

# FINAL 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, the Interim Report and this 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 was a senior adviser 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 *SLA, 1995*, which the Consultants are characterizing as the *Securities Act, 2005* (the “**SA, 2005**”) (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 the Interim Report including detailed notes for amendments to the Subject Legislation, as well as new proposed legislation and by-laws.
- Prepare this 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, the 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 the Interim Report. The Interim Report contained more detailed findings resulting from the Consultants'

review, and contained detailed recommendations for revising and amending the Subject Legislation, and drafting new legislation and by-laws. Phase Two was completed upon the delivery of the Interim Report to the TTSEC.

**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. This Final Report, like the Interim Report, includes detailed draft legislation and by-laws and which have been refined as part of Phase Three. This Final Report also discusses 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, and 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 advisers, 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 the Interim Report.
- 1.5.2 **Draft Interim Report.** On June 10, 2003, the Consultants provided the TTSEC and its staff with a draft of the 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.
- 1.5.3 **Purpose of Interim Report.** The purpose of the Interim Report was 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. The Interim Report also contained 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.
- 1.5.4 **Structure of the Interim Report.** The structure of the Interim Report as with this Final Report was 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, these later reports focussed on describing in much more detail the suggested changes to the *SLA, 1995* and the *Companies Act*, and other Subject Legislation, as applicable.
- 1.5.5 **Delivery of Interim Report.** The Interim Report was delivered to the TTSEC on December 19, 2003, and marked the completion of Phase Two.

## 1.6 Phase Three of Review

- 1.6.1 **In-Country Mission.** The final in-country mission was held from March 10 to March 12, 2004. The purpose of this round of meetings was for the Consultants to meet with the TTSEC, its staff, and market participants to discuss in detail the recommendations made in the Interim Report. These meetings, held over three days, included discussions of the policy rationale behind many of the recommendations as well as the draft legislation that had been proposed.

- 1.6.2 Completion of Phase Three.** Phase Three was completed upon the delivery of this Final Report to the TTSEC on November 30, 2004. Consistent with prior practice, a draft of the legislation was delivered to staff of the TTSEC in late August, 2004 and a draft of this Final Report was delivered to staff of the TTSEC in early September, 2004.
- 1.6.3 The Final Report.** The delivery of this Final Report marks the completion of the mandate and represents the Consultants' final recommendations to the TTSEC. It represents the culmination of approximately 24 months of work and consultation between the Consultants, the TTSEC and the market participants in Trinidad and Tobago.
- 1.6.4 Final Report to Form Basis for New Legislation.** We expect that the Final Report will form the basis for a new *Securities Act, 2005* to be formally prepared by the Trinidad and Tobago Attorney General's Department.
- 1.6.5 Recommendations.** What is contained in this Final Report are recommendations which seek to achieve the objectives of securities regulations while taking into consideration local conditions and competing considerations. While we hope that the overall report will find broad support, we do not expect that every recommendation will have the full support of all interested parties in Trinidad and Tobago. We do believe that the recommendations represent a critical compromise between the needs of the market place in a developing capital market and the goal of achieving international best practice in securities legislation in Trinidad and Tobago.

## **1.7 Structure of the Final Report**

- 1.7.1 Final Report Develops Interim Report Recommendations.** This Final Report is similarly structured to the Interim Report, and has been amended as part of the on-going consultative process, and to reflect the development of the Consultant's recommendations.
- 1.7.2 Chapter Two Summary.** Chapter Two of this Final Report highlights the significant suggested changes for the *SLA, 1995*. Each of the sections within the chapter discusses one particular part of the *SLA, 1995* and the significant changes which are being proposed for that part. Chapter Two also discusses the significant changes made from the Interim Report. It should also be noted that not all changes previously suggested are reflected in this Final 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 *SLA, 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 Final Report contains the complete text of the proposed *SA, 2005* which would implement the Consultants recommendations. The Consultants encourage all of the recipients of this Final

Report to review the proposed *SA, 2005* found at Schedule “B” as they read the accompanying Part-by-Part commentary in Chapter Two.

- 1.7.3 Chapter Three Summary.** Chapter Three of this Final Report discusses the one entirely new recommended Part of the proposed *SA, 2005* that is not in the current *SLA, 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 the concept has generally been positively received by market participants, with the greatest concerns surrounding resource limitations in the country. In Chapter Three, 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 XIII for the proposed *SA, 2005*, proposed legislation for which can be found in Schedule “B”. As noted in Chapter Three, the Tribunal is only one means of achieving the desired policy objective of separating the adjudicative and enforcement functions of the TTSEC.
- 1.7.4 Chapter Four Summary.** Chapter Four discusses the suggested by-laws for the proposed *SA, 2005*. 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.
- 1.7.5 New Draft By-Laws.** Accordingly, included with this Final Report are three new suggested by-laws to complement the proposed *SA, 2005* – the Prospectus By-Law, the CIS By-Law and the General By-Law. Each of these will be discussed in Chapter Four. The Take-Over By-Law is the fourth by-law, which the Consultants have previously reviewed. The Consultants have 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 the Consultants participated in public meetings which 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 Final 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.
- 1.7.6 The New Securities Regulatory Regime.** In total the Consultants are suggesting a securities regime for Trinidad and Tobago comprised of the *SA, 2005* 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).

- 1.7.7 **Chapter Five Summary.** Chapter Five 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 proposed to the *SA, 2005*. In order to be implemented effectively, the consequential changes to the *Companies Act* should be brought into force at the same time.
- 1.7.8 **Chapter Six Summary.** Chapter Six discusses other recommendations of the Consultants which are not reflected in the proposed *SA, 2005*, or draft by-laws, relating to a securities advisory committee and fees.
- 1.7.9 **Chapter Seven Summary.** Chapter Seven concludes this Final Report.
- 1.7.10 **List of Commentators.** Finally, it should be noted that Schedule “A” to this Final Report contains a list of all of the comment letters which have been received by the Consultants from the date of the Interim Report, as well as a list of previous commentators. The Consultants have agreed with many of the suggestions and these are reflected in this Final Report. Other changes have not been made. Where possible we have addressed the rationale for making or not making the suggested changes in the following commentary. 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.