Review and Revision of the Trinidad and Tobago *Securities Industry Act, 1995* and Related By-Laws and Associated Legislation

INTERIM REPORT

December 19, 2003

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SCHEDULES

EXECUTIVE SUMMARY

Stikeman Elliott LLP has been retained by the Trinidad and Tobago Securities and Exchange Commission (the "**TTSEC**") to conduct a review of the *Securities Industry Act, 1995*, its by-laws and associated legislation, and to provide recommendations aimed at bringing the securities regulatory regime in Trinidad and Tobago to the level of international best practice.

As part of this mandate, the team from Stikeman Elliott LLP has conducted a review of the existing legislation, held public meetings with market participants in Trinidad and Tobago on three occasions, met with important stakeholders including but not limited to, the Central Bank and the Stock Exchange, reviewed the comments provided by those participants to the TTSEC, and has engaged in numerous discussions with the TTSEC and its staff on the matters and issues raised during the course of the mandate to date.

Several themes emerged in the course of our review. These themes, are reflected in this Executive Summary. Our principal recommendations resulting from the mandate are also summarized below.

Balanced Approach to Recommendations

There have been a number of competing concerns identified during the course of the mandate. These include the emerging state of the securities markets in Trinidad and Tobago, the need to balance market development with investor protection, the expertise and resources available in the country in securities regulation and related fields, and the need for a level playing field amongst securities market participants.

Given the scope of the mandate, and these concerns, we have proposed a balanced approach for the capital markets in Trinidad and Tobago. Recommendations represent international best practice in most areas. In some areas the Consultants recommend incremental change in the direction of international best practice standards, while accommodating the competing concerns of market development and availability of resources, as well as the ability of the market to adjust to change and the financial costs of complying with the proposed changes. In these areas, international best practice is proposed to be achieved in stages in order to accommodate market development. However, the Consultants recommend that international best practice in all areas of securities regulation should be the goal of the securities regulators in Trinidad and Tobago, but that implementation in stages may be the more prudent course of action for the near term in some areas.

The competing considerations and factors that have influenced the Consultants' recommendations are found in Part 3.1 of Chapter 3.

Conceptual Underpinnings

Several conceptual and structural changes for securities regulation in Trinidad and Tobago have been recommended by the Consultants. These include the evolution of the basis of securities regulation in Trinidad and Tobago from issuer-based jurisdiction to investor-based and activity-based jurisdiction, as well the separation of the policymaking, enforcement and adjudicative functions of the securities regulatory authorities in the country. These changes are reflected in the draft legislation included with this Interim Report. In particular, we refer to the new proposed Securities Market Tribunal and the suggested amendments to the *Companies Act* that move "public company" regulation under the auspices of the *SIA, 1995*.

In addition, the Consultants are recommending a more prominent use of subordinate legislation, such as by-laws, in establishing the securities regulatory regime in Trinidad and Tobago. To that end, three new draft by-laws are included with this report – a by-law on collective investment schemes ("**CIS**"), a prospectus by-law and a general by-law. A fourth by-law regulating take-over bids has been previously published by the TTSEC and was the subject of a public meeting in August, 2003. It is being addressed separately from this Interim Report.

Part 3.3 of Chapter 3 sets out the Consultants' views for the conceptual underpinnings underlying securities regulation in Trinidad and Tobago.

The Securities Market Tribunal

The most significant structural change recommended by the Consultants is the creation of a new Securities Market Tribunal (the "**Tribunal**"). The Tribunal, as an *ad hoc* body, would assume many of the adjudicative functions of the TTSEC. Its mandate would be to hear appeals of certain TTSEC and staff decisions, as well as to hear market misconduct cases at first instance brought by the TTSEC.

The primary reasons for the recommendation to establish the Tribunal are twofold. First, the performance of the multiple functions can strain the resources of the TTSEC and detract from performance of its other functions. The adjudicative function also calls for different skills than the policy making, oversight and investigation functions. Second, a structure where the staff report to the TTSEC and the TTSEC adjudicates on decisions of staff or disciplinary proceedings brought by the staff, may give rise to concerns about "structural" bias or reasonable apprehension of bias. In recent years, the structure of securities regulatory authorities has been the subject of debate, including in Canada, where recent reports have recommended that multi-functional structure be reconsidered on a priority basis.

As an appellate body, the Tribunal would review decisions of the TTSEC and its staff on matters such as prospectus receipts and market actor registration matters. In its role as a

forum for the prosecution of market misconduct offences, the Tribunal would hear matters related to the alleged breach of provisions of the revised *SIA, 1995* dealing with insider trading, market manipulation, maintaining or creating artificial prices for securities, and breaches of reporting issuer disclosure obligations.

A full discussion of the Tribunal, including its proposed structure, functions, and powers, can be found in Chapter 4.

Registration of Companies and Individuals

The Consultants are recommending a significantly revised registration regime for brokers, dealers, traders, underwriters and investment advisers. Of the two most significant recommendations in this area, one is substantive and the other is structural.

With respect to structural changes, the Consultants recommend that the detailed requirements for the registration of market actors be left to by-laws. Fundamental to a modern and effective securities regulatory regime is the ability of the regulator to respond in a timely, concerted and effective manner to changes in the securities markets. As a result, many jurisdictions have given the authority for creating and enforcing subordinate legislation to their securities regulatory authority. This has been justified on numerous grounds, including that the legislative body lacks the time to deal with complex and detailed requirements of securities regulation, that primary legislation becomes less accessible and understandable if all matters of law are "crowded" into it, that subordinate legislation provides a forum for managing detail that, if the legislative body were required to work out, would result in lengthy delays in the enactment of legislation which delays would be prejudicial to the public interest and the markets. This principle is now reflected in the proposed legislation as the detailed criteria to be satisfied to obtain registration as a broker-dealer, investment adviser, or underwriter (the simplified categories proposed), appear in the General By-Law.

With respect to substantive changes, the Consultants are recommending a regime whereby companies and individuals are separately registered, and the categories of registration simplified. Under the proposed *SIA, 1995* persons wishing to carry on business as a broker-dealer, investment adviser or underwriter would need to carry on that business through a company. The existing category of 'securities company' is proposed to be deleted. With limited exceptions, the employees of the registered company that conduct the securities business would need to be registered individually as a director or senior officer, or registered representative.

A third important recommended change is a category of limited temporary registration for individuals that conduct brokering or advising activities in Trinidad and Tobago. Such temporary market actors would need to be sponsored by a broker-dealer or investment adviser in Trinidad and Tobago. These temporary market actors, who would already be registered in an approved foreign jurisdiction, would be permitted to conduct

these activities in the country for no more than 30 days in a calendar year, and would have limited obligations.

The Consultants recommendations for changes to the registration of brokers, dealers, underwriters and investment advisers can be found at Part 3.6 of Chapter 3.

Reporting Issuer Disclosure Regime

Appropriate and timely disclosure of information relating to reporting issuers is a necessary condition for the establishment of fair, efficient and transparent capital markets. The existing continuous disclosure regime in Trinidad and Tobago falls short of international best practice in this area. Accordingly, the Consultants are recommending changes to increase the amount and timeliness of information flowing from issuer to investor. In particular, the proposed revisions to Part V of the *SIA, 1995* would require reporting issuers to:

- prepare and file annual audited financial statements in accordance with International Financial Reporting Standards ("**IFRS**") within 120 days of their financial year-end;

- prepare and file a management's discussion and analysis on its annual audited financial statements, which would supplement the financial statements, and would discuss material information and changes about the reporting issuer's financial position that are not readily apparent from reading the financial statements;

- commencing in 2005, prepare and file interim (quarterly) unaudited financial statements in accordance with IFRS within 60 days of a quarter end;

- have their chief executive officer and chief financial officer (or their equivalents) certify the accuracy of annual audited financial statements;

- have an audit committee composed of independent members; and

- solicit proxies in connection with securityholder meetings, and provide a minimum standard of information to securityholders with respect to the matters to be conducted at the meeting.

To supplement the recommended disclosure requirements, the Consultants are also recommending new offence provisions which would impose liability on directors for knowingly authorizing, permitting or acquiescing in the failure of a reporting issuer to comply with its disclosure obligations. As well, auditors who provide false audit reports would face fines and potentially a ban on being the auditor of a reporting issuer for up to five years.

Finally, the Consultants are recommending that issuers that are subject to oversight in an approved jurisdiction be exempted from the disclosure requirements in Trinidad and Tobago on the basis that they are already subject to disclosure requirements at least as rigorous in an approved foreign jurisdiction, and that they provide Trinidad and Tobago investors with the same documents provided to investors in the home market. This exemption would be available, provided that the issuer has no more than 10% of its voting securities held in Trinidad and Tobago.

Part 3.7 of Chapter 3 discusses the recommended continuous disclosure regime for reporting issuers.

Distributions and Offers of Securities

In the *SIA, 1995* at present, an "offer to the public" attracts the obligation to file a registration statement with the TTSEC, while a "distribution" attracts the requirement to prepare and file a prospectus with the TTSEC. The Consultants recommend that the concept of "offer to the public" be removed from the *SIA, 1995* and the concept of "distribution" be retained as the sole concept for determining when an issuer would need to prepare, file, and have receipted, a prospectus. A registration statement would be required to be prepared and filed following a distribution of securities and would report on the results of the distribution.

The revised definition of "distribution" in the proposed *SIA, 1995* would catch all treasury issuances of securities of all types of issuers, both private and public. It would also catch sales by controlling securityholders. All issuances of securities would attract the prospectus obligation subject to an appropriate set of exemptions from the prospectus requirement to capture those trades, where, for policy reasons, a prospectus is not warranted in order to protect an investor's interests. Exemptions include private placements to a revised group of "sophisticated purchasers". It is recommended that individual "sophisticated purchasers" would be required to obtain investment advice in order to utilize the exemption.

Securities that are issued on a prospectus exempt basis would be subject to a "hold period" during which time they could not be traded again without the filing of a prospectus or the use of a subsequent prospectus exemption. Securities distributed under a prospectus would be freely tradable by the purchaser, other than a purchaser that is a controlling securityholder.

A distribution of asset-backed securities would require specific and more detailed disclosure in a prospectus which qualifies the distribution of the asset-backed securities, including the features or aspects of the securitization, information pertaining to the nature, performance and servicing of the underlying pool of financial assets, the material attributes and characteristics of the asset-backed securities, the existence of any third party or internal support or credit enhancement arrangements established to protect holders of the asset-backed securities from losses associated with the performance of the financial assets, and

information in respect of persons or companies who sell the assets or provide services or other support in respect of the securitization transaction. The Consultants also recommend that, in order for asset-backed securities to be eligible for sale under a prospectus, the securities would need to have an approved rating (which would be a rating of "investment grade") from an approved rating organization. In the case of prospectus exempt distributions of asset-backed securities, such transactions could not be completed until the purchaser of the asset-backed security had received a prescribed risk disclosure statement (although an investment grade rating would not be required).

As well, the Consultants recommend that exemptions from the prospectus requirements be made available to approved foreign issuers where the issuer uses the foreign offering documents reviewed and utilized in an approved foreign jurisdiction. There would be little or no review of the documents by the TTSEC. Rather, the TTSEC would be relying on the approval process of the securities regulatory authority in the designated foreign jurisdiction. Such a system would give issuers an incentive to distribute securities in the country. It would increase the number and type of securities available to the investing public while still providing the investing public and local market actors with an appropriate level of investor protection. However, the exemptions would not be available where the approved foreign issuer has more than 10% of its voting securities in Trinidad and Tobago following a distribution, or failed to have a minimum market capitalization.

Part 3.8 of Chapter 3 discusses the recommended changes to the securities offering and prospectus system in Trinidad and Tobago.

Market Manipulation Offences

IOSCO recognizes that the possibility and types of market manipulation are, in part, a function of the characteristics of the particular market (such as its size and liquidity), and that different jurisdictions have taken different approaches to defining, investigating and prosecuting market manipulation. Whatever the approach, should it be ineffective, confidence in the markets will suffer, thereby reducing the efficiency of the capital markets. The first step to effective deterrence of market manipulation is effective legislation prohibiting activities that constitute market manipulation. Accordingly, the Consultants are recommending a number of changes to the existing market manipulations prohibitions in the *SIA , 1995.*

Each of the existing market manipulation prohibitions is proposed to be expanded with appropriate additions including to address the creation of artificial prices for securities and a prohibition against making any misrepresentation to induce a purchase or sale of a security. As well, the Consultants recommend a number of additional new market manipulation offences which prohibit price rigging and the manipulation of prices on a securities exchange.

Effective market manipulation legislation requires appropriate penalties to deter market manipulation. The Consultants are recommending increases to the potential fines for breaches of the market manipulation prohibitions of up to four hundred thousand dollars on indictment, and up to two hundred thousand dollars on summary conviction. No change has been recommended to the maximum prison sentence of two years.

Finally, market manipulation offences are recommended to be prosecuted either on a civil basis before the Tribunal or on a criminal basis before the courts. The Tribunal would have greater flexibility in hearing cases and proof would be on the balance of probabilities. However, the Tribunal would not have the power to impose criminal sanctions. Where the offence was serious enough to warrant criminal sanctions, the matter could be referred to the Director of Public Prosecutions.

Part 3.9 of Chapter 3 discusses the recommended changes to the market manipulation provisions of the SIA , 1995.

Insider Trading and Insider Reporting

The recommendations in this Interim Report address both insider dealing and insider reporting requirements (the term "insider" is used in this Interim Report to refer to "persons connected to a reporting issuer" as defined in proposed *SIA , 1995*).

Insider dealing is prohibited conduct in all major financial markets. It is prohibited for a number of different reasons including the desire for fairness in financial markets, the need to enhance investor confidence and encourage timely disclosure of price sensitive information while deterring conduct on the part of insiders which often involves a breach of trust or duty. For markets to operate successfully, investors must have confidence that there is a level playing field and that insiders are not benefiting to the detriment of public investors through access to insider information.

Accordingly, the Consultants are recommending changes aimed at, among others, clarifying the prohibition on insider dealing, permitting fair and effective enforcement of violations, fostering investor confidence in the securities marketplace, and increasing transparency by enhancing the quality and timeliness of information on securities dealings by directors and substantial shareholders.

The basic recommended approach to insider dealing is that persons commonly known as "insiders", who have access to price sensitive information, must either disclose and disseminate that information to the market or they must refrain from trading. Similarly, an insider who has price sensitive information acquired as a result of his connection to the issuer must not disclose that information to other persons except in the necessary course of business. Outsiders who learn information from an insider are similarly prohibited from trading. Two recommended provisions would operate to clearly prohibit certain uses of "undisclosed price sensitive information" by persons connected to a reporting issuer,

including trading for their own account, counseling others to trade, and disclosing the information prior to its general dissemination, other than in the necessary course of business.

In addition, the Consultants recommend that the determination of who is a "connected person" be objectified and simplified by deeming certain persons to be "connected" to a reporting issuer, including its directors, senior officers, and substantial shareholders.

A person who commits a serious breach of the prohibitions on insider trading or tipping would be subject to increased sanctions. Insider trading may be prosecuted on a civil basis before the Tribunal or on a criminal basis before the courts. The Tribunal would have the power to impose civil sanctions such as a fine, require that compensation be paid or prohibit the person from being a director of a reporting issuer. In the event of criminal prosecutions, it is recommended that the penalty on summary conviction would be the greater of the profit made or loss avoided and $200,000, and up to six months in prison. The financial penalty on indictment is proposed to be the greater of $400,000 and double the profit made or loss avoided. The potential prison term would remain at two years.

With respect to insider reporting, it is standard international practice to require insiders to report their ownership of, and transactions in, securities of issuers of which they are insiders. The Consultants are recommending changes aimed at increasing the information available to the marketplace about the activities of insiders, and to ensure that the information is disseminated in a timely manner. Under the recommended amendments, persons who are connected to the reporting issuer because they are (i) a director or senior officer of the reporting issuer (or of an affiliate) or (ii) a person that beneficially owns securities carrying more than 10% of the votes attached to all outstanding voting securities of the reporting issuer, would have to report their holdings in securities of the reporting issuer. Such a report would be required to be filed with the TTSEC within five business days of first becoming deemed to be connected to a reporting issuer, and thereafter within five business days of every subsequent trade in securities of the reporting issuer. The Consultants are also recommending consequential changes to the *Companies Act* in this area.

Part 3.11 of Chapter 3 discusses the recommended changes to the insider dealing prohibition and insider reporting system in Trinidad and Tobago.

Statutory Rights of Action

The Consultants are recommending a number of changes to clarify the rights of action available to aggrieved investors, and significant changes in order to grant investors a right of action for damages in more circumstances than just for misrepresentations in a prospectus (as described below).

With respect to civil liability for misrepresentation in a prospectus, the Consultants recommend amendments to make it clear that a purchaser has a right of action for damages against the issuer and its directors, experts, promoters and other persons who sign certificates in a prospectus. The Consultants recommend that the issuer and selling securityholder be liable for any misrepresentation and not have the benefit of the due diligence defence. Other persons could rely on a due diligence defence.

The Consultants also recommend more limited rights of action for aggrieved investors in connection with:

- misrepresentations in offering documents other than prospectuses;
- insider trading;
- market manipulation; and
- breaches by market actors of conflict of interest provisions.

The Consultants are not recommending statutory secondary market civil liability for misrepresentations made in continuous disclosure documents of reporting issuers. However, as the availability of statutory rights of action for secondary market disclosure continues to develop in a number of jurisdictions, a civil liability regime for secondary market purchasers should, in time, be implemented in Trinidad and Tobago.

Part 3.13 of Chapter 3 discusses the recommended changes to the civil liability provisions of the SIA, 1995.

The By-Law System

The Consultants recommend changes designed to enhance and elaborate on the by-law making power of the Minister, based on recommendations made by the TTSEC.

The Consultants recommend that the majority of areas where by-laws may be prescribed be included in the proposed Part XI of the *SIA, 1995* for ease of reference. Concerns have also been raised about the potential for legal challenges in the areas of by-law making power. As a result, the Consultants suggest 43 main heads of detailed by-law making authority, and numerous sub-headings. Should by-laws be made beyond these areas, aggrieved persons would be able to appeal the application of the by-law. The Court of Appeal is empowered to revoke any by-law should it find that it exceeds the TTSEC's jurisdiction. Accordingly, there would be (as there currently are) a number of checks and balances in respect of the making of subordinate legislation – the Minister, Parliament and the Court of Appeal all have important roles to play.

In addition, the Consultants also recommend a general by-law making power. This power would help the TTSEC to respond quickly to the changing needs of the marketplace in the eventuality that no specifically enumerated head of by-law making power expressly provided the necessary authority. In the Consultants' view, such a power would necessarily be circumscribed by the purposes of the *SIA, 1995* and the functions of the TTSEC, and accordingly, the TTSEC would not be in a position to make a by-law unless it was within the scope of the *SIA, 1995.* As noted above, the making of by-laws are also subject to extensive checks and balances through the Minister and the "negative resolution" of Parliament.

Section 3.14 discusses the revised by-law making power of the Minister in the SIA, 1995.

Proposals to Amend the *Companies Act*

An important component of the recommendations made in this Interim Report would be the amendment of the *Companies Act* to harmonize it with the proposed *SIA, 1995*. *Companies Act* regulation of "public companies" is symptomatic of securities regulation based on the jurisdiction of incorporation of the issuer which results in differing standards being applied to "public companies" in Trinidad and Tobago – one standard for those governed by the *Companies Act* and a differing standard for those companies governed by the companies law of another jurisdiction. Entities that are not companies would be subject to another set of requirements. Harmonizing regulation of "public companies" in the *SIA, 1995* would "level the playing field" between different issuers, and provide uniform regulation for issuers that access the capital markets in Trinidad and Tobago, without discriminating between issuers. Accordingly, the Consultants have recommended in the proposed *SIA, 1995* that a number of provisions of the *Companies Act* be amended.

Chapter 6 discusses the consequential amendments proposed to be made the Companies Act.

The Conclusion of the Mandate

This Interim Report marks the completion of the second phase of the mandate. The Consultants hope that the detailed commentary accompanying the proposed *SIA, 1995* included in this Interim Report as well as the proposed by-laws will provide the TTSEC and market participants with significant points to discuss and consider as the process of modernizing the securities regulatory environment moves to the next stage.

The Consultants expect to meet with the TTSEC and its staff to discuss this report and to spend the necessary time to discuss the detailed recommendations and their underlying rationale. It is suggested that the TTSEC again invite market participants to comment on this Interim Report and to continue the useful dialogue with the industry that has helped to form the recommendations made in this report.

Following this process, the Consultants will produce the Final Report which would include final drafts of a revised *SIA, 1995*, the Prospectus By-Law, the CIS By-Law and the General By-Law.

INTERIM REPORT

1. BACKGROUND

1.1 TTSEC Request for Proposals and Selection of Stikeman Elliott LLP

1.1.1 Expression of Interest. In the fall of 2001, Stikeman Elliott LLP submitted an Expression of Interest to the TTSEC in response to its advertisement for consultancy services to review and revise the *Securities Industry Act, 1995* (the "***SIA, 1995***") and the by-laws made thereunder, the *Companies Act, 1995* (the "***Companies Act***") (as it relates to the securities industry), and associated legislation (collectively the "**Subject Legislation**").

1.1.2 Submissions. On December 14, 2001, the TTSEC invited Stikeman Elliott LLP to submit a Technical Proposal and Cost Proposal for the review and revision of the Subject Legislation. Stikeman Elliott LLP submitted its proposals on February 13, 2002. The Cost Proposal was revised as of August 13, 2002. The TTSEC subsequently awarded the mandate to Stikeman Elliott LLP by Letter of Award dated September 5, 2002.

1.1.3 Stikeman Elliott LLP. Stikeman Elliott LLP is a Canadian and international business law firm, with more than 400 lawyers working out of nine cities in Canada and around the world. The Stikeman Elliott LLP team is headed by the firm's chairman, Edward Waitzer. Mr. Waitzer has advised on a number of public policy initiatives over the course of his career. From 1993 to 1996 Mr. Waitzer was the Chair of the Ontario Securities Commission ("**OSC**"). He has also chaired the Technical Committee of the International Organization of Securities Commissions ("**IOSCO**") from 1994 to 1996.

1.1.4 Project Co-Leaders. Primary responsibility for the execution of the mandate, the preparation of the Inception Report, this Interim Report and the Final Report lies with the project co-leaders, Ermanno Pascutto and Dee Rajpal, as well as Mr. Quentin Markin, an associate lawyer with Stikeman Elliott LLP. Mr. Pascutto is a senior advisor to Stikeman Elliott LLP with a 20-year career as a securities regulator and lawyer. Mr. Pascutto played a critical role in the establishment of the Securities and Futures Commission in Hong Kong between 1989 and 1994. Prior to that position, Mr. Pascutto was the Executive Director of the OSC. Mr. Rajpal is a partner with Stikeman Elliott LLP whose practice focuses on public finance, mergers, and corporate law. Mr. Rajpal regularly advises boards of Canadian and international companies in respect of these transactions. He regularly speaks on corporate and securities law issues in Canada, and was a member of the SEDAR Toronto Working Group, which participated in the development of Internet-based electronic public company filings in Canada.

1.1.5 Other Project Members. As the scope of the project dictates, other members of Stikeman Elliott LLP and outside specialized consultants (as required and permitted under the terms of the mandate) have been utilized to execute the review. In this report the term "**Consultants**" refers to Messrs. Pascutto, Rajpal and Markin together with other members of Stikeman Elliott LLP and outside personnel engaged as part of the mandate.

1.2 Purpose and Scope of the Mandate

1.2.1 Purpose of the Mandate. The purpose of the mandate is to provide to the TTSEC detailed recommendations for a revised and amended *SIA, 1995* (and where necessary, other Subject Legislation), and to prepare draft legislation which will form the basis of legislation (including subordinate legislation such as by-laws) to be drafted by the Trinidad and Tobago Attorney General's Department in order to implement those recommendations of the Consultants which are accepted by the TTSEC.

1.2.2 Scope of the Mandate. The scope of the mandate is to conduct an overall review of the Subject Legislation with a focus on the appropriate regulatory framework in respect of collective investment schemes ("**CIS**"), take-over bid regulation, asset securitization transactions, and securities clearance and settlement systems.

1.2.3 Mandated Tasks. In order to complete the mandate, the Consultants have been mandated to do the following:

- Review the Subject Legislation and proposed related legislation (including subordinate legislation).

- Review the policy guidelines published by the TTSEC as well as reports of other consultants and other relevant documents that contain proposals/ recommendations for amendments to the Subject Legislation or new legislation regulating the securities industry.

- Review the Report of the Technical Committee appointed to assist in the formulation of mutual fund (CIS) legislation.

- To the extent applicable, review the reports, studies and other documentation prepared or published by international agencies, including IOSCO, the Council of Securities Regulators of the Americas ("**COSRA**"), the Organization for Economic Co-Operation and Development ("**OECD**") and the Inter-American Development Bank ("**IADB**"), with a view to incorporating those recommendations that would assist in achieving the project's goals.

- Obtain the views of the staff and commissioners of the TTSEC as well as market participants in reviewing the Subject Legislation.

- Prepare the Inception Report setting out the overall view of the Consultants with respect to the mandate.

- Prepare this Interim Report including detailed notes for amendments to the Subject Legislation, as well as new proposed legislation and by-laws.

- Prepare the Final Report containing draft legislation that will form the basis of legislation (and subordinate legislation) or legislative amendments to be drafted by the Trinidad and Tobago Attorney General's Department.

1.3 Framework of Review

1.3.1 Three Phased Review. The mandate has been divided into three distinct review phases each corresponding to one of the deliverable reports.

1.3.2 Purposes of Phase One. The purpose of phase one of the review was for the Consultants to familiarize themselves with the existing securities regulatory framework in Trinidad and Tobago, including proposed legislation and by-laws, and to develop an understanding of the local securities market participants and market conditions. An important part of this process was the review of previous consultative reports, position papers, studies and other related material.

1.3.3 Phase One Consultative Meetings. The major events of phase one were the consultative meetings held with the TTSEC, its staff, and securities industry and market participants in Port of Spain. Prior to these meetings the staff of the TTSEC provided the Consultants with a written list of legislative issues, areas of regulatory concern to staff, and suggested amendments to the Subject Legislation. The meetings in Port of Spain with the TTSEC were held to discuss these regulatory issues at a preliminary level, and to gather facts with respect to both the existing legal framework and local securities industry and market conditions. In addition, such meetings were also aimed at defining and clearly delineating the scope of the mandate and the TTSEC's business objectives. Subsequent meetings with securities industry and market participants had the goal of expanding the Consultants' knowledge of local market conditions and involving from the outset those most keenly interested in the legislative recommendations arising from the project. Phase one was completed upon delivery of the Inception Report to the TTSEC.

1.3.4 Purposes of Phase Two and Interim Report. The purpose of phase two was to refine the preliminary legislative recommendations made in the Inception Report in continuing consultation with both the TTSEC and its staff, and local market participants. The Consultants responded to comments made by the TTSEC and its staff and comments received from market participants. The further refinement of the recommendations resulted in the drafting and development of this Interim Report. This Interim Report contains more detailed findings resulting from the Consultants' review, and contains detailed recommendations for revising and amending the Subject Legislation, and drafting new legislation and by-laws, as appropriate. Phase Two will be completed upon the delivery of this Interim Report and after debriefs and discussions occur with the TTSEC and its staff.

1.3.5 Purposes of Phase Three and Final Report. The last phase of the mandate involves finalizing the recommendations made in the Interim Report for the purpose of the preparation of legislative amendments (or new legislation or subordinate legislation) by the Trinidad and Tobago Attorney General's Department. The Final Report will include detailed draft legislation and by-laws. The Final Report will also discuss other matters related to the Subject Legislation, where, as a result of the review and within the scope of the mandate, the Consultants' view is that additional amendments or changes should be considered.

1.4 Phase One Of Review

1.4.1 Initial In-Country Mission. The first in-country mission occurred between September 25, 2002 and September 27, 2002. The first objective of this mission was to meet with the TTSEC commissioners and their staff to discuss the scope of the mandate, their concerns with the current regulatory framework and their business objectives for the project. As well, meetings were held to obtain the first-hand views of participants in Trinidad and Tobago's securities markets which assisted the Consultants in obtaining a better understanding of the nature of the local market, particular local market conditions as well as specialized local concerns.

1.4.2 Market Participants. Representatives from the brokerage community, legal and accounting firms, unit trust and mutual fund companies (including bank providers), the Trinidad and Tobago Stock Exchange (the "**Stock Exchange**"), the Trinidad and Tobago Central Depository (the "**Central Depository**"), investment advisors, and securities companies were invited to meet with Messrs. Pascutto, Rajpal and Markin, to discuss the mandate and their concerns and views regarding the project. As well, separate meetings were held with officials of the Central Bank of Trinidad and Tobago (the "**Central Bank**") and the Commissioners and staff of the TTSEC.

1.4.3 State of Securities Regulation in Trinidad and Tobago. These meetings prompted an informed discussion amongst market participants on the state of securities regulation in Trinidad and Tobago. In addition to providing a forum for market participants to suggest changes to the Subject Legislation and to highlight other relevant concerns, these forums provided the Consultants with the ability to conduct fact finding in respect of the current legal framework governing securities regulation in Trinidad and Tobago (including the regulation of public issuers), the role of the Stock Exchange and other self-regulatory organizations, the nature of the institutional and retail securities markets, the prevalence and nature of investment products offered in the local market, disclosure standards, the day-to-day role of the TTSEC, and the securities registration and offering process. All participants were invited to submit written comments to the staff of the TTSEC by October 14, 2002. Written comments were received from a number of market participants and the Consultants were provided with a copy of all of these written comments.

1.5 Phase Two of Review

1.5.1 Phase Two Process. Phase Two commenced following the delivery of the Inception Report to the TTSEC. Owing to the results of the September, 2002 consultative meetings, an additional report was prepared – the Addendum to the Inception Report dated January 30, 2003 – which elaborated and provided greater detail to the recommendations made in the Inception Report. Additional in-country meetings were held on February 19 and 20, 2003 in Port of Spain between the Consultants, the TTSEC, its staff, and market participants to discuss the Inception Report and the Addendum to the Inception Report and the recommendations made in them. Following completion of these meetings, the Consultants began work on this Interim Report.

1.5.2 Draft Interim Report. On June 10, 2003, the Consultants provided the TTSEC and its staff with a draft of this Interim Report. Throughout the late summer and fall of 2003 the Consultants responded to the comments of the TTSEC and its staff based on their review of the draft Interim Report. Changes resulting from that process are reflected in this Interim Report.

2. THE INTERIM REPORT

2.1 Introduction and Purpose

2.1.1 Purpose of Interim Report. The purpose of this Interim Report is to further refine the preliminary legislative recommendations made in the Inception Report and the Addendum to the Inception Report based on the Consultants' continuing discussions with the TTSEC and its staff, as well as market participants in Trinidad and Tobago. This Interim Report also contains more detailed findings resulting from the Consultants' continuing review of the Subject Legislation, including detailed recommendations for changing (whether by revising or repealing) parts of these statutes, as well as draft revised legislation and new proposed by-laws which are included as schedules.

2.2 Structure Of The Interim Report

2.2.1 Interim Report Focus on Detailed Recommendations. The structure of this Interim Report is somewhat different than the structure of the Inception Report and the Addendum to the Inception Report. Whereas those reports focused more conceptually on recommended changes to securities regulation in Trinidad and Tobago, this Interim Report will instead focus on describing in much more detail the suggested changes to the *SIA, 1995* and the *Companies Act,* and other Subject Legislation, as applicable. In addition, comparisons are made between the suggested changes and international best practices and standards throughout this report. The following summarizes the discussion to follow.

2.2.2 Chapter Three Summary. Chapter Three of this Interim Report highlights the significant suggested changes to the *SIA, 1995*. Each of the sections within the chapter discusses one particular part of the *SIA, 1995* and the significant changes which are being proposed for that part. Most of these changes have been previously reflected in the Inception Report and the Addendum to the Inception Report. Some are new and have been developed based on the continuing consultative process with the TTSEC, its staff, and market participants, and the continuing review of the Subject Legislation. It should also be noted that not all changes previously suggested are reflected in this Interim Report, as some changes have been rejected as the mandate has developed and the issues have become more defined. As well, the commentary which discusses the significant changes to each Part of the *SIA, 1995* does not discuss all of the more technical amendments to the legislation. In addition to the significant conceptual and policy changes which are discussed, the Consultants have also suggested numerous other changes including drafting changes to the legislation and the by-laws. Schedule "B" to this Interim Report contains the complete text of the proposed *SIA, 1995* which would implement the Consultants recommendations. The Consultants encourage all of the recipients of this Interim Report to review each revised Part of the *SIA, 1995* found at Schedule "B" as they read the accompanying Part-by-Part commentary in Chapter Three. The Commentary is not exhaustive as it does not comment on all of the more technical proposed amendments.

2.2.3 Chapter Four Summary. Chapter Four of this Interim Report discusses the one entirely new recommended Part of the proposed *SIA, 1995* – The Securities Market Tribunal or simply the "**Tribunal**". This concept of moving many of the adjudicative functions of the TTSEC to a separate, independent body has been developed throughout the course of the mandate and has generally been positively received by market participants, with the greatest concerns surrounding resource limitations in the country. In Chapter Four, the Consultants discuss the suggested structure of the Tribunal, and in particular, the matters for which it will be responsible. The Tribunal would be created in a new Part II.A to the *SIA, 1995,* proposed legislation for which can be found in Schedule "B".

2.2.4 Chapter Five Summary. Chapter Five discusses the suggested by-laws for the *SIA, 1995.* In previous reports, the Consultants have recommended, and continue to recommend, that by-law making power be clearly defined and utilized. In modern securities markets, the use of subordinate legislation, be it by-laws, rules or regulations, is an increasingly vital component of an effective and efficient securities regulatory regime. By-laws provide the means for securities regulators to provide the details (both technical and otherwise) that are not appropriate for primary legislation. By-laws provide a means to respond relatively quickly to changes in the securities marketplace, which simply could not be achieved by amending the primary legislation each time a new issue or concern arose.

2.2.5 New Draft By-Laws. Accordingly, included with this Interim Report are three new suggested by-laws to complement the proposed changes to the *SIA, 1995* – the

Prospectus By-Law, the CIS By-Law and the General By-Law. Each of these will be discussed in Chapter Five. The Take-Over By-Law is the fourth by-law, which the Consultants have previously reviewed. Subsequent to that time, the Consultants worked with the TTSEC and its staff to develop a draft Take-Over By-Law, which by-law has since been republished for public comment and in respect of which public meetings were held on August 14, 2003. Given its separate time frame for implementation, the Take-Over By-Law is not specifically dealt with in this Interim Report. Schedule "C" contains the suggested CIS By-Law while Schedule "D" contains the suggested Prospectus By-Law. Schedule "E" contains the proposed General By-Law.

2.2.6 The New Securities Regulatory Regime. In total the Consultants are suggesting a securities regime for Trinidad and Tobago comprised of a revised *SIA, 1995* with four accompanying by-laws – the General By-Law, the Prospectus By-Law, the Take-Over By-Law and the CIS By-Law (although the Take-Over By-Law can be implemented earlier).

2.2.7 Chapter Six Summary. Chapter Six discusses consequential changes to the *Companies Act* to avoid duplication of regulation and to co-ordinate the *Companies Act* with the conceptual and other legislative changes reflected in the suggested changes to the *SIA, 1995*. In order to be implemented effectively, the Consultants suggest these components of a new securities law regime in Trinidad and Tobago, if accepted, be brought into force at the same time.

2.2.8 Chapter Seven Summary. Chapter Seven discusses three further recommendations of the Consultants which are not reflected in the proposed *SIA, 1995,* or draft by-laws, relating to a securities advisory committee, fees and the severity of penalties under the *SIA, 1995*.

2.2.9 Chapter Eight Summary. Chapter Eight concludes this Interim Report and discusses the suggested steps forward to the Final Report.

2.2.10 List of Commentators. Finally, it should be noted that Schedule "A" to this Interim Report contains a list of all of the comment letters which have been received by the Consultants from market participants to date in respect of the Inception Report and Addendum to the Inception Report. The Consultants understand that the TTSEC has not made these written comments publicly available. The Consultants have agreed with many of the suggestions and these are reflected in this Interim Report. Other changes have not been made. In all cases, the time and effort spent by market participants in reviewing the Consultant's previous reports and providing their comments has been of great value to the Consultants in helping to understand the securities marketplace and industry in Trinidad and Tobago. The Consultants hope that market participants would once again take the time and effort to carefully review this Interim Report and the proposed legislation and by-laws.