section takes effect at the time specified by the Commission, but the Commission or the Court of Appeal may grant a stay pending review.

(3) The Commission is entitled to appear and be heard on the merits on an appeal under this section.

(4) On an appeal under this section, the Court of Appeal may confirm or revoke a by-law or any part thereof, or may remand the matter to the Commission for further proceedings subject to any conditions that the Court of Appeal considers proper, but the Court of Appeal may revoke a by-law or any part thereof, only if -

(a) it is arbitrary, capricious or an abuse of discretion;

(b) it is in excess of the Commission's jurisdiction;

(c) it was made in contravention of section 152; or

(d) a specific material fact found by the Commission after an evidentiary hearing convened pursuant to section 156 is not supported by the evidence.

Division 5 - Investigations

Investigation

160. (1) The Commission may appoint a person to conduct an investigation to ascertain whether any person has contravened, is contravening, or is about to contravene, this Act or the by-laws.

(2) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control.

(3) A person appointed by the Commission pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.

(4) A person who gives evidence in an investigation under this section may be represented by counsel.

(5) Where a person who is required by the Commission to give evidence or attend a hearing in the course of an investigation fails or refuses to -

(a) attend; or

(b) give evidence on oath, or with affirmation,

the Commission may make an application to the Court to so compel the person.

(6) An investigation under this section shall be held in camera.

(7) A person appointed by the Commission pursuant to subsection (1) shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.

(8) The Commission may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall -

(a) provide a person against whom an adverse finding is to be made with fourteen days notice of the finding and an opportunity to be heard in person or by counsel; and

(b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Conduct of inquiry re:
proposed by-laws

161. (1) The Commission may conduct an inquiry to aid in the prescription of by-laws under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.

(2) The Commission may exercise the powers specified in section 160(2) and (3) in relation to an inquiry under this section.

(3) A person who gives evidence in an inquiry under this section may be represented by counsel.

(4) An inquiry under this section may be conducted in public, but a person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position for the record in the inquiry.

(5) The Commission may publish a report or other information concerning an inquiry under this section but a person who is likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

- 162.** (1) The Commission may at any time appoint a person in writing –
- (a) to examine or review the books, records and documents of a market actor, including at the place of business of the market actor or reporting issuer; or
 - (b) examine or review the financial affairs of a market actor;
- and to prepare such financial or other reports as the Commission may require, whether or not the Commission is of the view that the market actor or reporting issuer may be in breach of this Act or the by-laws
- (2) A market actor shall permit any person appointed under subsection (1) to enter the place of business of the market actor for the purpose of examining or reviewing the books, records and documents of the market actor during normal business hours.
- (3) Where, upon the application ex parte of the Commission, the Court is satisfied that a person other than a market actor or a reporting issuer may be in breach of this Act or the by-laws, the Court may make an order authorizing the Commission to examine the records and financial affairs of that person.
- (4) A person appointed by the Commission pursuant to subsection (1) or (2) may examine and make copies of all the records, books of account, securities, cash, bank accounts and other data of the market actor, reporting issuer or person whose books, records and affairs are to be examined.
- (5) No person shall withhold, conceal, destroy or refuse to produce any document, instrument, writing, information or record required for the purpose of the examination by a person appointed pursuant to this section.
- (6) The Commission may charge a market actor or reporting issuer a prescribed fee for an examination made under this section.

Division 6 – Orders of Court

- 163.** (1) Where the Commission considers that a person has failed to comply with or is contravening this Act or any by-law or an order, the Commission may, in addition to any other powers it may have, apply to the Court for a permanent or temporary injunction directing -
- (a) the person to comply with or to cease contravening this Act, the by-law or the order; and
 - (b) the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act, the by-law or the order.

(2) On application under subsection (1), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing-

- (a) an order requiring restitution or disgorgement of profits;
- (b) an order restraining the conduct complained of;
- (c) an order requiring compliance with this Act or the by-laws or an order;
- (d) an order requiring disclosure of any information;
- (e) an order setting aside a transaction relating to trading in securities; or
- (f) an order requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

Appointment of receiver,
etc.

164. (1) Where the Commission considers that it is necessary in the public interest or for the protection of investors to prevent -

- (a) a person who has contravened this Act or any by-law; or
- (b) a market actor or self-regulatory organization whose registration under this Act has been suspended or revoked,

from dealing with property under his control or direction, it may apply to the Court and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, creditors or security holders of that person, or members of that person to do so.

(2) Where the Commission intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Inspector of Banks with regard to the proposed application.

(3) The Court may make an order under subsection (1) on an ex parte application by the Commission for a period not exceeding fifteen days.

(4) The provisions of Division 3 of Part IV of the Companies Act shall apply to a receiver or receiver-manager appointed under this section.

Disqualification of
directors and senior
officers

165. (1) When, on the application of the Commission, the Court is satisfied that an individual is unfit to be concerned in the management of an issuer, the Court may order that that individual shall not, without the prior leave of the Court, be a director or senior officer of the issuer, or be in any way, directly or

indirectly, concerned with the management of the issuer for such period -

(a) beginning-

(i) with the date of the order; or

(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years, as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Trinidad and Tobago or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Commission shall give that individual not less than ten days notice of its intention to make the application.

(4) On the hearing of an application made by the Commission under this section or an application for leave under this section, the Commission and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

Division 7 - Offences

General Offences

166. (1) A person who -

(a) makes a misrepresentation in contravention of this Act or any by-law;

(b) makes a misrepresentation to any person appointed to conduct an investigation under section 160 or to the Commission in connection with an inquiry under section 161;

(c) contravenes section 49 or 87; or

(d) contravenes a provision of this Act or the by-laws for which no penalty or sanction is specified in respect of that contravention, whether by action or omission;

is guilty of an offence and is liable -

(e) on indictment to a fine of up to four hundred thousand dollars and to imprisonment for up to two years, or both, or

(f) on summary conviction to a fine of up to two hundred thousand dollars and to imprisonment for up to six months, or both.

(2) A person who knowingly or recklessly contravenes an order of the Commission or subpoena or other request or summons under this Act, is guilty of an offence and is liable on summary conviction to a fine of up to fifty thousand dollars and up to imprisonment for one year, or both.

(3) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in-

(a) this Act or any by-law;

(b) a judicial judgment or opinion; or

(c) an order or official release of the Commission,

is a defence in a proceeding under this section.

Liability of directors, etc.

167. (1) Notwithstanding any other provision of this Act or the by-laws, where a person has been convicted of an offence under this Act or any by-law then, any director, senior officer, or supervisor of the person who knowingly or recklessly authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) A person convicted of an offence against this Act or any by-law is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(3) Reasonable reliance, including reliance on advice of counsel, an auditor or other expert, in good faith, is a defence in a proceeding under this section.

(4) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(5) The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Rules of the Supreme Court, 1975 as if the certificate were a bill of costs, and the Master or Registrar shall review the cost and may vary them if he considers them unreasonable or not related to the investigation.

(6) The scales of costs in Order 62 of the Rules of the Supreme Court, 1975 do not apply to a certificate reviewed under this section.

(7) After review the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of that Court.

Prosecution of summary offences

168. (1) Notwithstanding any other written law, an officer of the Commission may, in relation to an alleged summary offences against this Act or any by-law institute and conduct proceedings, including criminal proceedings, in a summary court.

(2) Notwithstanding any other written law, an officer of the Commission may, in relation to an alleged summary offences against this Act or any by-law, institute and conduct proceedings before the Tribunal.

PART XII

TRANSITIONAL PROVISIONS

Repeal Chap. 83:02

169. The Securities Industry Act is repealed Repeal Chap. 83:02.