4. SUGGESTED BY-LAWS FOR THE SECURITIES ACT, 2005

4.1 Introduction

4.1.1 **By-Law Recommendations**. In this Chapter, the Consultants discuss the recommendations made with respect to the proposed by-laws which would accompany the proposed *SA, 2005*. One of the main benefits of by-laws is that they permit flexibility in regulation by giving the regulator the means to respond to developments in the marketplace. For the TTSEC, they would also provide a means to continue to refine securities market regulation in Trinidad and Tobago to keep pace with changing developments internationally all in the context of the regulatory framework established by Parliament in the *SA, 2005*. Accordingly, the Consultants recommend that the TTSEC continue to monitor developments internationally, and where appropriate, recommend changes to the Minister to be implemented by by-law.

4.2 The Take-Over By-Law

4.2.1 **Summary of Recommended Changes to Take-Over By-Law**. During the course of the mandate, the Consultants have recommended a number of changes to the draft Take-Over By-Law originally published in October, 2000 by the TTSEC. The Consultants recommended, among others, the following changes:

- Amendments to subsection 3(2) by expanding the definition of "affiliate" to include non-corporate entities such as partnerships, trusts and unincorporated associations.

- Amendments to paragraph 12(4)(a) to change the withdrawal rights to any time where the securities have not been taken up by the offeror as opposed to any time before the expiration of thirty-five days from the date of the bid. This change will help ensure that withdrawal rights are available if the bid expires beyond the minimum 35-day period.

- Amendments to subsection 12(12) to clarify that notwithstanding subsection 12(12), if the offeror waives any terms or conditions of a bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 12(4)(b) are applicable, the bid shall be extended without the offeror first taking up the securities which are subject to such rights of withdrawal. This is a technical amendment required to ensure that an offeror is not required to take up and pay in a circumstance where the withdrawal rights continue after a notice of change or variation to the bid.

- An amendment to subsection 17(5) to refer to publishing as opposed to mailing as subsection 17(3) permits bid documents to be published as opposed to mailed to recipients.

- Removal of the exemption found in paragraph 4(1)(c) of the October, 2000 version of the draft Take-Over By-Law which would have given an exemption from the take-over bid requirements where purchases were made from not more than five persons who did receive more than 115% of the market price for their securities. In the Consultants' view, while such a similar provision is found in Ontario securities laws, the exemption is not appropriately justifiable considering the general principle supporting take-over bid laws, being the equal treatment of all shareholders. It is also susceptible to manipulation.

4.2.2 **Furnishing of Securityholder List in Take-Over Bids**. As well, the Consultants recommended that the draft Take-Over By-Laws require an offeree issuer to furnish to an offeror a list of securityholders of the offeree issuer in order to permit the offeror to deliver the bid documents in compliance with the Take-Over By-Laws. Offeree issuers would have ten (10) days to comply with the request.

4.2.3 **Re-Publishing of Take-Over Bid By-Law**. On April 15, 2003, the TTSEC republished the proposed Take-Over By-Laws for public comment which took into account the Consultants' recommendations. A complete copy of the proposed Take-Over By-Law is available from the website of the TTSEC.

4.2.4 **Public Meetings August 14, 2003**. On August 14, 2003, the TTSEC held a public meeting in Port of Spain to discuss the proposed Take-Over By-Laws which was attended by the Consultants. A number of comments were received by the TTSEC from participants and which were provided to the Consultants. Subsequently, the Consultants provided their views on the comments received prior to the further publishing of the by-law.

4.3 The Collective Investment Scheme By-Law

4.3.1 **Introduction**. As part of the mandate, the Consultants have prepared the proposed CIS By-Law, included as Schedule "C" to this Final Report, to replace the Central Bank guidelines and TTSEC Policy Guideline 11.1. The proposed CIS By-Law sets out the requirements that apply to a CIS in addition to any other requirements contained in the proposed *SA, 2005* or any other by-law, including the Prospectus By-Law.

4.3.2 **Collective Investment Scheme By-Law Reflects Mixed Approach**. The proposed CIS By-Law contains a number of requirements that are designed to bring the regulation of CIS's in Trinidad and Tobago to the level of international best practice. In the proposed CIS By-Law, where appropriate, the Consultants have adopted a mixed "disclosure approach" and "substantive regulation approach" which is consistent with practice in Canada and the United States. The Consultants are of the view that this balance is suitable to the current situation in Trinidad and Tobago given the level of sophistication of CIS investors and the size and stage of development of the market.

4.3.3 **Definition of a CIS**. It is important to note that not all mutual investment structures will be constitute a CIS as defined (section 4). In order to be a CIS, the fund must provide for redemptions "on demand, or within a specified period after demand". Accordingly, many closed-end funds may not be a CIS for purposes of the proposed *SA, 2005* and the CIS By-Law where they lack this feature.

4.3.4 **Disclosure.** The Consultants do not recommend, among other things, regulating the legal form of a CIS, or prescribing the specific powers of the manager, custodian or other service provider of a CIS (other than providing that the manager and custodian must adhere to a standard of care). Instead, the Consultants recommend disclosure coupled with substantive regulation in certain areas in order to provide the marketplace with flexibility while ensuring that the appropriate standards are established for CIS's. The more significant features that are included in the proposed CIS By-Law are set out in this Part.

4.3.5 **Prospectus Disclosure for Collective Investment Schemes**. CIS's which intend to distribute securities in Trinidad and Tobago must file a prospectus that is prepared in accordance with the prospectus disclosure requirements set forth in Form No. 1 to the CIS By-Law ("**Form No. 1**"). In response to comments received on the Interim Report, Form No. 1 is now a stand-alone prospectus form for a CIS. A CIS need not look to the equivalent form for issuers in general in the Prospectus By-Law in drafting a prospectus (although other features of the Prospectus By-Law would still apply such as, for example, certification requirements and procedures for granting receipts). Form No. 1 requires the disclosure of a number of matters that are considered to be important to a prospective investor in making an investment decision. These matters include disclosure of:

- the investment objectives and investment strategies of the CIS;
- a statement on the suitability of the investment for certain types of investors;
- a description of the risk factors specific to an investment in the CIS;
- disclosure of the fees and expenses payable by the CIS and by holders of securities in the CIS's;
- disclosure of relationships that the CIS or its manager has with any person that may give rise to a potential conflict of interest;
- disclosure of how net asset value is calculated and the frequency of valuation;
- disclosure of the ten largest holdings of the CIS; and
- the inclusion of certain warning language where performance data is included.

4.3.6 **Regulation of Managers and Custodians**. The proposed CIS By-Law requires that the manager and the custodian of a CIS adhere to a standard of care (section 10 and

section 14), and be liable for losses arising out of its failure to meet such standard. In addition, consistent with the recommendation made by the Technical Committee appointed by the Minister of Finance in its report on the formation of mutual fund legislation dated March 16, 2001, a custodian must be a company that is licensed under the *Financial Institutions Act, 1993*, or a person that is regulated as a banking institution or trust company under the laws of a designated foreign jurisdiction (section 13(b)).

4.3.7 **<u>Regulation of Salespersons</u>**. Persons who deal in mutual funds with the public will be required to be registered under Part IV of the proposed SA, 2005 and the General By-Law as "registered representatives" of a broker-dealer. No additional registration requirements are imposed in the proposed CIS By-Law. As a result, these persons will have to meet the minimal educational and other standards generally required of "registered representatives". However, as discussed earlier in this Final Report, it is recommended that proficiency criteria for all categories of market actor be continually evaluated and updated once additional educational courses become available, or are recognized, in Trinidad and Tobago for the purpose of registration.

4.3.8 **<u>Approval of the Manager</u>.** The Consultants recommend that the manager of a CIS, other than a financial institution or a registered market actor, must obtain the approval of the TTSEC before acting as the manager of the CIS (proposed section 9).

4.3.9 **<u>Regulation of Trustees</u>**. The proposed CIS By-Law requires that the trustee of a CIS be responsible for the supervision of the activities of the manager of the CIS (proposed section 11). While the specific duties, responsibilities or requirements on trustees of CIS's are more appropriately regulated by trust law generally, and the declaration of trust establishing the CIS, the Consultants consider that the duty to supervise should be contained in the By-Law.

4.3.10 **<u>Names for Collective Investment Schemes</u>**. The Consultants recommend that a CIS adopt a name which best characterizes the CIS and be prohibited from adopting a name that is misleading (proposed section 7). In addition, a CIS must meet certain requirements in order to be referred to as a "bond fund" or "money market fund".

4.3.11 **<u>Names for a CIS not a Market Intrusion</u>**. The proposed requirements for consistency in naming a "money market" fund and "bond fund" in the Interim Report attracted significant comment. The Consultants have modified the recommendation made in the Interim Report to expand the types of funds which would qualify as either a "bond" or "money market" fund. These naming rules do not restrict companies from establishing funds beyond the parameters, but are intended to provide consistency for consumers of CIS products, and are justified on this basis in the name of investor protection. The purpose is not to limit the types of funds that can be established. Rather, the rule is proposed so that a consumer that is choosing among "money market" funds offered by several companies, can have a measure of assurance that the goals, objectives and holdings of such funds are

substantially the same. To the extent that balanced, or global bond, or sector specific funds are demanded in the marketplace, such funds are not prohibited, they just could not carry the name "money market" or "bond" unless the objectives and holdings fit in the prescribed categories.

4.3.12 **Calculation of Net Asset Value**. The proposed CIS By-Law does not prescribe any method for calculating net asset value ("**NAV**") of the CIS (proposed section 20). However, NAV must be calculated each business day by the CIS in accordance with the methodology set forth in its prospectus. Given that equity trading on the Stock Exchange currently takes place only three times weekly, the value of some funds may not change on a day-to-day basis. In the Consultants' view, the fact that the NAV of fund is not expected to change is not sufficient enough to justify calculating NAV on a less frequent basis. This would also apply to funds with a real estate holding as well. Rather, calculations of NAV each business day are consistent with international practice, provide a current calculation to support redemptions, and would prepare the market for a date when more active trading takes place in Trinidad and Tobago.

4.3.13 **Calculation of Performance Data**. Performance data, on the other hand, is required under the proposed CIS By-Law to be calculated in accordance with the performance presentation standards published from time to time by the CFA Institute ("**CFAI**"), the successor to the Association for Investment Management and Research or AIMR (proposed subsection 36(4)). CFAI is an international, non-profit organization of investment practitioners and educators in over 100 countries (www.cfainstitue.org). CFAI's mission is to serve its members and investors as a global leader in educating and examining investment managers and analysts and sustaining high standards of professional conduct. Several commentators have supported the use of the CFAI standard.

4.3.14 **Maintenance of Securityholder Records**. A CIS is required to maintain certain records of holders of its securities and a record of distribution and redemption activities (proposed section 32).

4.3.15 **No Misleading Sales Communications**. Any sales communication to a prospective investor or holders of securities of a CIS must not contain a misrepresentation and where the sales communication is provided in written form, it must include certain warning language (proposed subsection 36(2)). What constitutes a "misrepresentation" is defined in section 4 of the proposed *SA, 2005*.

4.3.16 **Delivery and Content of Financial Statements of a Collective Investment Scheme**. A CIS that is a reporting issuer is required to prepare and file financial statements under the proposed *SA, 2005* as would any other reporting issuer, except that the statements that comprise interim and annual financial statements are set out in proposed Part XIV of the CIS By-Law, and are designed to keep the marketplace informed of the performance of the CIS. The financial statements of a CIS must include an income statement, a balance sheet, a statement of investment portfolio, a statement of portfolio transactions, and a statement of changes in net assets. Unlike

other reporting issuers, a CIS would not need a specific MD&A to accompany the financial statements of a CIS. The Consultants do recommend that the TTSEC continue to monitor the development of this disclosure internationally as well as industry practice in Trinidad and Tobago, so as to determine if such an additional disclosure requirement becomes warranted in the future.

4.3.17 **Investment Restrictions**. The Consultants recommend that appropriate investment and borrowing restrictions should be adopted. As such, included in the proposed CIS By-Law are provisions on concentration restrictions (proposed section 16), control restrictions relating to the investment activities of a CIS (proposed section 17) and liquidity restrictions relating to purchasing equity securities that cannot be readily disposed of in the market (proposed section 18), as well as a provision limiting a CIS's ability to borrow money (proposed section 19). In response to several comments received, the Consultants note that the concentration restriction excludes certain types of indebtedness such that money market and bond funds could acquire indebtedness of an issuer above the ten per cent limit. As well, the restriction on the purchase of illiquid securities only applies to equity securities, and again, bond and money market funds, should be largely unaffected by these provisions.

4.3.18 **New Collective Investment Schemes**. The Consultants recommend that before a prospectus for a new CIS is filed, at least one million dollars in securities of such CIS must be beneficially owned by the promoter, manager of portfolio adviser of the CIS and/or any of their respective partners, directors, officers or securityholders (proposed section 6). The Consultants acknowledge the comments received on this point as this recommendation reflects a change from the five million dollars recommended in the Interim Report.

4.3.19 **Approved Foreign Issuers that are Collective Investment Schemes**. Finally, reporting issuers that are CIS's, and which also qualify for approved foreign issuer status, would be exempt from the CIS By-Law (proposed section 3). This is justified on the basis that such issuers would be subject to the securities laws of a designated foreign jurisdiction which regulates mutual funds and CIS's. Accordingly, as such reporting issuers are subject to standards at least equivalent to those in Trinidad and Tobago, such collective investment schemes need not comply with the requirements of the CIS By-Law.

4.3.20 **The Unit Trust Corporation**. Several commentators have remarked about the lack of an explicit reference to the UTC in the CIS By-Law, and have queried about the applicability of the by-law to that organization. The CIS By-Law is meant to be of general application and apply to any organization that establishes a CIS. The UTC would be such an organization. Accordingly, the CIS By-Law applies equally to the UTC. Nothing has come to the attention of the Consultants during the course of the mandate that suggests that anything more with respect to the UTC needs to be drafted in the proposed CIS By-Law.

4.3.21 **<u>Tax Considerations</u>**. Several commentators suggested that parallel amendments were also needed to the tax legislation in Trinidad and Tobago with respect to a CIS. Addressing such issues with respect to a CIS are beyond the scope of this mandate.

4.4 The Prospectus By-Law

4.4.1 **<u>Introduction</u>**. The Consultants have prepared the proposed Prospectus By-Law, included as Schedule "D" to this Final Report, to replace the existing prospectus guidelines. The proposed Prospectus By-Law sets out the detailed content requirements to be included in a prospectus, together with the procedures associated with the filing of a prospectus, and which are not included in the proposed *SA, 2005*.

4.4.2 **<u>Proposed By-Law Further Develops Existing Prospectus Guidelines</u>**. The proposed Prospectus By-Law contains a number of requirements that are not currently found in the prospectus guidelines in order to incorporate recommendations to bring the prospectus disclosure regime closer to international best practice. Some of the more significant additional disclosure requirements recommended for inclusion in a prospectus include the following (and which are found in the prospectus form accompanying the proposed by-law):

- greater detail of the securities to be distributed, including specific requirements relating to equity, debt and asset-backed securities, as well as disclosure of credit ratings for debt securities and asset-backed securities, and earnings coverage ratios for certain debt and preferred securities;

- a description of the plan of distribution of the securities by the underwriters and any conflict or potential conflict of interest between the issuer and the underwriters;

- a description of all material legal proceedings involving the issuer;

- in the case of a minimum offering, a statement that if the minimum amount to be raised is not raised within ninety days after the date of receipt of the prospectus, the distribution will cease and all amounts received during the ninety day period will be returned to the subscribers (which corresponds to proposed subsection 86(3) of the *SA, 2005)*;

- a statement that investors have the right to withdraw from an agreement to purchase securities within two business days after receipt of a prospectus and any amendment thereto, and that such investors have remedies for rescission and damages if the prospectus or any amendment contains a misrepresentation;

- in the case of a prospectus of a foreign issuer, a statement that it may not be possible for investors to collect from foreign issuers, judgments obtained in the courts of Trinidad and Tobago predicated upon the civil liability provisions of the proposed *SA, 2005*; and

- the inclusion of certificate pages for the issuer and underwriters to sign certifying that the prospectus constitutes full, true and plain disclosure of all material facts relating to the issuer and the securities distributed by the prospectus.

4.4.3 **Financial Statement Disclosure in a Prospectus**. The Consultants also recommend that financial statement disclosure to be contained in a prospectus be substantially similar to that provided for under section 45 of the current by-laws, except that the Consultants recommend only the inclusion of three year historical financial statements (not the current five year requirement), and the inclusion of interim financial statements for any quarterly period ending more than 60 days before the date of the prospectus.

4.4.4 **Executive Compensation Disclosure in a Prospectus**. The Prospectus By-Law also requires disclosure of executive compensation in a prospectus (Form No. 1, Chapter 8, Section 8). This recommendation attracted a significant number of comments expressing concern given the current crime situation in the country. While the Consultants do not believe that executive compensation disclosure in a prospectus will impact on the personal safety of executives, in response to the extent of the comments, the Consultants have modified the disclosure required from that recommended in the Interim Report. In our view, it is important that implementation of the reforms proposed in this Final Report not be delayed due to controversy over this disclosure recommendation. This, however, is recommended as an temporary measure. What is now proposed is disclosure of aggregate compensation levels for the directors and officers, rather that specific individual disclosure. This is not international best practice, but provides a reasonable temporary accommodation. In Canada, executive compensation is required to be disclosed annually in proxy materials as well as in prospectuses. In the United States and Europe, prospectuses require more detailed disclosure than what is recommended in the Prospectus By-Law. The Consultants encourage the TTSEC to monitor the local situation, and as circumstances warrant, to seek to amend the Prospectus By-Law in response to changing local conditions.

4.4.5 **Prospectus Filing Procedures**. Finally, the Consultants have also incorporated into the proposed Prospectus By-Law recommendations relating to prospectus filing procedures and requirements. For example, the Prospectus By-Law now clarifies that the TTSEC has the power to review and comment on the draft prospectus and to require that it be amended before a receipt is issued. In addition, the constating documents (such as the articles, by-laws or trust indenture) of an issuer would be required to be filed with the TTSEC as part of a prospectus filing. The proposed Prospectus By-Law also contains filing requirements associated with an amendment to a prospectus.

4.4.6 **Filing of Material Contracts With a Prospectus**. The proposed Prospectus By-Law requires the filing of material contracts of an issuer with the TTSEC as part of the prospectus filing process. (This is now a standard practice in most jurisdictions, including Canada and the United States). As a result of the application of section 34

(public availability of filed documents) of the proposed *SA, 2005* and subsection 26(2) of the proposed Prospectus By-Law (inspection of material contracts during period of distribution), these documents would have to be made publicly available by the TTSEC and made available for public inspection by the issuer. During the consultation process, market participants expressed a concern that such disclosure could materially prejudice an issuer where a material contract contained competitively sensitive information. Under the proposed *SA, 2005*, issuers in this position would have to establish to the TTSEC's satisfaction that such a material contract contains competitively sensitive information which would be materially prejudicial to the issuer if disclosed (see proposed subsection 26(3) of the Prospectus By-Law) and that disclosure of the sensitive information contained in the material contract would not be in the public interest (see proposed subsection 34(1) of the *SA, 2005*). If persuaded that the information is competitively sensitive, the TTSEC may exempt an issuer from the requirement to file the material contract or may require the filing of a redacted version. However, the issuer would still be required to disclose the existence of a material contract in the prospectus and the substance of its terms. However, as noted earlier in this Final Report, to be disclosable a material contract has to be out of the ordinary course of business. Accordingly, in the Consultants' view, normal course commercial contracts should not fall within the ambit of the rule.

4.5 The General By-Law

4.5.1 **Introduction**. Finally, the Consultants have recommended as the final by-law, a General By-Law to accompany the proposed *SA, 2005*. The General By-Law addresses a number of differing matters requiring prescription in the proposed *SA, 2005*, including:

- providing the necessary detail for the revised registration scheme of Part IV of the proposed *SA, 2005*;
- setting forth the business conduct and practices required of registered market actors;
- providing detail to the Part V disclosure obligations of reporting issuers; and
- setting out the disclosure required for potential conflicts of interest between registered market actors and clients (in addition to that set forth in the proposed *SA, 2005*).

4.5.2 **General By-Law Reflects Existing By-Laws**. To a large extent, subordinate legislation such as by-laws reflect the prevailing local market practices. For this reason, the Consultants have recommended limited but important changes to the General By-Law. Particularly local matters such as filing fees have been left to the determination of the TTSEC and Government. Large portions of existing By-Laws 1 to 76 remain in a renumbered form in the General By-Law. In particular, existing By-Laws 14 to 38 dealing with "registrant" obligations such as ledger accounts and trade execution matters are largely unamended (save for consequential amendments

necessary to reflect the Consultants' recommendations). As well, former by-laws relating to the internal operations of the TTSEC and the operations of self-regulatory organizations have had limited suggested changes. Finally, provisions of existing By-Laws 1 to 76 addressing prospectus matters have been appropriately relocated to the more specialized Prospectus By-Law.

4.5.3 **Significant Recommendations Reflected in General By-Law**. However, a number of significant recommendations are reflected in the General By-Law. These include the details of the new proposed registration regime for market actors (both companies and individuals), clarification of the market actor conflicts of interest rules, and the details of on-going financial statement disclosure requirements for reporting issuers. Each is discussed in detail in this part of the Final Report.

4.5.4 **Structure of General By-Law**. As the proposed General By-Law addresses a variety of matters, it has been structured into ten parts, and three schedules (including a fee schedule and a schedule setting out the various prescribed forms). Each part roughly corresponds to the same part in the proposed *SA, 2005* (for example, Part IV addresses the regime for registering market actors as does Part IV of the proposed *SA, 2005*). Parts of the General By-Law containing significant changes or significant new requirements are discussed below.

4.5.5 **Designated Foreign Jurisdictions**. Part I of the General By-Law sets forth those jurisdictions prescribed as "designated foreign jurisdictions" for the purposes of determining which foreign issuers are approved foreign issuers. At present, the suggested list of 17 countries is based on a similar list prepared by Canadian securities regulators for the similar purpose of permitting issuers from these countries to comply with Canadian disclosure requirements by filing, in Canada, disclosure documents from a designated foreign jurisdiction. The Canadian list was developed jointly by Canada's securities regulatory authorities. Given the resource costs involved, the Consultants suggest that this list serve as a starting point for determining approved foreign issuers for purposes of the proposed *SA, 2005*. As well, Part I also prescribes how the market capitalization of an approved foreign issuer is to be determined for purposes of paragraphs 72(1)(a) and 83(2)(b) of the proposed *SA, 2005*, providing exemptions from the disclosure and offering requirements of Parts V and VI of the proposed *SA, 2005* for approved foreign issuers respectively.

4.5.6 **Market Actor Registration Requirements Prescribed in General By-Law**. Part IV of the General By-Law sets out the requirements that must be met for registration as a broker-dealer, investment adviser or underwriter under subsection 54(1) of the proposed *SA, 2005*. As well, the requirements for individuals that are directors, senior officers or employees of these market actors, to obtain registration under proposed subsection 54(2) of the proposed *SA, 2005* are also prescribed.

4.5.7 **Broker-Dealers and Underwriters Must be Companies**. A significant departure from the registration provisions of the current *SIA, 1995* is the requirement under

sections 17 and 18 of the General By-Law, that only companies incorporated in Trinidad and Tobago or incorporated in another Caricom state and registered in Trinidad and Tobago, can obtain registration in the categories of broker-dealer or underwriter. The requirement to carry on business in a corporate entity is consistent with North American registration standards where firms and individuals are registered separately. As discussed earlier in this Final Report, investment advisers can be either companies or individuals.

4.5.8 **Securities Industry Activities to be Primary Activity for Corporate Market Actors**. As a condition of obtaining registration as a broker-dealer, investment adviser or underwriter, these firms must have as their primary activity an activity for which registration is required under Part IV of the proposed *SA, 2005*. As a result, firms which engage in insurance or banking activities, as well as brokering, underwriting or investment advising, will need to carry on their securities industry activity in a separate company.

4.5.9 **General By-Law Creates Three Categories of Individual Market Actors**. The General By-Law creates two categories of registration for individual market actors (in addition to being able to register as an investment adviser) – (i) director or senior officer of a market actor, and (ii) registered representative (proposed section 20). At present, the Consultants recommend basic requirements to obtain registration in these categories. To obtain registration, an individual would need to, among other things, be –

- at least 21 years of age and of good character;
- in the employment of a registered market corporate actor (i.e. a broker-dealer, investment adviser, or underwriter); and
- fit and proper for registration.

The Consultants recommend that the TTSEC consider revising the categories and standards for registration as the market develops. In particular, additional educational standards and proficiency requirements for individuals should be introduced. This should be one of the TTSEC's priorities.

4.5.10 **Corporate Market Actors Responsibilities**. While individuals registered as market actors under Division 4 (individual registration) of the proposed General By-Law will be required to comply with the proposed *SA, 2005*, the by-laws and the terms and conditions of their registration, responsibility for record-keeping functions will not lie with them but with corporate market actors. These detailed on-going requirements are set out in Division 7 of the General By-Law.

4.5.11 **Sponsored Market Actors Exempt from General By-Law Market Actor Requirements**. In addition, individuals who rely on the sponsored market actor provisions of subsection 54(5) of the proposed *SA, 2005*, would also be exempt from the Division 7 of Part IV requirements affecting corporate market actors

generally. This is justified on the basis that the firms that these individuals represent are already subject to an acceptable level of regulatory oversight in a designated foreign jurisdiction, which provides for similar standards and that a local market actor is responsible for the conduct of the sponsored person. As well, given that only individuals are permitted to obtain sponsored registration (General By-Law, paragraph 22(1)(a)), such individuals would not be in a position to comply with the requirements (such as for example, the capitalization requirements).

4.5.12 **Flexibility of Registration Regime**. In the Consultants' view, placing the detail of the market actor registration regime in the General By-Law provides the necessary flexibility to adapt to a changing marketplace. As we have discussed elsewhere in this Final Report, it is difficult to manage the type of detail necessary for an effective registration regime in primary legislation. Currently, much of this detail is found in sections 54, 56, 58, 59 and 60 of the *SIA, 1995*. As a result, it is difficult to adapt the regime to evolving international standards and a developing securities industry in Trinidad and Tobago. Placing the detail in the General By-Law will allow the TTSEC to more effectively regulate the key participants in the local securities markets and to effectively respond to the changing needs of the marketplace.

4.5.13 **Simplified Conflict of Interest Requirements**. Existing by-laws 59 to 65 impose requirements on market actors in relation to actual and potential conflicts of interest. The existing rules are difficult to interpret and difficult to apply in practice. From discussions with market participants, questions have been raised concerning whether current "registrants" understand and comply with the conflict of interest requirements. New Division 8 of Part IV of the General By-Law attempts to simplify current by-laws 59 to 65. The new sections 53, 54 and 55 of the General By-Law prohibit market actors from trading in, advising in respect of, or exercising discretion over, on behalf of clients, securities of issuers that are related to the market actor. An exemption from the prohibition is provided where disclosure of the relationship between market actor and related issuer is made in the prescribed form included in Schedule 3 to the General By-Law. Informed prior written consent is required for discretionary trades. An issuer will be related to the market actor where the market actor beneficially owns, or exercises control or direction over, more than 30% of the outstanding voting securities of the issuer, and vice-versa. This disclosure serves an information function to the investor and alerts the investor to possible conflicts of interest. An investor can then make a more fully-informed investment decision with knowledge of the relationship. As well, trade confirmations sent to clients must include a statement that the trade was in a security of an issuer that is related to the market actor (proposed section 56 of the General By-Law).

4.5.14 **Detailed Disclosure Obligations for Reporting Issuers**. Part V of the General By-Law sets out the form and content of certain aspects of the on-going disclosure to be required of reporting issuers under Part V of the proposed *SA, 2005*, and in particular, financial statement requirements.

4.5.15 **Annual Financial Statements**. Section 59 of the General By-Law requires that the annual comparative financial statements of a reporting issuer (other than a CIS) include:

- an income statement;
- a statement of surplus;
- a statement of changes in financial position; and
- a balance sheet;

as well as comparative statements for the preceding financial year as set out in section 67 of the proposed *SA, 2005*.

4.5.16 **Interim (Quarterly) Financial Statements**. Interim financial statements of a reporting issuer (other than a CIS) will require:

- an income statement for the 3, 6, or 9 month period to which the financial statements relate;
- a statement of surplus for the 3, 6 or 9 month period to which the financial statements relate;
- a statement of changes in financial position for the 3, 6 or 9 month period to which the financial statements relate; and
- a balance sheet for the end of the 3, 6 or 9 month period to which the financial statements related;

in each case with a comparison to the corresponding 3, 6 or 9 month period in the preceding financial year. As well, for interim financial statements which relate to 6 or 9 month periods in a financial year, a separate income statement and statement of changes in financial position for the most recently completed 3 month period will also be required (with equivalent period comparisons to the prior year).

4.5.17 **Contingency Fund**. Finally, we understand that current By-Laws 66 to 76 regulate the contingency fund operated by the Stock Exchange pursuant to current section 48 of the *SIA, 1995*. A detailed review of the operations of the contingency fund is beyond the scope of this mandate, and accordingly, the Consultants are not making any recommendations for changes to these by-laws (which would form Part X of the proposed General By-Law). The existing by-laws have been replicated in Part X of the General By-Law.