



Salient Provisions in the Securities Bill, 2012

Public Consultations

Outline

- Introduction
- Part I – Preliminary
- Part II – The Securities and Exchange Commission
- Part IV- Registration of Registrants
- Part V- Disclosure Obligations of Reporting Issuers
- Part VI- Distributions
- Part VII- Market Conduct and Regulation
- Part IX – Reporting by Persons Connected with Issuers
- Part X- Civil Liability
- Part XI- General Provisions and Enforcement
- Questions

Part I - Preliminary

- Examples of New and Expanded Definitions
 - Broker -Dealer
 - Distribution
 - Market Actor
 - Relative
 - Security
 - Investment Contract
 - Derivative

Part I - Preliminary

Removal of the Concept of Offer to the Public (“OTTP”)

- **SIA – Section 3(1)**

An “OTTP” attracted an obligation to file a registration statement. i.e. seek registration as a reporting issuer

A “distribution” attracted a requirement to prepare and file a prospectus

- **Bill- Section 4(1)**

The term “distribution” is retained as the sole concept in determining when an issuer is required to register as a reporting issuer and file a prospectus with the Commission

Part I - Preliminary

Definition of Material Change

- **SIA – Section 3(1)**

A change that would reasonably be expected to affect the price or value of securities

- **Bill- Section 4(1)**

A change that would likely be considered important to a reasonable investor in making an investment decision

Part I - Preliminary

Definition of Records:

- **SIA – Section 3(1)**

Bank accounts not included

- **Bill- Section 4(1)**

Includes:

- Books of account
- Bank accounts and other bank records

Part II – The Securities and Exchange Commission

- Expanded functions– S.6
- Expanded powers – S.7
- Increased size of the Commission – S.10
- Confidentiality- S.14
- Information sharing – S.19

Part IV:

Registration of Registrants

Classes of Registrants/Market Actors

- **SIA-Section 53(1)**
Market Actors are: brokers, dealers, traders, investment advisers, underwriters and securities companies.
- **Bill -Sections 51, 52(1), 53(1) & 61**
“Market Actors” are now called “Registrants” and can register as:
 - A broker-dealer (which now replaces brokers, dealers and securities companies)
 - An investment adviser
 - An underwriter
 - A Reporting Issuer

Part IV:

Registration of Registrants

A trader is a registered representative of a broker-dealer

Individuals can register as investment advisers

Directors, senior officers and employees of broker-dealers, investment advisers and underwriters must register

Directors, senior officers and employees of broker-dealers investment advisers and underwriters who perform solely administrative functions are exempt from registering.

Part V: Disclosure Obligations of Reporting Issuers

Enhanced Disclosure Obligations

- Annual Report – S.63
- Annual audited financial statements – S.65
- Interim financial statements- S.66
- Delivery of annual and interim financial statements to security holders- S.67
- Proxy solicitation – S.68

Part VI

Distributions

- Removal of offer to the public
- Accredited investor – S.72
- Prospectus exemptions – S.79
- Approved foreign issuer exemptions – S.80

Part VII

Market Conduct and Regulation

- **SIA-Section 47**

The Commission's powers are limited to inspection of records and examination of financial affairs of SRO's

- **Bill- Section 87**

Gives the record keeping requirements for all market actors



- **Bill- Section 89**

Gives the Commission the ability to review the books records and documents of market actors in order to ensure compliance

Part VII

Market Conduct and Regulation

- **Bill – Section 90**
Allows the General Manager to issue compliance directions
- **Bill – Section 146 (Part XI)**
Allows the Commission to issue compliance directions for contravention of guideline issued by the Commission

Part VII

Market Conduct and Regulation

- Allows for the recognition of market manipulation offences:
 - False trading & artificial pricing - S.91
 - Price rigging – S.92
 - Dissemination of information containing a misrepresentation – S.93
 - Securities market manipulation – S.94
 - Use of fraudulent or deceptive devices- S.95
 - Excessive trading – S.96
 - Restrictions on recommendations – S.98

Part VII

Market Conduct and Regulation

Insider Trading

- **SIA – Section 120 (1)**
The definition of price sensitive information is very subjective and not investor based
- **Bill – Sections 4(1) and 100**
The concept of material non-public information is clearly defined, more investor based and in keeping with international standards

Part VII

Market Conduct and Regulation

Insider Trading Cont'd:

- **SIA -Section 121**
Prohibits certain trades by connected persons but the provisions lack clarity and are technical so it is difficult to determine what market activity is prohibited
- **Bill- Section 101**
This section clearly prohibits certain uses of “material non-public” information and introduces tipping-off prohibitions

Part VII

Market Conduct and Regulation

Insider Trading – Burden of Proof

- **SIA – Section 124**

In the current Act Section 124 provides several defenses which are inconsistent with the objectives of regulating insider trading since they place a heavy burden of proof on the regulator in that it must be shown that the person traded with the primary motive of making a profit or avoiding a loss by the use of the inside information

- **Bill – Section 101(1)**

Reverses the burden of proof. A rebuttable presumption puts the onus on the person with ‘knowledge’ or ‘possession’ of material non public information to show that he did not use that information contrary to Part VII, which regulates market conduct.

Part IX: Reporting by Persons Connected with Issuers

Connected Persons

- **SIA- Section 120**
Definition of “connected person” is restrictive and requires a subjective assessment which makes it difficult for individuals and regulators to determine whether they are prohibited from trading
- **SIA- Section 122**
The issuer is merely permitted to request disclosure from security holders in writing. Disclosure is made to the issuer and not the Commission

Part IX: Reporting by Persons Connected with Issuers

Bill-Sections 4(3) & 136

No subjective assessment is required since all directors, senior officers, employees, significant security holders, beneficial owners, affiliates and anyone in close relationship to the reporting issuer are prohibited from trading. The category of persons included is wider. These persons must also report their holdings to the Commission.

Part IX: Reporting by Persons Connected with Issuers

Obligation to Continue Reporting

- **SIA**

There is no requirement to continue reporting trades after the initial report

Disclosure only applies to holdings in share capital

- **Bill- Section 136**

Reporting is required within 5 business days of every subsequent trade in securities to the Commission and to the reporting issuer

The obligation to disclose relates to all securities including derivatives, convertible securities and rights issues

Part X

Civil Liability

Persons Liable

- **SIA-Section 128**
Directors, promoters and persons who authorized or caused the issue of the prospectus
- **Bill – Section 139**
The issuer, its directors, experts, promoters and other persons who sign certificates in a prospectus

Part X

Civil Liability

Civil Liability for Insider Trading

- **SIA**
No civil liability for Insider Trading
- **Bill -Section 143**
Purchasers or sellers of security can seek damages or rescission of the trade

Part X

Civil Liability

Civil Liability for Market Manipulation/Market Actor Conflict of Interest

- **SIA**
There is no civil remedy for persons who suffer loss because of artificial prices on the Stock Exchange or against market actors who make inappropriate recommendations to clients/fail to disclose conflicts of interest
- **Bill- Section 147**
A person who sustains a loss as a result of market manipulation and market misconduct can seek compensation for the loss directly from the contravening person

Part XI:

General Provisions & Enforcement

By-Law Making Powers

- **SIA – Section 131**
The powers of the Minister to make by-laws are limited. There are 20 areas, or heads, under which the Minister can make by-laws
- **Bill – Section 148(1) & (2)**
There are 46 main heads of by-law making authority. This reduces the likelihood of success of a legal challenge to the by-law making authority of the Minister
- **Bill -Section 149(2)**
Contains a general by-law making power which allows the Commission to respond quickly to the ever changing needs of the marketplace

Part XI:

General Provisions & Enforcement

Cease Trading Orders

The Commission can order a cease trade:

- **SIA-Section 141**

The Commission can order a cease trade in connection with a particular distribution for material nondisclosure or if it is in the public interest to do so. There is no explicit power to order a cease trade for non compliance with the SIA or the bylaws

- **Bill-Section 150**

The Commission can order a cease trade for non compliance or contravention of the Bill by a reporting issuer

Part XI:

General Provisions & Enforcement

Order for Penalty

- **SIA-Section 143(1)**
The Commission can order a person who has contravened the Act, by-laws or an Order of Commission to pay penalty of up to \$50,000
- **Bill- Section 152**
The maximum administrative penalty is increased to \$500,000

Persons who contravene solely by reason of failure to file or publish a document or instrument on time are liable to a penalty of \$1,000 per day until the instrument is filed

Part XI:

General Provisions & Enforcement

Investigations

- **SIA-Section 138**

The Commission may appoint a person to investigate a contravention of the Act

- **Bill- Section 153(1)**

The Commission's powers to appoint a person to conduct an investigation are broader to aid in the administration of the Act or the regulation of the capital markets or to assist in the administration of the securities laws or regulation of the capital markets in another jurisdiction

Records do not need to be held by the person under investigation

Part XI:

General Provisions & Enforcement

Whistle Blowing Protection

- **SIA**
No similar provision
- **Bill – Section 159**
Indemnifies individuals who provide information to the Commission in good faith

Part XI:

General Provisions & Enforcement

General Offences

- **SIA – Section 148 (2)**
Maximum penalty on summary conviction is \$100,000 and 3 months imprisonment
- **Bill – Section 163 (1)**
Maximum penalty on indictment is \$2,000,000 and 2 years imprisonment

Email address for additional comments and questions
sib2012@ttsec.org.tt

Thank You