6. OTHER CONSIDERATIONS AND RECOMMENDATIONS

6.1.1 **Introduction**. In addition to the recommendations set out in this Final Report, the Consultants also make two additional recommendations and raise one point for consideration These are with respect to an advisory committee and fees, and the issue of the shareholder privacy.

6.1.2 **Advisory Committee**. The Consultants recommend that the TTSEC establish an advisory committee made up of market actors, reporting issuers, lawyers, accountants, investors and other persons who participate in the securities industry and marketplace in Trinidad and Tobago. The purpose of such a body would be to provide an on-going forum, which the Consultants suggest should meet periodically (e.g. on a quarterly basis), where the regulator can establish and continue a dialogue with those affected by its activities. The advisory committee need not be statutorily mandated and its discussions and deliberations would be non-binding on the TTSEC. For market participants, the benefits would include having regular access to the TTSEC and its staff to discuss new by-laws, developing issues in the marketplace, and regulatory policy issues. For the TTSEC, the benefits would include obtaining the important views of the marketplace before formulating and implementing new by-laws or determining the enforcement and regulatory priorities of the TTSEC. Such an advisory body would be the natural extension of the consultation process which has been undertaken with the market participants as a part of this mandate. Similar consultative bodies are used in Canada, Hong Kong and elsewhere.

6.1.3 **Fee Schedule**. Finally, the Consultants recommend that the TTSEC re-examine its fee schedule in light of the recommendations presented in this Final Report and the new documentary filings. The determination of fees is, however, largely a local matter, based on prevailing conditions in the local marketplace. Accordingly, no specific recommendations are made.

6.1.4 **Beneficial Shareholder Privacy**. The *SIA, 1995* contains a procedure which permits issuers to determine who their beneficial shareholders are (section 114). Through the Central Depository, a list may be compiled containing the names and addresses of these shareholders. We have not made any fundamental changes to this process but have clarified in Part VII of the *SA, 2005*, the ability of an issuer to identify its beneficial shareholders. However, maintaining the anonymity of beneficial shareholders has become an issue in Canada, and Canadian securities regulators have developed a system which allows beneficial shareholders to “object” to the disclosure of this information to issuers. Such objecting beneficial shareholders receive shareholder communications (such as annual reports) indirectly through participants and not directly from the issuer. As such, an issuer may never know the identity of a beneficial shareholder, but still communicates with them indirectly through CDS and its participants. It may be that there is a similar desire to protect shareholder privacy rights in Trinidad and Tobago, or there may not. This issue has

not been raised at any point in the mandate, but may be one which the TTSEC may wish to consider as fully dematerialized trading and settlement occurs in Trinidad and Tobago. The implementation of such privacy protections would, however, involve a re-examination of the TTCD rules and Part VII of the *SA, 2005*.

7. CONCLUSION

7.1.1 **Matters for Continuing Review and Consideration.** Securities markets are in a state of constant change and evolution and it is vital that the regulation of securities markets also evolve and change. The Final Report represents a major step forward in the reform of securities regulation in Trinidad and Tobago but it is not the end of the journey. This Final Report does not address all issues which arose during the course of our review of the Subject Legislation. Throughout the report we have identified important topics which fall outside the scope of our mandate but require consideration by the TTSEC including some matters that should be addressed on a priority basis. These include:

(i) Minimum proficiency requirements for market actors to ensure that registered individuals have a minimum understanding of the regulatory framework requirements and are knowledgeable of the financial products that they deal in or advise upon and the markets to which they provide services;

(ii) Prescribing capital requirements for market actors that reflect the level of business risk being undertaken and professional indemnity insurance in respect of those risks;

(iii) The contingency fund provided for in the proposed *SA, 2005* and in the General By-Law needs to be subject to a separate review and assessment;

(iv) Corporate governance requirements for reporting issuers need development including the functioning, responsibility and composition of boards of directors and the development of audit committee responsibilities. Consideration might be given to forming a task force or working party on corporate governance with the Stock Exchange and other stakeholders; and

(v) A review of the rules of the Central Depositary should be undertaken in light of developing international standards.

7.1.2 **Evolution of Securities Laws.** Change is the only constant in securities regulation, even in markets like the United States and Canada where regulators have been addressing regulatory issues for decades before the establishment of the TTSEC. The United States recently undertook a major overhaul of corporate governance and disclosure by reporting companies in the *Sarbanes Oxley Act* amendments. In Canada, in recognition of the need to keep legislation up to date and to ensure that it properly protects investors and fosters a fair and efficient marketplace, the Ontario *Securities Act* mandates the establishment of an advisory committee every five years to review the legislation, regulations and rules. The most recent committee published a list of

42 issues requiring consideration and its final report[16] ran to 295 pages and contained 95 recommendations for reform.

7.1.3 **Completion of the Mandate**. While this Final Report marks the completion of the mandate granted to Stikeman Elliott LLP to review the regulation of the securities marketplace in Trinidad and Tobago, it does not mark the end of the development of securities regulation in the country. The proposed *SA, 2005*, the Takeovers By-Law, the General By-Law, the Prospectus By-Law and the CIS By-Law, together with the detailed commentary in this Final Report, will establish a foundation for the enactment of a more modern securities regulatory regime for Trinidad and Tobago, but it is only a foundation, and one that will need to be continually reviewed and built up as the needs and demands of the country continue to change.

[16] Five Year Review Committee Final Report, March 21, 2003.