

SECURITIES REGULATION IN TRINIDAD AND TOBAGO



ADDRESS BY-

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TRINIDAD AND TOBAGO SECURITIES & EXCHANGE COMMISSION

Welcome

I am extremely pleased to see such a turnout this morning.

This seminar is part of the process to improve our contact and consultation with market participants. This is a first step and we will continue to use several means of achieving effective consultation in the future.

This event also marks our signal to the market that we at the Trinidad and Tobago Securities and Exchange Commission will press on with the development, consultation and implementation of policies for the regulation and development of our securities market.

As you are aware, the regulation of financial services throughout the world has in recent years been marked by the efforts of regulators to synchronise regulation of the different parts of the financial system in recognition of the increasing impact of the global market on such systems and the instantaneous nature of financial transactions. In order to achieve such synchronisation while recognising and paying due regard to the specific needs of different jurisdictions, regulators worldwide have developed codes of best practice that have been recommended for implementation by regulatory authorities.

Thus in the banking and financial services sector best practice is defined through standards established by the Basle Committee, while in the securities industry, such best practice standards are established by the International Organisation of Securities Commissions (IOSCO).

IOSCO identifies the goals of securities regulation as:

- Ensuring market fairness, efficiency and transparency;
- Protection of investors; and
- Reduction of systemic risk.

These are intended to lead to and encourage market growth and development, particularly through instilling confidence, among investors, market participants and issuers of securities alike, that the risks in the market are known – and presumably understood – and that the playing field is level for all participants, even though it may not be smooth.

A securities regulator like the Trinidad and Tobago Securities and Exchange Commission has relatively few tools to use to achieve these broad goals. The first and most important of these is an appropriate enabling legislative framework that recognises the importance of the goals of market regulation and that empowers the regulator to take the necessary steps to achieve those goals. We, at the Commission, have been engaged over the past year in a comprehensive exercise to review, modernize and revise the legislation in order to bring it up to international best practice standards. Indeed, the Take-Over By-Law that we are here to discuss today is only one part of that effort.

Within the framework of the specific legislation that empowers securities regulators in each jurisdiction, there are three broad strategies and interventions practiced by regulators. These are:

- The establishment of standards as may be embodied in law through rules and regulations;
- The implementation of mechanisms to ensure market compliance with such standards; and
- The enforcement of those standards, through established administrative, civil and criminal proceedings.

Establishment of Standards

The primary concern of a securities regulator is whether investors are fully informed of the risks to which they may be exposed when deciding or agreeing to invest in any security that may be offered to them. It is also important that investors have a level of comfort about the reputation, integrity and conduct of market actors. Consequently, regulators seek to establish standards that require the issuers of securities to register and to fully disclose a number of matters about their current or proposed operations, to identify the risks involved in the securities that are to be issued, and to disclose the interests in these securities of persons related to the issuer.

The process of registration that arises from these requirements is intended to satisfy the investing public that issuers are financially and organisationally sound and that they disclose the significant risks that are inherent in any security that may be issued. The regulator also has an

obligation to ensure that the relevant disclosures are made both to the regulator and to the general public.

We recognize that changes in the market do take place rapidly. Consequently securities regulators have the power to make and amend their rules in order to ensure that the regulations keep pace with market developments and trends.

Compliance with Standards

The compliance responsibilities of regulators are intended to ensure that all market participants recognise, uphold and meet the established standards and observe the law.

Registrants are required to implement appropriate internal policies and procedures which may be subject to review by the regulator to ensure that the appropriate standards of operation and of behaviour are observed.

Enforcement of Standards

The third arrow in the regulator's quiver is its power to enforce the standards that have been established. Enforcement is usually through a combination of moral suasion and the application of administrative, civil or criminal sanctions or penalties.

Regulatory Concerns in Trinidad and Tobago

After some six years of operation of the Trinidad and Tobago Securities and Exchange Commission, a number of regulatory concerns have come to the fore. The revision of the legislation in which we are currently involved is intended to strengthen our regulatory regime in these areas, and I will simply highlight a few of the most significant areas that the proposed revision seeks to address.

Transparency, Fairness and Efficiency

The first major issue of concern is that relating to the transparency, fairness and efficiency of the market. A number of issues arise here, including suspected illegal insider trading and the incidence of selective disclosure of market sensitive information which itself may potentially facilitate illegal insider trading. As a regulator the TTSEC is very concerned about the possibility of illegal insider trading and the existence of behaviours that may facilitate it. Consequently we have recently issued a statement discouraging selective disclosure and shall shortly publish guidelines on the handling of price-sensitive information. As well, we continue the process of examining certain transactions that took place in 2001 and 2002 to determine whether concerns about illegal insider trading are justified and to determine what steps ought to be taken to ensure that the appropriate sanctions are applied.

Similarly, we recently advised brokerages that the practice of pooling of trades does not allow for an adequate level of equity and transparency in brokers' dealing with clients and that therefore, the practice should be terminated. In this context we have been encouraging the Trinidad and Tobago Stock Exchange to speed up implementation of the system of automated trading and we eagerly look forward to this critical aspect of modernisation of the Stock Exchange which we have been advised is scheduled for early in 2004. With automated trading and the full operation of the Central Securities Depository, we expect a significant improvement in the level of transparency, fairness and equity in the market.

The TTSEC has also recently reminded listed companies of the importance of timely filing of their financial reports, complete with all the required disclosures, since this is the main mechanism by which the public is kept informed of possible changes in the risk profile of the securities in which they have invested.

The Regulation of Takeovers

There is now no established legislative regime for regulating the process by which a person or persons may take control of or takeover a public company and for ensuring that such market activity is conducted in an orderly manner. This is a deficiency that needs urgently to be corrected. Some three years ago we published the first draft of the By-Law, but when we

subsequently embarked on a comprehensive legislative review and revision exercise, we thought it wise to review the By-Law again against the background of the overall regulatory strategy being developed.

We are here today to explain to you what we intend to achieve in this particular by-law which we published recently and I will say no more about it at this stage. Our General Manager, Ms. Monica Clement will provide you with a brief overview that will be followed by a more detailed presentation later.

The Marketing and Sale of Foreign Securities in Trinidad and Tobago

There is increasing concern about the availability for sale of foreign securities which do not come under the jurisdiction of the Commission and about the activities of visiting securities sales persons that are also not regulated. We believe that the protection of our investors makes it mandatory for us to introduce a tighter level of regulation of foreign issues and of persons visiting the country to market and sell such issues.

Collective Investment Schemes/ Mutual Funds

The number of mutual funds and other forms of local and foreign collective investment schemes being marketed in Trinidad and Tobago has grown immensely over recent years and this growth has taken place without adequate supervision and regulation. This is another area in which we believe that substantial changes have to be made as soon as possible in order to ensure a fair and equitable market for these instruments, and we are currently considering a draft By-Law for Collective Investment Schemes.

Compliance

The Commission intends to acquire enhanced powers for ensuring compliance by the implementation of a system of on-site inspections and examinations which would not necessarily be related to specific accusations or suspicions of default or wrong doing. This is one of the critical mechanisms by which financial services regulators worldwide maintain effective

surveillance of institutions under their watch.

Regulatory Rationalisation /Integration

The final area of concern and interest that I will deal with today is that of regulatory rationalisation. Currently, the Commission, the Central Bank and the Registrar of Companies oversee different aspects of the operations of players in the securities market. This shared responsibility leaves many gaps in the regulatory process, allowing for the possibility of regulatory arbitrage. This is one of the serious deficiencies of the existing legislative framework that we intend to address in the proposed revision of the SIA. Consequently, our proposed revision of the legislation will include specific provisions for amending the Companies Act, for bringing all aspects of securities regulation under the TTSEC and for facilitating collaboration and cooperation with the Central Bank as well as foreign regulators.

Regulatory Strategy

As we move forward to modernise and rationalise the regulation of the securities market in Trinidad and Tobago, the Commission has embarked on a strategy that contains five essential elements:

- Undertaking a substantial and comprehensive revision of the Securities Industry Act. This does not mean merely an exercise of amending small areas here and there in the Act. Rather it involves a comprehensive review of the philosophy underlying securities regulation in Trinidad and Tobago and an upgrade of the powers needed by the Commission to allow it to more efficiently regulate the market in accordance with international best practice. This revision includes bringing all forms of securities and all issuers and other market participants within the purview of the Act.
- Developing an improved framework within the Commission for policy making and for ongoing consultation with the market.
- Developing improved surveillance systems in order to detect market irregularities on a more timely basis and to ensure compliance with the Act.

- Intensifying our investor education programmes to inform members of the public about the nature and risks in the securities market.
- Taking more effective enforcement action against persons who contravene the Act, and the By-Laws.

The new Take-Over By-Law that is being considered and discussed here this morning is but one step towards our overall objective of improving and strengthening our securities regulation and is the first element of our legislative and rule making agenda that will include, among other things:

- A Collective Investment Scheme By-Law;
- A Prospectus By-Law
- A General By-Law governing procedures for the regulation of the market; and
- A substantially revised Securities Industry Act.

We feel confident that the effective implementation of our strategy by a rejuvenated, vigilant and effective Securities Commission will help to develop the vibrant and growing capital market that is envisioned by the Government's Vision 2020 for the financial services market in Trinidad and Tobago, and we look forward to your cooperation in our efforts.

I thank you.