SENATE

Tuesday, December 08, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Conrad Enill, Sen. The Hon. Hazel Manning, Sen. Dr. Adesh Nanan and Sen. Prof. Ramesh Deosaran, who are out of the country. The leave the Senators have requested has been granted.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. NOEL GAYLE

WHEREAS Senator Hazel Ann Marie Manning is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NOEL GAYLE, to be temporarily a member of the Senate, with effect from 8th December, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Ann Marie Manning.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of December, 2009."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. JOEL PRIMUS

WHEREAS Senator Conrad Enill is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOEL PRIMUS, to be temporarily a member of the Senate, with effect from 8th December, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Conrad Enill.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of December, 2009."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. VED SEEREERAM

WHEREAS Senator Dr. Adesh Nanan is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the

Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VED SEEREERAM, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Adesh Nanan.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of December, 2009."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. PARVATEE ANMOLSINGH-MAHABIR

WHEREAS Senator Professor Ramesh Deosaran is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PARVATEE ANMOLSINGH-MAHABIR, to be temporarily a member of the Senate, with effect from 7th December, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Professor Ramesh Deosaran.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of December, 2009."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Noel Gayle, Joel Primus, Ved Seereeram, Parvatee Anmolsingh-Mahabir.

PAPERS LAID

1. Annual audited financial statements of East Port of Spain Development Company Limited for the financial year ended September 30, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance* (*Sen. The Hon. Mariano Browne*)]

2. Audited financial statements of Vehicle Maintenance Corporation of Trinidad and Tobago for the financial year ended September 30, 2008. [*Sen. The Hon. M. Browne*]

3. Audited financial statements of Trinidad and Tobago Free Zones Company Limited for the financial year ended December 31, 2007. [*Sen. The Hon. M. Browne*]

4. Audited financial statements of Trinidad and Tobago Free Zones Company Limited for the financial year ended December 31, 2008. [*Sen. The Hon. M. Browne*]

5. Audited financial statements of Trinidad and Tobago Mortgage Finance Company Limited for the financial year ended December 31, 2008. [*Sen. The Hon. M. Browne*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Mayaro Civic Centre for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]

7. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Mayaro Civic Centre for the year ended September 30, 2007. [*Sen. The Hon. M. Browne*]

ORAL ANSWERS TO QUESTIONS

International Organization for Migration (Benefits of Funding and Training)

184. Sen. Lyndira Oudit asked the hon. Minister of Foreign Affairs:

Could the Minister indicate to the Senate, how the Ministry of Foreign Affairs proposes to benefit from the funding and training to be made available to this country through the International Organization for Migration (IOM), as a consequence of becoming a member in June, 2009?

The Acting Prime Minister and Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, the Minister of Foreign Affairs is out of the country. I do not have an answer.

With respect to questions 184 and 185, I am asking for a deferral of one week, when the Minister will be back.

Question, by leave, deferred.

The following question stood on the Order Paper in the name of Sen. Lyndira Oudit:

International Organization for Migration (Details of Resources)

185. With respect to membership in the International Organization for Migration (IOM), could the hon. Minister of Foreign Affairs indicate to the Senate the measures presently in place to detect, gather evidence, collate data on and to counter human trafficking in Trinidad and Tobago?

Question, by leave, deferred.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Fees to Senior Counsels

158. Could the hon. Attorney General provide the Senate with the quantum of legal or consultancy fees paid to Senior Counsels appointed after January 01, 2005 by any State Enterprise, Municipal Corporation, Statutory Authority, government Ministry or other State Agency from the period of their respective appointment to June 16, 2009?

Vide end of sitting for written answer.

GRANT OF FINANCIAL ASSISTANCE/SCHOLARSHIPS (NON-PROVISION OF INFORMATION)

Sen. Wade Mark: Thank you, Mr. President. During the last session of the Parliament and with your leave I asked the following question of the hon. Minister of Community Development, Culture and Gender Affairs, the hon. Marlene Mc Donald:

(a) Could the Minister inform the Senate whether her Ministry has provided financial assistance or awarded scholarships to persons desirous of pursuing studies at universities in Trinidad and Tobago, the Caribbean region and/or internationally?

(b) If the answer is in the affirmative, will the Minister provide the Senate with the following information:

(i) A list of names of persons who have benefitted from such assistance for the period 2002 to December 2007;

(ii) The amount of financial assistance provided to each person; and

(iii) The names of the institutions involved.

At a sitting of the Senate held on Tuesday, July 01, 2008, the hon. Minister, in replying to my question, said in part:

"In accordance with the provisions of section 4 of the Freedom of Information Act, the names of persons who have benefitted from such financial assistance from the State for the pursuit of studies locally, regionally and/or internationally for the period 2002—2007 and the financial assistance provided to each person are regarded as personal information within the meaning of the Act.

By section 30 of that Act therefore, personal information relating to an individual's education, which is submitted, may include his educational records or his current educational status and the financial transaction within the Ministry of Community Development, Culture and Gender Affairs, a public authority in which an individual has been involved to enable his or her pursuit of studies are exempt from disclosure. As a consequence, regrettably, the Minister is unable to provide the information requested in respect of part (b)(i) and (ii)."

1.45 p.m.

The Minister informed the Senate that the reason she was unable to answer part (b)(i) and (ii) of my question was because of the provisions in the Freedom of Information Act.

Mr. President, at a sitting of the House of Representatives held on Friday, December 04, 2009, the hon. Minister of Community Development, Culture and Gender Affairs, in a statement addressing the recent publication of details for financial support for persons, informed the House of Representatives in part, as follows, and I quote:

"Mr. Speaker, none of those who sought financial assistance did so with the expectation that their personal circumstances would have been exposed for public ridicule…

The Government's initial reluctance to provide those names was intended to prevent precisely such an occurrence. In our earlier decision, we sought to protect the privacy of citizens who approached the Government for assistance."

In other words, when the hon. Minister informed the Senate on July 01, 2008 that the reason she could not reply to part (b)(i) and (ii) of my question was because of the provisions of sections 4 and 30 of the Freedom of Information Act, she wilfully and deliberately misled this Senate since, at that time, she knew or ought to have known, as evidenced by her statement in the House of Representatives on Friday, December 04, 2009, that the reason for not giving the Senate the information requested was a deliberate policy on the part of the Cabinet to protect the identities of those who sought financial assistance from public ridicule and not any restrictions contained in the Freedom of Information Act.

Mr. President, it is a grave contempt for any Member to deliberately mislead this Senate, and it is even more serious when that Member is a Cabinet Minister. All Members are entitled to rely on the integrity of information provided to them by Ministers. It is a sad day for this Senate when the provisions of the laws of Trinidad and Tobago can be subject to questionable interpretation to support Government policy and, at the same time, deny this Senate information to which it is legitimately entitled.

Mr. President, it is on the foregoing grounds that in accordance with the provisions of Standing Order 26(2), I now seek your leave to raise this matter as a question of privilege and to have this matter referred to the Committee of Privileges of this Senate.

Mr. President, this privilege Motion could not be brought before since it was only on Friday, December 04, 2009 that the hon. Minister of Community Development, Culture and Gender Affairs, in a statement made in the House of Representatives concerning this matter, provided an entirely different reason for not previously giving to the Senate on July 01, 2008, a reply to my question.

Mr. President: Hon. Senators, I received notice of this matter this morning and, accordingly, I will give my ruling on this matter at the next sitting next week.

SECURITIES BILL

Order for second reading read.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I beg to move,

That a Bill to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to

co-operate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters, be now read a second time.

Mr. President, in all economies in our contemporary world, the securities market is a key driver of wealth creation, both for individuals and other entities, as it underpins and gives life to the capital market. We have only to consider the range of investments now held by investors worldwide.

In our own market, there has been a distinct shift over the last 30 years, away from savings and fixed deposits, the only options previously open to the ordinary man. Whilst property is still a significant component of an investor's wealth, investors also buy into various types of mutual funds and fixed income instruments, in addition to shares of listed companies.

When the first three developmental plans for Trinidad and Tobago were written, our planners were acutely aware of the imbalance between domestic investment and domestic savings. Where there were no mechanisms to channel savings into the capital markets and thus into productive activity to promote economic development, external deployment of domestic savings became an attractive consideration. If this had not been changed, it would still today be an attractive consideration.

Mr. President, a developed and well functioning securities market supports the real sector by providing mechanisms for more efficient pricing of risk and more efficient allocation of capital. Such a market facilitates intermediation directly and indirectly through institutional investors and other intermediaries and provides opportunities for a variety of risk tolerances and appetites to be satisfied. It fosters capital market development as it provides for diversity in the way risk and rewards associated with capital and other financial interests are packaged and offered to both those seeking to acquire capital and those seeking to invest capital.

The securities market is, therefore, an integral part of the financial system and inextricably linked to our economic welfare. While in the past, there was a tendency to direct the strongest regulatory focus on the banking sector, the lesson is now well learnt that the securities market can bring the banking sector to its knees and, indeed, cripple the entire financial system.

The securities business, not ordinary banking deposit and lending business, was the core of the most recent international meltdown and huge losses to investors, with significant negative socio-economic and even political consequences. Past experience, both here and elsewhere, is replete with other examples that clearly indicate that all branches of the financial sector need to be adequately regulated to mitigate various forms of potential harm to investors.

An orderly, though dynamic securities market, in which there is confidence in the systems that underlie the market is, therefore, necessary if the securities market is to serve its ultimate purpose in fostering economic progress. Without confidence, the securities market stagnates and, consequently, the world capital market will not function as effectively or efficiently as it could. Adequate regulatory oversight is one important step to ensuring such order and confidence.

Experience has also shown that not only market professionals, but also regulators have failed to recognize and take measures regarding the relevant risks. In this regard, Mr. President, the Chairman of the US Securities and Exchange Commission, Mary Shapiro, in addressing the Securities Industry and Financial Markets Association (SIFMA) annual conference in New York on October 27, 2009 on the topic "The Road to Investor Confidence" noted that one of the causes of the recent financial crisis was that too many financial institutions, securities firms, and others either did not understand "or simply ignored the risks they were tasked with identifying". She further noted that:

> "...It was much the same for regulators...Either way, the right questions were not asked, nor were the necessary steps taken to mitigate the risk before we coasted to the brink."

Mr. President, securities business is a global business in which physical location is largely irrelevant. Securities market oversight must, therefore, reflect a cross-jurisdictional architecture as market failures can have deleterious effects way beyond the physical border of the initial transactions. We have no clearer example than the current recent financial difficulties which were occasioned by just such an event.

The report of the High Level Group on Financial Supervision chaired by Jacques de Larosière set up by the European President in October 2008 to advise on the future of European financial regulation and supervision noted inter alia that:

> "Financial regulation and supervision have been too weak or have provided the wrong incentives. Global markets have fanned the contagion. Opacity, and complexity have made things much worse.
>
> Repair is necessary and urgent.
>
> Action is required at all levels—Global, European and National and in all financial sectors."

Within this context, however, specific jurisdictions must set up oversight systems to regulate securities activity and effectively capture business originating both within and beyond their borders.

Mr. President, oversight systems should be robust enough to act as a deterrent to undesirable behaviour in the securities market, and where such behaviour does in fact occur, it is detected and disciplined through enforcement action. Market efficiency is impaired and investor confidence eroded where activities such as insider trading, market manipulation and other distortions are allowed to corrupt the investment process.

Persons seeking to act outside the realm of propriety in the financial sector will seek the weakest spot in the financial sector regulatory framework. Such regulatory arbitrage may occur across financial subsectors such as banking, securities or insurance, as well as across jurisdictions. As a matter of necessity, therefore, the Commission has to be empowered to cooperate with other securities regulators as well as other financial sector regulators, as the circumstances warrant.

International cooperation will have little success in adequately addressing the most potent financial market risks where there are uneven standards across countries; with some countries implementing strong standards while others remain with weak or rudimentary oversight structures. In order to achieve the objectives of international cooperation, we therefore need both consistent standards in addition to the ability to share information.

In recognition of this, countries through the International Organization of Securities Commissions (IOSCO) have been working for some time on formulating and refining international standards for oversight of securities markets and promoting the adoption of consistent supervisory requirements and practices. Strengthening the financial regulatory system is now an international priority. Ongoing developments in technology, innovation in money laundering strategies and other financial activities of criminals are just some of the realities that lend urgency to ensuring there is a suitably strong domestic and international securities oversight regime.

Mr. President, where deficiencies are recognized in the domestic systems, these must be addressed by improving legislation and supervisory administration. This Bill, accordingly, seeks to both improve the regulatory mechanisms, as well as to expand the provisions for cooperation with both domestic and foreign regulators by authorizing the commission to sign MOUs with such regulators.

2.00 p.m.

This development was underscored in the leaders statement issued at the G20 Summit in Pittsburgh in September 2009. This statement identified the sweeping reforms that are to be implemented to tackle the root cause of the crisis and transform the system for global financial regulation. These include reinforcing

international cooperations as well as enhancing and expanding the scope of regulation and oversight. In addition, the statement underscored the need for consistent standards across jurisdictions as it advised, and I quote:

> "We are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage."

Securities markets are characterized by continuous change. Change in the form and structure of instruments, in the modes of delivery, in the changing roles of intermediaries. Market system and infrastructure evolve over time and reflect both economic progress and ongoing development of technical expertise and innovation.

Accordingly, Mr. President, the very notion of international best practice in the financial sector is time sensitive as it will be relevant to a market at a particular stage of development at a point in time. Legislation to provide regulatory oversight of securities business has also had to adapt to a mode of ongoing refinement in order to remain relevant to the market as it seeks to regulate.

Adequate legislation therefore is a lag process, and indeed, a notable financial commentator and theorist on financial intermediation describes this environment as a tricky environment. In what I consider the more developed securities markets: The USA, UK, Japan and some European markets for example, enhancements to securities legislation and oversight procedures is an ongoing process as regulators attempt to catch up with market realities.

What was regarded as best practice for today's securities market has clearly proven to be not good enough. The current legislation, the Securities Industry Act was enacted in 1995. Since that time the Trinidad and Tobago Securities Exchange Commission has been charged with the responsibility to administer the Act. Over the years, deficiencies in the current provisions emerged from several sources, including:

1. Inadequate provisions to regulate the market that existed even at the time that the commission was established.
2. The quantity and complexity of securities and services offered.
3. The number and type of intermediaries and other institutions that service this market.

The Commission has advised that over the period 1998 to 2009 the value of securities outstanding has increased from $69 billion representing 81 per cent of GDP to $207 billion representing 123 per cent of GDP. Furthermore, as at June 2009 there were 305 mutual funds registered with 241 of these being domiciled outside of Trinidad and Tobago. Assets under management in the mutual funds industry grew from $5 billion in 1998 to almost $44 billion in 2009. Four local mutual funds sponsors control over 92.4 per cent of the assets under management.

Mr. President, these figures attest to the growing significance of securities in the generation and preservation of wealth for the citizens of Trinidad and Tobago, either by their direct investment or indirectly through their pension plans, insurance policies, or more generally, through its contribution to the overall financial and economic prosperity of the society. As our market continues to develop and employ new techniques and product structures, it is imperative that we have the required supervisory structure and mechanisms.

This Bill aims to enhance and modernize our regulatory framework and ensure the regulation of our securities market is consistent with the three main objectives set out by IOSCO of which we are a member. These objectives are as follows:

(a) to protect investors;

(b) to ensure that our markets are fair, efficient and transparent; and

(c) to reduce systemic risk.

In order to achieve these objectives we are seeking to put in place a number of specific measures that will:

1. Strengthen the powers and capacity of the commission.
2. Improve surveillance of the various actors that operate in our market and ensure that persons involved in the creation, management and distribution of securities will be subject to registration and regulation.
3. Introduce more relevant and effective disclosure standards.
4. Allow for more effective enforcement by clarifying certain market offences such as insider trading and enhancing the enforcement powers of the commission.

Mr. President, I will now go through the clauses of the Bill that provide for the major changes and the additions to the regulatory framework for the securities industry.

Part I, Interpretation Section. The interpretations in Part I have been amended to delete definitions that are no longer relevant; amend others that require refinement and add those that are now required: approved foreign issuers' collective investment schemes, assets back security, unpublished price sensitive information and some new interpretations that clarify the application of existing provisions and enable the implementation of new requirements.

Part II, the Commission, its powers and capacity. The provisions of Part II of the Bill will strengthen the powers and capacity of the commission to discharge its functions.

Currently, the commission is limited in number to a maximum of seven commissioners. This limitation in number severely restricts the abilities of the commissioners in its quasi judicial role, for example, in the adjudication of contraventions.

Clause 10(4) of the Bill provides for the appointment of up to three temporary commissioners in addition to the substantive seven in cases where additional expertise is required.

Waiver or variation of fees. The Securities Industry Act gives the commission the authority to charge fees with the approval of the Minister, but no authority to waive or vary such fees.

Clause 28 of the Bill will rectify this particular anomaly by authorizing the commission to waive, vary or suspend fees with the prior approval of the Minister where such actions become appropriate.

Clause 31(8) and (9) of the Bill introduces a requirement for the commission to have an audit committee of a minimum of three commissioners. This will strengthen the corporate governance function on framework of the commission.

Disclosures to the public. Under the current legislation the commission is required to publish annually a list of all valid registrants in the *Gazette*, and the public is allowed to inspect and extract information from the registrar of registered persons.

Clause 33 of this Bill increases disclosure to the public by allowing for all documents filed to be made available for public inspection at the commission as well as to be posted on the commission's website.

Part III, the regulatory requirements for self-regulating organizations, on-site inspections and powers of entry.

Clause 47 of the Bill expands the powers of the commission to inspect the records of self-regulatory organizations. The Bill explicitly requires an SRO or self-regulatory organization to permit a person who is authorized by the commission to enter the place of business of the SRO for the purpose of examining or reviewing its books, records and documents.

Settlement Assurance Fund. The SIA requires clearing agencies to maintain a contingency fund to protect against insolvency or bankruptcy of its members. However, these provisions offer no protection where a clearing agency is not insolvent but a transaction fails due to failure of a member to deliver securities or moneys.

Clause 48(2) of this Bill will require clearing agencies to establish and maintain an assurance fund to provide support where a member of a clearing agency fails to deliver on a transaction.

Part IV, Registration of Market Actors, Issuers and Securities. Classes of registrants and/or market actors. Under Part IV of the Bill the classification of market actors has been revised, with security companies no longer constituting a separate category.

Under clause 52(1) of the Bill, persons can be registered as the following:

(a) a broker-dealer;

(b) an investment adviser; or

(c) an underwriter.

Furthermore, clause 52(2) of the Bill and clause 54(2) of the Bill contain new obligation for directors, senior officers and employees of a market actor to obtain registration. Registration of individual participants in the securities industry is a basic component of the regulatory structure in almost any and all developed securities markets.

This affords a regulator the opportunity to supervise the individuals charged with the responsibility for conducting the activity for which an entity is registered. Other new provisions include a requirement in clause 53(10) for market actors to file an annual return as prescribed and a requirement under clause 54(1) for anyone that proposes to become a substantial shareholder of a market actor to be first approved by the commission.

Registration of Issuers and Securities. With regard to the registration of reporting issuers, the concept of an offer to the public which was the basis of

registration as a reporting issuer has been replaced in clause 61(1) by the construct of a distribution. All distributions of securities are required to be registered by the commission and those making a distribution are required to be registered as a reporting issuer.

Part V, Disclosure Obligations of Reporting Issuers, refined disclosure obligations. Part V of the Bill improves the regime for reporting by issuers of securities and allows investors to access more relevant and timely information. In particular, reporting issuers are now required to provide:

1. More timely disclosure of material changes of the issuer—which is clause 66.

2. Interim financial statements on a quarterly basis—clause 68.

3. Management discussion and analysis to be filed on an annual basis—clause 70.

4. Mandatory proxy solicitation for all reporting issuers—clause 71(1).

As reporting issuers, collective investment schemes will also be required to comply with all the disclosure obligations contained in Part V of this Bill, this part also accommodates approved foreign issuers that distribute securities in our jurisdiction and provide certain exemptions from some of the reporting requirements once they meet the specified criteria set out in clause 72. The qualifying criteria include capital requirements, reports to local investors and full compliance in their home jurisdiction which has to be one that is designated under the bylaws of this Act.

Part VI, Distributions. Part VI of the Bill deals with the requirements and contents of offering documents such as a prospectus issued in the process of making a distribution.

Clause 82(5)(f), introduces the concept of a whole period for securities where the distribution obtained an exemption from the prospectus requirement. During this whole period no subsequent trade can be effected in the security without the filing of a prospectus or the use of a subsequent prospectus exemption. The provision is necessary to ensure that securities that are issued on an exempt basis are not immediately resold to the public in a transaction that would in effect be a shammed transaction aimed at getting the securities into the hands of the public without a prospectus.

2.15 p.m.

The Bill also grants an exemption for the prospectus requirement to foreign issuers, subject to their compliance with clause 83 of the Bill and the by-laws to follow.

Part VII—Market Conduct and Regulation. Market Manipulation: Part VII of the Bill addresses market conduct and regulation.

Mr. President, the Securities Industry Act prohibition on inducement to trade in securities by the dissemination of certain information, only prescribes misrepresentation which will be the cause of the price of a security to rise and fall.

Clause 96 of the Bill is broader and prohibits making any misrepresentation to induce a purchase or sale of a security.

Restrictions on Recommendations. The Securities Industry Act requires an instrument to be assessed as suitable before recommending it to an investor. When recommending a security to any customer, clause 101 of the Bill now requires a market actor to disclose in writing, all actual or potential conflicts of interest, which he may have in respect of the security of the issuer.

Insider Trading. The provisions relating to trading by connected persons, also referred to as insider trading, have been enhanced as well as structurally simplified to provide clarity as to interpretation and application.

Section 121 of the Securities Industry Act prohibits a connected person from buying, selling or participating in any transaction on any securities exchange or self-regulatory organization.

Clause 104 of the Bill extends the prohibition to transactions off a securities exchange. Currently, section 124 of the Securities Industry Act provides that trading by connected persons, while in possession of price sensitive information, is not prohibited unless trading was with a "view to making of a profit or the avoidance of loss". This permits trading with the benefit of unpublished price sensitive information and also creates serious enforcement difficulties since it is difficult to prove motivation, or the view with which a trade was effected. The revised exemptions removed this subjective element of the provisions.

In addition, clauses 103 and 104 prohibit tipping without the proviso now contained in the Securities Industry Act, that the tipper has to have reasonable cause to believe that the recipient would trade with this information.

Mr. President, it is standard international practice to require insiders to report their ownership of, and transactions in, securities of issuers of which they are

insiders. This allows for regulators to more easily monitor the trading actions of insiders, and provides an insight to other non-insiders as to the insiders' assessment of the merits of the relevant securities.

Clause 139 of the Bill introduces a requirement for connected persons to report their holdings in securities of the reporting issuer with the commission within five business days of first becoming connected to a reporting issuer, and within five business days of every subsequent trade in such securities. A copy of the report would also be required to be sent to the reporting issuer.

Part X—Civil Liability. Part X of the Securities Industry Act for civil liability where persons have suffered loss as a result of misrepresentations in offering documents. Clause 146 extends these provisions to include insider trading and other market misconduct offences. Injured persons now have the right of civil action and the ability to seek compensation directly from the persons who have contravened these provisions of the Act.

Part XI—General Provisions and Enforcement. Enforcement provisions of Part XI provide the commission with greater powers to make by-laws, which will give it the ability to respond flexibly to developments in the market. In addition, this Bill also provides for new offences and higher penalties for breaches of the Act, for example:

i. The fine for an offence under clause 61(2), failure to register as a market actor, has been increased from $100,000 to $2 million.

ii. Under the Securities Industry Act, penalties for breach of the insider trading provisions are a fine of $200,000 and two years imprisonment on indictment, and a fine of $50,000 and six months imprisonment on summary conviction. Under the Bill, sanctions for this breach are only imposed by way of conviction on the indictment. The minimum penalty in such a case is the profit made or loss avoided, as well as a $2 million fine on indictment and imprisonment for two years.

iii. Clause 153(1) of the Bill, increases the penalty payable for a contravention of the Act, or by-laws, or an Order of the commission from a maximum amount of $50,000 in section 143(1) of the Securities Industry Act, to an amount of not more than $500,000, subject to a hearing.

iv. A reporting issuer guilty of a specific offence created under clause 73 of this Bill, contravening the reporting requirements or making a misrepresentation in any document filed with the commission or security holders is liable on indictment to a fine of $1 million.

v. It will also be an offence under clause 73(5) for an auditor to knowingly make or provide a false or misleading audit report in respect of the comparative financial statements of a reporting issuer. The commissioner may also order that such an auditor be prohibited from being an auditor of a reporting issuer for a maximum period of five years.

Mr. President, the enhancements and additions to the regulatory regime for securities are substantial and far-reaching. Accordingly, it was felt that the required objectives could not be achieved through selective amendments to the existing legislation. For this reason, the approach now being taken is to repeal the existing legislation and present the proposals for reform in the form of an entirely new Bill. Many of the proposals in the Bill require support in the form of appropriate by-laws.

Mr. President, I have been assured by the commission that these by-laws are in an advanced stage of completion. More specifically, they have already been drafted and submitted to the Chief Parliamentary Counsel. These are:

1. the general by-law;
2. the prospectus by-law;
3. the collective investments scheme by-law;
4. the depository receipts by-law.

In closing, Mr. President, I would like again, to refer to the Chairman of the United States Securities and Exchange Commission, Mary Shapiro, and echo her sentiments as she addressed the conference in October, and I quote:

"…we restore confidence by focusing on the needs of investors, making tough decisions, setting our standards high and dedicating ourselves to achieving them."

Mr. President, I am informed that this Bill will require a three-fifths majority, and I so inform this honourable Senate.

Sen. Jeremie SC: For passage.

Sen. The Hon. M. Browne: For passage, yes. It requires a three-fifths majority for passage before us.

Mr. President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Thank you, Mr. President. The Bill before us, the Securities Bill, 2009, is obviously aimed at providing greater protection for investors which is very laudable. This particular Bill certainly has come against the background of the global financial meltdown, which witnessed a loss in confidence by investors in the various capital markets around the globe, and Trinidad and Tobago being no exception in the context of our seeking to establish this country as some Pan Caribbean Financial Centre, to do so, we have to reach global standards and acceptable global standards, and it is against this particular background that this Bill is being introduced today and being debated.

Mr. President, I also want to indicate from the outset because of the voluminous nature of the legislation and the number of clauses, we did have an agreement with the Leader of Government Business last week, Sen. Prof. Deosaran, Sen. Ali, and myself, that we would have two speakers on this side, two speakers on the Independent Bench, two speakers on their Bench and this Bill would then be referred to a Special Select Committee of the Senate because there are so many areas of concern that we would want to get it right. And it is against this background, we are limiting our intervention today, with a clear undertaking from the Leader of Government Business to us on this side. So I just wanted to put that on record very early.

Sen. Dr. Saith: Mr. President, I understand what the Senator is saying and preempting the present Leader of Government Business in a way. I was not party to that and I am not aware of it. I however would listen to the debate, and at the end of the day decide where we go from here. Therefore, I do not think it is fair to suggest that we have agreed at least, at the moment.

Sen. W. Mark: Well, I could understand the hon. Sen. Dr. Saith was not around, or if he was, he was not communicated to properly. I am just communicating to him the agreement. But, Mr. President, we are here and we are making our contributions.

Sen. Dr. Saith: [*Inaudible*]

Sen. W. Mark: We are making our contribution. You are the acting Prime Minister. You will respect this House today.

Mr. President, I would like to indicate that some of the main issues in this Bill today, that they would need to pay attention to is one, independence—independence of the commission.

We want to look at the whole issue of enforcement. We want to also look at the quality of staff at the level of the commission because this legislation will make no sense if we do not have an independent—Not the kind of bogus

independence that we have at this commission now. We do not want that kind of independence, where the President is not the President of the Republic. The President is the Cabinet of Trinidad and Tobago. So it is the PNM that is going to be appointing the commissioners.

2.30 p.m.

We would want to have an independent commission, like the Securities and Exchange Commission in the United States; even though the President appoints them, it is on a bipartisan basis. You have three members from the Democrats, two from the Republicans and they have an independent chairman. You have independence there, because there are checks and balances. So we would not have the cover-up, which I will demonstrate this afternoon.

The Securities and Exchange Commission has done a disservice to this country, because of the weakness of the present administration, both at the executive management and at the level of the board. A lot of criminal activities have taken place in the securities and exchange market, without any kind of action being taken by this administration in charge of the SEC.

I will demonstrate that this Bill is a glorified version of what we have now, which we are seeking to repeal. Unless we do not have independence of these commissioners, or the persons who will make up the commission, you will realize that a lot of underhand activities that have taken place at the level of the Securities and Exchange Commission would continue.

I will demonstrate to you today, without calling names. I could call names if I wish, because I have the names, PNM financiers—and I know who they are—who have gotten away with all kinds of activities, scot-free, in this country. As far as we are concerned, we would want to propose fundamental changes. One of the changes that we are proposing is that there must be an office, like the SEC in America has, of inspector general, who will supervise the Securities and Exchange Commission. [*Interruption*] We want an office of inspector general.

I have a report; [*Sen. Mark displays document*] I could not download the entire thing; it is about 500 pages. The Office of Inspector General went into detail on the Madoff and other scandals in the United States of America, and they did that over the Head of the SEC, Shapiro or whatever they call the lady.

So what we have here is a Mickey Mouse group of people; I am not calling them Mickey Mouse, I am saying that it is almost equivalent to that because they have no power, and if they do have power, they do not exercise it. I will show you where they took almost five years, when they should have taken almost six

months, to deal with a report involving an attempted takeover by CEMEX. Mexican Cement Limited came here to take over Trinidad Cement Limited (TCL) and some of our own institutional investors, and “big sawatees” who were financiers of the PNM and had price sensitive information and they traded shares. After they took five years to give a report, do you know what they told us? I have it here. They could not take any action because some senior counsel told them that the evidence was limited. I never knew that the Executive Chairman of the SEC and his team were judge, jury and executioner. I thought they would have taken that report to the courts and bring criminal charges, but they did not do that.

Let us deal with some of the sections. I have so many things to say on this matter, that is why I would like it to go to a select committee to strengthen the legislation.

Who can argue if you bring legislation to tighten the regulations? We have three regulatory authorities in this country when it should be one, like in England. We have the Commissioner of Cooperative Societies regulating the credit unions; we have the Governor of the Central Bank supervising financial institutions and then we have the Securities and Exchange Commission dealing with the stock market and other related bodies under its jurisdiction. We should really have one single regulatory authority as they have in the United Kingdom.

This is what the Government promised in its White Paper, back in 2004, but you know the PNM is NATO: "no action, talk only." [*Laughter*] As far as we are concerned, there are some definitions here which are repeated; misrepresentation is an example. It is here in the old, it is here in the new. I will show you today where there was and, in fact, is misrepresentation in prospectuses. What is the SEC doing about it? They are silent. Where is Osborne Nurse, what is he doing? I like him, he is a good "fella"; a "fella" called Osborne Nurse, he is the Chairman of the SEC, I want to know if he is sleeping, [*Interruption*] or he was—"yuh fire him". [*Laughter*] I did not know that you fired him. Who is the new person? Tell us who the new person is. [*Crosstalk*]

Misrepresentation is here. I want to tell this honourable Senate that on page 26 of the legislation there is something called "security". When you go to page 27 they tell you what security includes and then also on page 27 it tells what it does not include. Hear what it does not include as an example:

> "a certificate or document constituting evidence of any interest in a deposit account with—
>
> (i) a financial institution;
>
> (ii) a credit union…

(iii) an insurance company; or

(iv) a contract of insurance;"

So they are saying that a security does not include a certificate or document constituting any interest in a deposit account. You are saying that insurance companies can accept deposits?

Sen. Browne: We did not say that.

Sen. W. Mark: You are saying that here:

"a certificate or document constituting evidence of any interest in a deposit account with—

(i) a financial institution;

(ii) a credit union…

(iii) an insurance company; or

(iv) contract of insurance;"

What do you mean by that? Why are insurance companies being left out? Is it not the same crisis that took place with Clico, where they were accepting deposits, that caused the collapse of Clico? Why are we making an exception to the rule? These are some of the areas that we want to deal with when we are in committee.

We believe that the insurance companies ought not to be part of this deposit issue. You have a few of them here, like Guardian Life Holdings, big financier of the PNM—its boss man, big financier of the PNM. Is it because of his links with the PNM that you have made an exception to the rule? I want to know. Mr. President, we, therefore, call on the Government to clarify this issue at the level of our committee. This was one of the downfalls of one of our largest institutions in this country.

I also want to take you to Part II of this Bill which deals with the actual establishment of the Securities and Exchange Commission; very noble objectives, who can argue.

As an example, one of the functions of this particular body or commission is to:

"protect the integrity of the capital market against any abuses arising from market manipulating practices, insider trading, conflicts of interest and other unfair and improper practices;"

But the SEC, as it currently stands, has failed miserably in this regard; they have failed the people.

You have a number of other noble objectives as it relates to the functions of the Commission, but we know that if you do not have qualified staff—and not the kind of staff you have here; we are going to recommend the kind of staff that you need, to really give that particular commission the kind of efficacy it requires to carry out its functions properly.

Mr. President, if you look at the membership of the commission in clause 10:

"(a) a Chairman; and

(b) not more than seven nor fewer than three individuals selected from among persons who appear to the President to have wide experience and ability in the legal, financial, business, investment…"—among others.

We want to make it very clear that we do not want the President—unless it is the President of the Republic on the joint advice of the Prime Minister and the Leader of the Opposition—to appoint these commissioners. We do not want the Cabinet to appoint these people. We do not want it. We have many instances of the Cabinet involvement in independent organizations in this country, where they abuse and manipulate these commissions. We do not want it here. If they want a President, we have no problem, but it must not be the Cabinet, it must be the President of the Republic on the joint advice of the Prime Minister and the Leader of the Opposition, appointing the commissioners.

Sen. Dr. Saith: The same President you want to remove?

Sen. W. Mark: The President is the Cabinet, and we do not want the Cabinet to be appointing commissioners to head the SEC. We do not want that. That is why we are serving notice on the Government that we intend to make certain amendments at the level of our select committee, when we go there.

As we go on, we see that the Government is proposing in the legislation a situation in which the commission will be almost forced to give to the Minister of Finance information on a regular basis. That information, as you know, could be very sensitive, and we have a Minister of Finance who nobody trusts. Nobody trusts our Minister of Finance.

Hon. Senator: This one here?

Sen. W. Mark: Not the Sen. Mariano Browne; maybe his turn is coming, but not yet.

You cannot put the kind of power into the hands of the Minister of Finance so that these people report to her; no. We are not supporting that arrangement whatsoever.

You have a situation in clause 17(4), and it reads:

"The Minister is entitled, upon request, to have access to the minutes of the Commission or a committee thereof, and to receive from the Commission a copy of any of those minutes."

How can you have an independent commission looking after investors and seeking to protect their investment, and you have minutes being given to a politician, to have insider information, to be given time sensitive information or price sensitive information or non-public information? To whom, the Minister of Finance? We cannot have a Minister of Finance having that kind of power in the legislation. This is what was in the old legislation.

So if you are bringing back the same things that are in the old legislation, what sense is that going to make? What confidence are you going to generate in the country among investors, if you have the Minister having that kind of power?

Let me go on further to tell you how this commission would be made up. They have a quorum of three. So if you go to clause 10 of the legislation, you would see, for instance, the number that would be appointed, and it goes on further to say in subclause (4) that:

"In addition to the Commissioners appointed in accordance with subsections (1) and (2), the President may, on the advice of the Minister, appoint not more than three persons with such expertise as may be required by the Commission, to act as temporary Commissioners for such period as may be required."

2.45 p.m.

You are going to have a Minister having the power to appoint three temporary commissioners. The Bill is telling us that a quorum will be made up of three persons. You could have three persons taking decisions for the SEC being appointed by a politician. How can that SEC be independent? That cannot be an independent commission. That is a PNM politically driven commission. We cannot support that. This is a dangerous piece of legislation and it would not give the kind of confidence that we believe is necessary in order for people to invest in the stock market and bonds and other instruments, when you know that the politicians' hands are so deep in this particular institution. That is why I am saying that the more things change, the more things seem to remain the same in terms of the legislation that is before us.

We suggest, like in the current Bill, that there be a definition for "insider trading". We know that it is in the body of the legislation, but we want it in the Interpretation Section. What an insider is, is in this Bill. We want to go further with what is insider trading. We want that to be a definition clearly stated.

Let me go back to the composition. In terms of the composition, in addition, we are saying that we need security attorneys-at-law, but they must have a security background in terms of the securities market. There is what is called security lawyers. We need security lawyers on this particular commission. We need persons who are trained in the market who understand stocks and shares; the working of the SEC and that there are crooks posing as businessmen like Stanford, an international crook who came to Antigua and mamaguyed the people. He made people invest about $7 billion or more and what he was running was a Ponzi scheme as Madoff in the United States of America. You put your money and they say that they are giving you 20 per cent increase. You say that is a good return. Then you come to me and say, "Wade Mark, yuh know I geh back my money, 20 per cent." So I go and take my money and put it. He takes from my money and pays me interest. That is how he built up. That is how Madoff and Stanford collapsed.

What is also important is that a regulator in Antigua has been fired from his job and is facing criminal charges. Do you know why? He was given hundreds of thousands of US dollars by Stanford to turn a blind eye to what was taking place in the market. He was not telling the Government of Antigua and the securities exchange body the truth that was taking place. He was bribed and right now the office of Inspector General is investigating two attorneys of the Securities and Exchange Commission because they are under suspect in the Madoff scandal. Madoff is now spending 150 years—he will die in jail because he stole close to US $65 billion from ordinary investors in the world. Then there is a next one called Stanford.

We have to be careful. When you are putting regulators you have to put people with integrity. Not PNM people! We know that PNM has a challenge there.

Sen. Dr. Saith: He knows what he has to do. You cannot imply PNM people have no integrity.

Sen. W. Mark: You are PNM.

Sen. Dr. Saith: Of course I am.

Sen. W. Mark: I did not know that you encompass PNM.

Mr. President: Senator, I realize how passionate you are. I ask you to temper your language. This is the Senate.

Sen. W. Mark: Mr. President, the truth is that we want to protect our investors and ensure that the regulators are above board. That is what I am emphasizing here. I am giving you examples where even in the great United

States of America, this gentleman called Madoff, for 16 years mamaguyed and fooled the securities and exchange commissioners and their enforcement staff, from 1992 until he was caught in 2008. He was scheming his way through. We have to be careful in Trinidad and Tobago because we have a lot of local Madoffs here. They are doing almost the same thing. Do you know why they are getting away? They seem to have the protection of the authorities in this country. Some of them should be in jail right now, but they are wearing jacket and tie and appear to be decent citizens.

Another area of concern to us in the legislation is that a quorum should not be three persons. We want to increase the number of commissioners from seven to 10. We want a bigger quorum. We want the commissioners to be appointed not by the PNM Cabinet, but by the President on the joint advice of the Prime Minister and the Leader of the Opposition.

When we look at this legislation, another area of concern to us is the whole issue of complaints. It seems that there is a—I cannot recall the exact provision but I read it in going through this Bill. Maybe, the hon. Minister could advise me. There appears to be a time line for the submission of complaints. There should not be a time line as it relates to the submission of complaints. Complaints should be submitted not within a two-year period but have it extended. In this legislation, it appears that the Government is seeking to limit the period of time that you can submit a complaint. We believe that that is not proper in the circumstances.

There are areas in the Bill particularly as it relates to what we will like to call insider training. There is a whole section on insider trading in the legislation. I want to go back to the matter of the functions of the commission and deal with the issue of protecting the integrity of the capital market against any abuses arising from market manipulating practices, insider trading, conflicts of interests and other unfair and improper practices. I just got the article to which I wanted to refer. The gentleman's name is Mr. Leroy King. He is facing seven counts of conspiracy to commit wire fraud, 10 counts of conspiracy to commit mail fraud, conspiracy to launder illegal proceeds and conspiracy to obstruct the US Securities and Exchange Commission investigations into Sir Allan Stanford and his companies. This gentleman was the regulator and head of the Antigua and Barbuda Financial Services Regulatory Commission.

Our market, as you know, is a bit thin with the recent sell-out of our RBTT to RBC which was a most backward step on the part of this administration. This has now brought the stock exchange in terms of listed companies, the value has been reduced by close to $2 billion. The administration had no problem with its sale,

just as you had no problem with CEMEX taking over TCL, a national company. Because there were sufficient nationals who were patriotic, they were able to stave off that attack. They attacked that company on two occasions in 2002. In February was the first assault and they came back in June for the second assault. We were able to stave them off and they have left and gone back to Mexico.

In the case of the RBTT, RBC is now in charge of it. They sold it for about $13.7 billion. Now a local company, in this instance a bank that was listed on the stock exchange being delisted and as a result, the value of the total stock exchange has now been reduced by close to $10 billion to $12 billion. There are people in this country who like to invest when they see these things going on around them. When you see the interlocking directorships that exist on the stock exchange, market people have no confidence in the stock exchange. They do not have confidence in investing.

I will give you an example. I saw this and I had to ponder for a while. The Trinidad and Tobago Mortgage Finance Company Limited issued a prospectus. I happened to be on the Central Bank's website because they do not publish these things in the papers. I came across this. This was issued sometime in September. What I found a bit curious and I do not know if the hon. Minister can explain this to me when he is winding up. On page 1, under the term "security"—in the legislation it means among other things bonds—they are issuing a prospectus to raise $500 million through bonds at the rate of 7 per cent over a 15 year period. The agent is the Central Bank of Trinidad and Tobago. What I found curious was this:

> "The Securities and Exchange Commission has not in any way evaluated the merits of the securities distributed hereunder and any representation to the contrary is an offence."

It is something like this in the current Bill. To protect the integrity of the capital market against any abuses arising from market manipulating practices insider trading, conflicts of interest and other unfair and improper practices.

When I read this I asked myself the question: What is the role of the Securities and Exchange Commission? You are not coming to raise $50 million or $25 million. You are coming to raise $500 million. The Securities and Exchange Commission is saying in this document that these people have not evaluated the merits of the securities distributed hereunder and any representation to the contrary is an offence. If I am an investor and I want to—

3.00 p.m.

Sen. Browne: Mr. President, I would like to clarify that is a disclaimer that would be used for the issuance of any security. The purpose of the SEC is not to endorse any security or to recommend it to the public, but to ensure that the

market is fair; that it is transparent; that prospectuses are issued; that all relevant information is disclosed and that prospective purchasers have all the required information to make such a decision. It is therefore expected that the SEC will endorse any security and that disclaimer will be given for the issue of any security being issued by anybody; by the Central Bank, the TTMF or any issuer.

Sen. W. Mark: Mr. President, the Minister has tried to clarify the issue. I still have some reservations about it. I will not delay you on that point. I will go further.

I mentioned earlier that on page 21 of the legislation there is a definition of "misrepresentation". Follow me on page 21 of the Bill. It is a criminal offence that can draw both fine and jail if a prospectus is issued and material facts contained in the prospectus are misleading, deceptive and designed to mislead the people. Mr. President, I want to read for you and I want to know the role of the SEC in this matter.

This is the prospectus. I do not have the exact page—"Corporate Governance Issue". Under this section of this prospectus, the board of directors and key management are outlined. Hear who are on the board of directors:

Calder Hart, Chairman

Ingrid Lashley

Michael Annisette

Ruben Mc Sween

Esther Rajpaul

Henry Sealy

Eunice Walton

Hear what this says and I want you to carefully follow me. This is a prospectus where they want us to invest money to buy bonds. Hear what they have said about Mr. Calder Hart, who is the chairman:

"An economist by profession, Mr. Hart was recruited to set up The Home Mortgage Bank in 1986…"

I did Economics. I reached BA level. I do not call myself an economist. In the literature and in universities today, do you know when you are described as an economist? You are described as such when you have an MA or an MSc in Economics. You are attached to a profession. It is a serious science.

You have a gentleman who is the chairman of UDeCott saying that he is an economist. I have, in my position, an authentic copy of a resume of the qualifications of the chairman of UDeCott dated November 16, 2009, given under the Freedom of Information Act. It came from UDeCott. Hear the gentleman's education. According to his signed résumé:

1963 to 1966 St. Francois Xavier University

I have not seen a degree. If I go to a university, I imagine—I went to UWI, I have a BA in Economics/Politics—if I am putting my résumé down, I will say University of the West Indies (UWI), BA Economics/Politics, Lower Second Class Honours. What I see here—and I need clarification—I cast no aspersions; I make it clear.

Between 1966 and 1967, University of Ottawa—no qualifications;

1970 MIT, CHCMHC, whatever that means, and

In 1971, the University of Alberta, CHCMHC nominee.

That is what I see here. I searched throughout the document to see where there is an economist here. I did not see it.

I call on the Minister in the Ministry of Finance, who is responsible directly or indirectly for the SEC, to investigate this matter. I believe that there has been a misrepresentation of the material fact as to the man's qualifications. According to this man's own résumé, he is not an economist but purports in this prospectus to define himself as an economist by profession. That is misleading. He is fraudulently misrepresenting himself as a professional economist.

Mr. President: Senator, I do not think, other than for your own language, that there has been any allegation of fraud at this point in this matter. There certainly has been no charge of fraud or conviction of fraud. To use that language is somewhat harsh.

I advise you also that we had a former Independent Senator who had a first degree in Economics from UWI and we all know her as an economist. Your words tend to diminish her reputation. Therefore, I caution you as to the wisdom of the argument you are taking. The Senator served this Senate with merit.

Sen. W. Mark: [*Inaudible*]

Mr. President: I know, but you said one degree in Economics does not make you an economist. I do not know that in this country there is any institute of economics or anything that requires you to be called an economist. The fact that

you deal in that business is probably sufficient. Temper your language. I think that you are probably going to impinge on the reputation of some sitting Senators.

Sen. W. Mark: I am guided by you, Mr. President, but I want to make it quite clear that my contribution is not aimed at diminishing anyone. I am asking for clarification. Can I beat my chest and say that I am an economist because I worked all over the place in business?

May I also seek your guidance on this one?

Sen. the Hon. Michael Annisette, Director.

I am sorry he is not here. When I look at my tag, I see Sen. Wade Mark. When I look there, I see Sen. Michael Annisette. I do not know if you can put that on a document.

These are things that we do that misrepresent the truth and people move on that basis. Here we are dealing with the SEC and we are saying there is misrepresentation and we have to be careful. I have nothing against my colleague and friend in the trade union movement. I am saying that how he is represented here does not give the truth and we need to be clear because people's moneys are at stake.

Mr. President: It is interesting that at this juncture, I have to interrupt you when you are talking about misrepresenting the truth.

Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. J. Kernahan*]

Question put and agreed to.

Sen. W. Mark: Mr. President, through you, I would like to ask the hon. Minister in the Ministry of Finance to investigate a report in which the SEC submitted to the Governor of the Central Bank a report on insider trading at a leading commercial bank and where a former inspector of that bank graduated to managing director of that very bank. There was a report submitted by the SEC to the Governor of the Central Bank concerning insider trading at that commercial bank. My information to date is that the Governor has not done anything about that report and the person is no longer there.

I am asking this Minister to investigate why, if it is true that the Governor of the Central Bank received a report from the SEC concerning insider trading at a leading commercial bank, he has not taken action? [*Interruption*] You see how the games are being played: One success story on this matter of violation of the SEC laws.

This is a notice that was issued by the SEC. I got it on their website. It says that SEC successfully concluded an enforcement matter where Chan Ramlal Limited paid a maximum fine of $100,000. This is the first time I have read where the SEC, that has been sleeping for the last how many years was awoken and charged Devanand Ramlal of Chan Ramlal Limited.

I want the Attorney General to tell this country what he has done with the report on irregularities involving the former chairman of Trinidad and Tobago Electricity Commission (T&TEC). We understand that criminal charges ought to be preferred against that individual. The Attorney General has that report and is sitting on it hoping that the country will forget it. We will not forget it. We want action on that report.

I was happy to see that the chairman and his team were able to take action on a gentleman who bought more than 10 per cent of Berger Paints Limited, did not tell the SEC in accordance with its rules and laws that he had bought more than 10 per cent, triggering the takeover code. Because of the vigilance of their surveillance unit, they were able to get information. They wrote this gentleman over and over, but he was not writing back.

3.15 p.m.

Mr. President, do you know what he did? He reduced his 15 per cent back to 10 per cent. When they asked him who he sold those shares to, he could not answer. When they investigated it, he sold it to himself. He sold the shares to himself—himself to himself. That is why he was charged $100,000. Mr. President, one thing I am sad about is that it should have been two years in jail. I am sorry he was not given two years in jail.

This is the kind of crookedness, forgive my language. When you and I take our hard-earned change and put it on the stock market and invest it in stocks, bonds and shares and so on, there are people who are manipulating the market and undermining the value of your stocks and shares and making you poorer at the end of the day and that is unfair. We are trying through this legislation to bring confidence into the system, so that you and I and others can invest without thinking that there will be insider trading involving, for instance, this man, that man and the other.

Mr. President, the worst case involved Neal & Massy, RBTT and two big honchos from the PNM; one dead and one alive. Two big honchos! There is a report to that effect, but do you know what? They put it under the cover. If it was Basdeo Panday, jail with the Attorney General! Jail! "Arrest him, handcuff him,

police with big machine gun outside his house", but in the case of these big men who wear jacket and tie and give the impression that they are decent people in this country—if you know the amount of millions and millions of dollars they have made out of insider trading. They were on a board where they got sensitive information that you could not get, and they bought shares as if they were going out of style and their families, their wives and their children end up becoming millionaires in the country at the expense of the ordinary people of this land. They are around living nice and poor people cannot get the H1N1 vaccine. Our children are dying in the army because they cannot get the H1N1 vaccine, because the Government say that the money done.

Mr. President, we want to strengthen the legislation. What was the role of the SEC? That is why we are saying that the Securities and Exchange Commission does not appear to be doing its work. Here you had a fellow called Andre Monteil in charge of the Home Mortgage Bank buying half of the bank and paying $20 million for it, and NIB under Caldar Hart bought those same shares for a largesse amount.

Mr. President, it is really a scandal. Do you know what? The SEC has said nothing about it; himself buying shares via himself, and himself with a PNM person buying back the shares from him for a big amount of money. The Prime Minister said in the Parliament of this country that those shares were going to be returned to the Home Mortgage Bank at the same price. We were shocked to see NIB buying those shares beyond the price that those shares were bought for.

Sen. Browne: Mr. President, this is a matter which has been debated on a Motion and the facts have been put in the public domain. With respect to the issue of the transaction involving the Home Mortgage Bank and its purchase, first of all, the Home Mortgage Bank was not a public company, it was not listed and it was not traded. An investigation was done by the SEC and they determined that they broke none of the market actuarial rules.

With respect to the issue of the sale of the shares to third parties, a commitment was given by the Prime Minister that the shares would be sold at the price without suffering any loss or rather at the same price, and that is exactly what was done. There was no question of the shares being bought at a price different from the price when the original transaction took place. The shares were traded at exactly the same price. That was disclosed and it is the subject of a report in *Hansard* where I had responded to Sen. Mark's query, and Sen. Mark is aware of that.

Sen. W. Mark: Mr. President, with the greatest respect to my hon. colleague, I want to refer him to an article dated Sunday, November 23, 2008 in the *Trinidad Express*: “NIB acquires controversial HMB Shares” and I want to quote:

> “Stone Street Capital Limited a private company owned by Monteil and his wife had bought his then employer CL Financial interest in the Home Mortgage Bank for $110 million in a transaction that was widely condemned by the Prime Minister and other institutional sector including the Central Bank.”

Mr. President: Senator, the Minister has made his statement to the Parliament now twice, and you are reading from a newspaper article which is hardly evidence of anything, and to read it here is effectively challenging the veracity of the statement that the Minister just made.

Sen. W. Mark: What is his statement?

Mr. President: That they were bought at the same price that the—

Sen. W. Mark: So if he says, Mr. President, it is $110 million—

Mr. President: He said at the same price, whatever that is.

Sen. W. Mark: [*Inaudible*]

Mr. President: Let me finish. I think that unless you have absolute evidence in front of you, you need to make some other point, because to do otherwise is really to challenge the veracity of what the Minister said.

Sen. W. Mark: Well, I am challenging him.

Mr. President: I think we need to—

Sen. W. Mark: He is not God!

Mr. President: Well you are in effect saying that what the Minister is saying is untrue.

Sen. W. Mark: I am saying—

Mr. President: If that is so, then I think that the proper way to deal with that is on a Motion of privilege, and not to debate that issue here.

Sen. W. Mark: So, Mr. President, am I to get from what you are saying—I seek your guidance—that the hon. Minister is saying to us—I just want to get it clear if I have to bring this privilege Motion—that the shares, the 43.5 per cent shares, was bought for $110 million and was later sold for the same $110 million?

Is that what he is saying—it was sold and then purchased by NIB for the same $110 million? Was it $130 million that NIB paid for those shares? Mr. President, I sit to get him to clarify so I could bring my Motion of privilege.

Sen. Browne: Mr. President, with respect, I do not have the details at the top of my head because I did not prepare for that. We can go to *Hansard.* Quite clearly, if I remember the transaction correctly, there is stamp duty and transaction cost. The price that was paid for the shares was exactly the price which the original purchaser paid for the shares. If there were other costs, they would have been transaction costs related to stamp duty and transfer. That is what would occur.

Sen. W. Mark: I would do the research, Sir, and I would bring my privilege Motion.

Mr. President, I know that my time is coming to an end. In fact, I am almost there. We would like to strengthen the legislation, because we believe regulation of the market is in the interest of the public and, particularly, the investors. So, we have no problem with that. We are saying that there must be independence; there must be enforcement; and the quality of staff must be high in terms of the calibre of staff to carry out the enforcement and to ensure compliance.

Mr. President, it is against this background that we have said that we would like to work with the Government on a select committee to strengthen the legislation to make it fair, impartial and independent so that nobody could cast any aspersions on the integrity of this particular commission and that is all we are asking. We have some areas of concern, and we seek clarification wherever it is necessary, but we are clear in our minds that this SEC as is currently constituted is not able to do the kind of work that it is able and is mandated to do.

Finally, we do not believe that a complaint made by a person or an organization should take five and a half years to be answered. We believe six months is the minimum or maximum that should be given to that organization to respond.

I thank you very much. [*Desk thumping*]

Sen. Subhas Ramkhelawan: Mr. President, thank you for giving me the opportunity to speak on this particular Bill to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk.

Mr. President, this legislation is a most complex, complicated, convoluted and voluminous piece of legislation. I can say that in the past two years that I have been sitting in this honourable Senate that this has been probably the most challenging piece of legislation to tie all the parts together and to make some sense.

Mr. President: Senators, if you do not mind me interrupting you, as is the usual practice, I believe that you have an interest in a securities firm and, therefore, you ought to at the beginning of your contribution, declare that fact, that you have a vested interest on a professional basis in this piece of legislation.

Sen. S. Ramkhelawan: Mr. President, thank you. I had intended to do so just about at that time when you rose, but seeing that it is a matter of concern, first of all, let me state that I have been in the securities business—in the business of banking or in the business of a financial nature—for some 25 years. Having served on boards for mutual funds in the Cayman Islands, Offshore Asset and Investment Management Firm in St. Kitts and thereafter in St. Lucia; here in Trinidad and Tobago, first as a director in the First Repurchase Agreement Company in Trinidad and Tobago in 1995, a subsidiary of one the banks; as managing director of a securities company and brokerage house; as director and deputy chairman of the Trinidad and Tobago Stock Exchange which qualifies as a self-regulated organization under this draft legislation; as a member in 2002 of a Cabinet appointed committee to restructure the financial services sector, and that report became the Green Paper upon which much of the financial legislation is today being drafted and crafted.

I declare my interest accordingly and, therefore, I consider that I am in a unique position to look at this Bill as in Goudas' proverbial story statement of blind men feeling for the different parts of the elephant, I feel that I have seen many of the sides of the elephant rather than had only to feel to one side.

So, as I begin my contribution on this Bill, we are all aware that it is coming and being discussed and debated at a time when the world seems to be emerging from one of the worst financial crises of the past century. Many lessons across the world are being learnt. I think the hon. Minister in the Ministry of Finance alluded to some of the lessons that have been learnt and are being put into effect.

As we consider this Bill, we should learn from these various lessons and articulate what these lessons are and whether this particular Bill is, in fact, addressing lessons which have been learnt over the past two years or is it that the Bill crafted as it was by external consultants and left on the shelf for many years

after the consultants' work was completed in 2005, have we taken these lessons to heart and incorporated them in this particular Bill? The Bill has been in gestation since 2002.

3.30 p.m.

I want to start my contribution by saying that this matter of securities business is not very well understood by ordinary citizens, whether in Trinidad and Tobago or otherwise. Indeed, in Trinidad and Tobago there have been stories where persons would come into the offices of security firms and ask for a job as security guard. That has been known to happen over and over again. [*Laughter*]

It is not the same as in the banking industry where we have some two centuries of banking experience in this country. It is as far as securities are concerned, are not only trading in stock, it is that our experience with legislation has only been in place since 1995 with the introduction of the current Securities Industry Act, and that is some 14 years now.

Prior to this there was the Securities Industry Act, 1981 which dealt mainly with the function of brokers, dealers and market actors as agents, not necessarily as principals in the securities industry. It is for us 14 years later an opportunity to shape legislation that will not only protect the investor and not only provide for fair and efficient markets, but also ensure that our objective as a nation to be one of the leaders in a regional financial centre, in a regional capital market, that we can realize that by crafting and structuring legislation that is not only meant to ring-fence and protect, but is also meant to create and stimulate development.

The whole idea of legislation must not be only regulation and protection, but it must allow for innovation, it must allow for development, and this is one—in the Securities Industry Act, 1995—of the requirements of the Securities and Exchange Commission.

Therefore, I want to couch my contribution within this context, because to do otherwise is to create an imbalance in what policy initiatives are meant to achieve. Policy initiatives are meant to balance development and innovation with protection through regulation. Once we set that stage, we are about finding the right formula and the formulation that will ensure that we are creating, developing and enabling infrastructure for the development of this particular industry.

Having said that, I have listened to the arguments here in the debate and some of it in the other place and I think in the other place the issue was raised that this particular Bill should go to a Joint Select Committee. The response from the

Government side at that time was, what you need to do to get a Bill to a Joint Select Committee is to suggest and bring forward all the reasons that are cogent and clear that can take this Bill into a select committee or in that instance a Joint Select Committee to ensure that there is a reason for the Bill ending in that particular place.

So my point of departure to suggest the reasons why this particular Bill should go to a select committee of the Senate—and I support Sen. Wade Mark—will unfold as I get specific parts of the legislation which are in some places contradictory and in some places deficient for which correction will be needed. I want to endorse that strong legislation is necessary for the protection of the investor. I support wholeheartedly the idea of strong and effective legislation that is meant to achieve the objective or protection as well as provide for the expansion and development of the industry and the market.

I would like to, for the benefit of citizens across the board, ordinary citizens, establish a template, a benchmark, a point of departure to make a comparison between what this Bill sets out to do and the various parties that would be subject to the Bill, and the financial institutions legislation. The reason for this is that what happens in the securities industry is what happens—it has been described as the shadow banking system. Therefore, if it is the shadow banking system I want to make a comparison as to what is happening in a less complex area in terms of the parties involved in banking and financial institutions, and in the case of the capital markets and the securities industry.

In a bank the regulator is the Central Bank and its main agent is the inspector of financial services. The bank is in the business of lending money to persons who wish to raise funds, and the bank standing as principal in the middle in order to provide those funds to those who wish to raise funds would borrow, in a sense, from various other players in the form of deposits and in the form of other funding instrument. In the securities industry there are a larger number of parties and players. It is a bit more complex. But in essence it is between two parties with intermediaries where one is seeking to raise funds for whatever purposes on the one hand, and the other is seeking to invest or place funds for a benefit on the other hand. In this case the banking sector, the bank stands in the middle as principal.

But in the securities industry, in the capital markets the regulator is, in our case, the Securities Exchange Commission. It regulates the flow of funds and the transparency and reporting in respect of funds from one party to the other. In this

case the one party that is raising funds, according to the legislation will be the issuer, the reporting issuer or the approved foreign issuer as the case may be, so this party is raising funds. On the other side is the investor who is placing funds.

Now in the banking situation what happens is the bank stands as the intermediary and the investor can expect to get his funds back from the bank, those who place funds. But in this industry what happens is a process that is called disintermediation where somebody does not stand in the middle necessarily as principal but stands as agent. So, you have a regulator which is the oversight regulator, the Securities and Exchange Commission, but there are sub-regulators, and the sub-regulators are known as self-regulatory organizations or SROs.

3.45 p.m.

So, these are the various parties to the securities industry, and I think that you would see that it is somewhat more complex in the securities industry, than in the banking sector. Well, why then? Why then do we need a more complex, structured securities industry? I had mentioned this process of this intermediation, whereas, when we place our money with the bank, it is the bank that makes profits if it gets it right. The bank takes your money at 6 per cent or 7 per cent and lends it at 11 per cent, and if the lender repays on time and does not default, then the bank makes the profit and pays you your 6 per cent and that is the end of the deal. Why does that investor want an alternative form of investment? It is because through that alternative form of investment and by taking a different level of risk, the investor stands to gain more if all goes right. That is the reason for the shadow banking system, to take out the middle man.

So in the case of the bank, the bank is the middle man and the bank takes some of the risk and gives you a specific return. In the case of the securities industry, what happens in the primary market is you as an investor invest, and when you invest, you get all of the returns related to that risk, save and except the fees you may have to pay to the market actors who stand in the middle as the intermediate. That is the story. Therefore, within that context, what are the issues that we will have to address in this matter of this Securities Bill, 2009?

As I have said before, the purpose of the Bill is:

> "to protect the investor from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital market…to reduce systemic risk"—and in this particular piece of legislation—"to co-operate with other jurisdictions in the promotion of fair and efficient markets..."

I want to jump ahead beyond the definitions, to speak to some of the clauses that may require some adjustments. In the Financial Institutions Act, there is a definition for the business of banking, and there is a definition for the business of a financial nature that the legislation through the Central Bank, seeks to regulate. In this piece of legislation, this as I call it, the Securities Bill, 2009, there is no such definition for the playing field over which the regulator in this case, the Securities and Exchange Commission, has clear jurisdictions. Now, it is not that any definition could be all encompassing or all inclusive, that is not the case. In fact, in most pieces of legislation, you will see a definition that says "including, but not limited to", and I would like to see a definition of the securities business in this piece of legislation. I say this because even in the recently passed Financial Institutions Act which regulates banks, financial institutions and so on, there is an attempt to define the business of securities.

In the definition, Part I, section 2, under the Financial Institutions Act, 2008, "business of securities" is defined as:

> "means the business of brokering and dealing in securities as conducted by a broker and dealer, respectively as defined in the Securities Industry Act";

This is the first point that needs to be resolved. There is a definition here in the Financial Institutions Act and it will need to be changed because there is no longer a broker and dealer, there is a broker-dealer. Therefore, I bring it to the attention of the Minister in refining and finalizing this piece of legislation, it needs to be properly reconciled with a range of legislation that was originally contemplated in the adjustment of the financial sector. But while I am here in the Financial Institutions Act, I want to bring also to the attention of the hon. Minister, that the Minister would have raised that the definition of securities company which was contained in the Securities Industry Act 1995, has now been removed. It has now been removed and in its place, whereas we had "dealer" or we still have, "dealer-broker, investment advisor, underwriter and securities company", we now have "dealer-broker, investment advisor and underwriter". Yet still, in Part II of the Financial Institutions Act under Exempted Activities, a provision was put in place which spoke to the definition of a securities company, and what a securities company was allowed to do, so that it would not run afoul of the legislation in the Financial Institutions Act, that is, the business of a financial nature. So that under Part II, Exempted Activities, this activity was allowed to securities companies as an exempt activity.

Chap. 83:02:

(a) The business of repurchase agreements; and

(b) Lending and borrowing against securities as defined in the Securities Industry Act.

So I think what we will need to do, is we will need to remove from here, or adjust this definition to one probably to a broker/dealer undertaking and replacing the function of a securities company being able to undertake the business of repurchase, as well as lending and borrowing or margining. So I think this is the first point that we need to pay attention to, the whole question of making sure that we reconcile and rationalize the legislation that we are providing for.

But I turn to the other factors in the legislation. Under clause 7(1)(d), the intent of the Bill is to do away with the definition of insider, and to replace it with notion of a connected person. So in the new piece of legislation, the term insider trading is not defined. While it is still there, the term insider trading is not defined and I support my hon. colleague, Sen. Mark, that it should be defined or it should be removed, because the term insider trading, it was meant that "connected persons" was supposed to replace "insider trading".

I want to speak to this matter of capital adequacy, and again from my point of departure of the Financial Institutions Act, the Financial Institutions Act establishes very clearly what the minimum capital requirement is for persons who are engaged in lending and the taking of funds under that piece of legislation. But, what we are seeking to do under this piece of legislation is have that minimum, not properly articulated in the Act itself, but left to be determined in regulation, or in by-laws that are subject to negative resolution of this Parliament. In terms of that point of departure, I would like to see a minimum level of capital in the legislation for entities that would be engaged as principals in lending, and borrowing from customers. My suggestion is, Mr. President, that it should be the same minimum as in the financial institutions legislation. It should be the same as $15 million.

I think we would be remiss in terms of the protection of investors if we leave that open, and we find in the regulation that the figure turns out to be $1million or $2 million as the case may be. I think we should establish a minimum, and that minimum should be aligned to players in the banking sector that are in the business of lending. This does not speak as yet to the matter of capital adequacy. I think that the SEC has been somewhat, I should say negligent, tardy, ineffective, in dealing with the matter of capital adequacy for what was then securities companies, and the facts and figures

will come out to show that the SEC allowed certain companies to build an asset book that was insufficiently supported by capital. Now it is hidden, and couched, and lost in other institutions, but it cannot be hidden for too long.

So you allow institutions to grow to billions of dollars, but not have sufficient capital to carry that level of risk. I mentioned this because the reason for the failure of many institutions worldwide during the financial crisis was clear. The reason for the failure of those institutions was overleverage and under capitalization. So, the SEC fell asleep at the wheels, as the oversight regulator allowed securities companies to avoid these SROs and fell between the cracks, in a similar way to what happened in the 1980s and late 1970s, when some of these so-called finance companies were not, and did not have sufficient capital for the level of assets that they had on their books. History has a way sometimes in different forms, of repeating itself and I think we will see that particular situation take place here.

Clause 7(4) of the draft legislation—well, I hope I have the correct version of this—refers to an inspector of banks. Now, we all know that the function of inspector of banks became the fount and was replaced by the inspector of financial institutions under the Financial Institutions Act, 1993, and its replacement 2008. So that I think that we will need to clarify and correct that.

Sen. Browne: Thank you for giving way. That is one of the amendments we proposed. So that is already included. Thank you.

Sen. S. Ramkhelawan: So the Minister is ahead of me this time.

Clause 11(1) refers to a person engaged in securities business, as being disqualified from serving as a commissioner on the Securities and Exchange Commission. But as I said before, there is no definition of securities business. The only attempt to define securities business is in the Financial Institutions Act, but there is no definition of securities business in this Securities Bill. In clause 11(1)(c) a person can be appointed a commissioner even though he has up to 5 per cent equity, but not more in a reporting issuer.

4.00 p.m.

The amount of interest on investment could run into hundreds of millions of dollars. Why would you want a commissioner of the Securities and Exchange Commission to sit to oversee amongst other persons, reported issuers, when there could be such a very significant interest? Therefore, I would like to see this

matter dealt with. We could determine what the size is, but an absolute figure should also be applied. No person who has such interest should serve as a commissioner.

As a general comment, clause 11 seeks to prohibit commissioners and the general manager from the holding of securities, to a certain limit. What about the other senior officers in the commission who have access to a wide range of information, should they be allowed to hold securities in reporting issuers which they are regulating? Apart from the general manager and the commissioners, I could think of the secretary of the commission having extensive information and yet still being allowed to invest in the securities industry. I think not; I think this matter has to be addressed.

As we speak even to auditors, auditors in our country cannot hold shares in companies they are auditing. It is part of the code of conduct. They are not allowed to hold shares in companies they are auditing, at least in the serious auditing firms. In international auditing firms, that is not the case. I think the hon. Minister knows this. So why should we allow persons, who have such a wide array of information, to hold securities, and commissioners to hold 5 per cent? No; I do not think that makes good sense if you want to protect investors, if you want to insure or assure against having price sensitive information in various hands, and persons who can, in fact, participate in the market. We have to do some work to ensure that matter is resolved.

There are some other areas in Part III with regard to self-regulated organizations (SROs), which refer to securities exchanges, clearing agencies and associations of market actors. The Bill makes no provision for promoters of collective investment schemes or Unit Trust to become SROs, even though this is an industry that, by the Minister's own admission, was something like $44 billion or second only to the banking sector. I think if you want to regulate and make sure that the industry is efficient, we need to ensure that there is an adjustment which would allow for this association to become, if it so wishes, a self-regulated organization. I think the drafters could look at that at the appropriate time.

Under clause 47(8), and this is repeated across the draft legislation, there are instances where the commission will set what it considers to be reasonable fees and charges; that is reasonable in its own discretion and not via any by-law. Under clause 47(8) it says:

> "The Commission may charge a market actor or reporting issuer a fee for an examination made under this section that the Commission determines is reasonable in the circumstances."

So you could have a situation where the commission may have brought in a high cost examiner and it costs $5 million, but the law or the legislation as drafted gives the commission the power to charge that market actor.

Let us go back to the Financial Institutions Act; the inspector does not have that power. The Inspector of Financial Services does not have the power to determine that this is reasonable or unreasonable; he is guided by what is set out in the legislation, specific limits.

From a policy matter, what I think we are trying to do is to balance the growth of the industry with the protection of investors. It is quite clear that the industry is small and in its embryonic stages. In larger industries, what will happen is that the licensing fees ought to be sufficient to compensate the regulators. It cannot be the case where you have a fledgling industry. If the SEC believes that its business is to be self-sufficient, yes, I agree with that, but at what stage? Are you going to kill the goose that could have laid the golden egg or is it that you are going to build the industry and when it is built in the various areas, then you can move to take your share of the pie.

In various areas, and I will detail them further if time permits, you have this nefarious clause that comes up, where the SEC, in its own determination of what is equitable and reasonable, would charge the various market actors. It does not make sense.

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. B. Ali*]

Question put and agreed to.

Sen. S. Ramkhelawan: I will run through several other clauses to support the motion that this piece of draft legislation needs some significant correction, before it should see the light of day and achieve its purpose of investor protection at fair and efficient markets.

Under section 52(2), the intent of the legislation is to allow for foreign issuers to come to this market. Previously, if someone, an issuer, wanted to come to this market to raise funds and they were already under the jurisdiction of, let us say, their home market, which would have been recognized by the SEC, they would have still been required to come to this market and raise money through a whole new prospectus or offering document. I support the idea that an issuer could come to this market, if properly regulated in his home market, that we recognize could

come with the same offering document and offer to raise money in this particular market. I think it is a significant addition that makes sense, if we want to be the regional capital market and the regional financial centre. I support it wholeheartedly.

On the other side we have persons, who I will call "suitcase dealers" and "suitcase brokers", who used to come to this country, peddle their goods, market securities and were not subject to this jurisdiction, were not subject to the legislation and the controls here in Trinidad and Tobago.

What this draft legislation is seeking to do is to ensure that persons cannot come into an unregulated manner to sell securities, buy securities or make offers in Trinidad and Tobago. I think that is an important adjustment to the legislation in terms of protection of investors. What they can do is come and attach to a house that is licensed in Trinidad and Tobago for a period of 30 days. I think it makes sense, if we want to move towards this regional capital market and centre.

I turn quickly now to some other aspects. I want to reinforce that in each category, as we start to speak about broker-dealers, that in each category of activity, if we take the template of the Financial Institutions Act, every licensee has to be licensed to operate in different categories of the business; whether you want to be in trust, whether you want to be in mortgages or whether you want to be in currency trading, you have to have a specific authorization from the Central Bank and the Inspector of Financial Services, to do so.

I think it makes sense. If the broker-dealer acts only as agent, there should be a special licence for that. If the broker-dealer wants to engage in lending to clients, which we know generically as margining, then there should be a special authorization for that from the SEC.

4.15 p.m.

If the broker-dealer wants to engage in borrowing stocks from clients, there should be a specific authorization for that in each category and each category should have its own requirements for capital adequacy as the case may be.

Mr. President, in the transition from the Securities Industry Act to this piece of draft legislation, there are certain omissions and deletions in the transitional arrangements which are at best unclear and do not sufficiently provide and are not sufficiently provided for in the Bill.

One such arrangement is that in the Securities Industry Act, there is a definition of trader and with the new draft legislation the intention is to do away with the definition of trader and the rules that circumscribe that trader and have a

somewhat nebulous authorized representative. I caution against this, because there must be specific rules for somebody who is trading shares and securities for clients. I caution against this and it should be looked at very carefully in making the transition.

The trader under this Bill will be treated as a registered representative, not an authorized representative under the by-laws still to be made. So we are making a transition, we have a new piece of legislation, we have removed the definition of trader, how do you effect the transition even though you say that some of the by-laws will continue until they are replaced? I do not think that there is a specific by-law for traders. I may be mistaken, but there is not.

So in terms of continuity, we need to ensure that the arrangements are in place for a proper transition, and I do not think that is the case. [*Interruption*] Those by-laws will come into effect after the passage of this piece of legislation, once you remove the definition, I do not think you have the by-laws to support it, but we will discuss that. I am saying to you that that is the case, and we will discuss it as we go along.

Under Part V, Disclosure Obligations of Reporting Issuers, clause 64 speaks to all collective investment schemes being deemed to have the same disclosure requirement and reporting obligations as reporting issuers. The challenge with this is, I think that there ought to be different requirements for collective investment schemes, mutual funds, unit trusts and so forth from reporting issuers because this will require a collective investment scheme to send an annual report to each one of its shareholders or unit holders as at the reporting date. Now this could be onerous and it is not necessary. It is certainly not what is done in international practice, and I think the legislation is seeking to bring us to international practice and I ask that this matter be looked at very closely. Should there be a separate form of treatment of these collective investment schemes as against the reporting issuer which might be a company?

Clause 66(1) speaks to the issue of a press notice within one day of a material change. I think this is very impractical and something that would be very difficult to do. In terms of the press and the media, if a material change occurs and you have to get it to the press the next day, it is not always the case that you can, but the penalties for not doing so are very onerous; in some instances, up to $2 million and two years imprisonment.

So you are making an amendment that is now two days and I am not even sure that players would be able to achieve that and I think it is something that has to be discussed in practical terms.

Clause 67(5) stipulates the formulation of an audit committee of the board. Now collective investment schemes that are registered in Trinidad and Tobago and domiciled in Trinidad and Tobago do not have boards of directors, they have trusts. Is it the intent then that the board of directors or the trustee will form audit committees? What is the intent? I think that some clarity and attention need to be had as far as this is concerned.

The point I am making is that there is need for proper rationalization which has not taken place across the board and I think in a select committee we can iron out all these things so the legislation is actually workable. I think there is a lot that I still need to say but I believe my time is drawing to a close in the three minutes that I have.

So while there is much more that needs to be said, I think the point has been made to the powers that be that this piece of legislation, while laudable, is deficient in the drafting in many areas; while laudable, it is deficient in terms of the structural framework that must be properly applied to achieve the goals of investor protection and development of a fair and efficient market.

I would endorse and support this Bill goes to a select committee, failing which, we will be seeking to pass a piece of draft legislation that will be ineffective, improper, that will not be able to achieve the goals that were set out, and that is not the intent. I believe that on the Government side and on the part of all the Senators, I believe—I do not know—that we want to pass good legislation, effective legislation and workable legislation.

So I have no hesitation in supporting the idea of this Bill, I have no hesitation in lifting the bar in terms of the fraudulent practices, and in terms of misrepresentation. I just want to make sure that when it is put in place it can work and it makes proper sense. So I would reserve my other comments and urge the Government to take this matter to a select committee.

I thank you, Mr. President.

Mr. President: Sen. Seereeram, I understand that you wish to speak next. As this would be your maiden contribution, I am willing to make a little allowance. Normally, we would break for tea at 4.30 p.m. and I am rather loathe to stop you just barely six minutes into your first speech.

If you will like to start, I will certainly allow it, but if you will like to pause and return at 5 o'clock and start without interruption, I will allow that also.

Sen. Seereeram: I will like to pause.

Mr. President: Very well, thank you.

So Senators we will take the tea break now. This sitting is suspended until 5 o'clock.

4.25 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

Sen. Ved Seereeram: Mr. Vice-President, and Members of the honourable Senate, I am pleased to have the opportunity to address you today on matters in which I have been intimately involved over the past 20 years.

The recent events in the global and securities market have forced us to pause and examine what exactly has happened, what lessons we have learned, and how we can move forward to address the issues facing us. Mr. Vice-President, we are not alone in this quest, the developed countries are also at this juncture. While they may seem to be making progress to a path of development and improvement, evidence is surfacing that they are faltering and may not get off the starting block.

There is a new movie to be released and it is named "Wall Street", the director was interviewed and when asked what the content of the movie is, he summed it up very shortly by saying: "Greed is legal." The unbridled greed and corruption in the financial market are difficult to control and while updated laws are looked at as solutions, the actors in the financial markets are of brilliant minds and seem to have the inexhaustible capacity to circumvent laws and they enjoy the freedom to do as they please.

Let me give an example; if the law says that no single cigarette is to be sold without the cautionary health warning, an investment banker, or trader will think how to get around this legislation, how to circumvent this legislation. And he thinks to himself: suppose I sell a whole pack of cigarettes to the customer and immediately repurchases the packet except one. The proposed transaction is then discussed with the attorney to determine if there was any breach of the law; the attorney may very well confirm that there will be no breach of the law in such circumstances. The trader therefore gets a head start on the competition. But soon the secret is out and other traders get in the act, soon the practice is rolled out nationwide.

It comes to the attention of the regulators who have also been advised that the practice is within the law. What do the regulators do next?

Mr. President, to regulate an industry, there must be a thorough understanding of it, an understanding of the behaviour of the players, their motivation, their reward systems and the support systems including the role of their legal advisers, tax advisers, accounting advisers and paid lobbyists. Without this information and an appropriate support with good laws and adequate human resources to implement, no amount of legislation will be effective in regulating the market.

Mr. Vice-President, effective regulation therefore requires among other things the following:

- appropriate laws;
- qualified, experienced and proactive regulators;
- fearless, independent and determined regulators;
- ample staffing of regulatory agencies;
- adequate powers to the regulators to discipline the market participants;
- a supervisory body to supervise and regulate the regulatory agencies and to handle public complaints if not dealt with at the regulatory level.
- a legal system that is, lawyers and judges specialized in securities and banking law.

5.05 p.m.

Without those ingredients, we would have problems in having the new legislation implemented properly. A removal of obvious obstructions to justice as security deposits and a client that has been forced into bankruptcy by a market actor and is now asked to put security deposit to the courts. Where is he going to find the money when he has been made bankrupt by an institution? This is not only heartless but clearly an obstruction to justice.

The removal of further obstructions to justice includes deliberately drawing out of court cases to frustrate the plaintiff and further place them into financial distress. These are common practices in the court that frustrate a plaintiff to seek redress. A system to detect and weed out market actors engaged in deception, fraud and related questionable acts. We must have a system to ensure qualified and appropriately educated actors. Committed regulators to educating the public and market actors with established educational programmes in place.

These are the preconditions if we are to get an effective, efficient and law-abiding securities market. How has the Securities and Exchange Commission performed since inception? Those are fair questions to ask. How many

transactions, equity trade or bond transactions have been reviewed for compliance? The hon. Members of Parliament have a right to know. How many participants in the securities market over the years have been disciplined and or charged by the Securities and Exchange Commission? The hon. Members of Parliament have a right to know. What is wrong with the present legislation that would prevent compliance to good and lawful market practice? How would the Securities Bill, 2009, enable the commission to improve enforcement?

Contrary to popular belief, there are indeed, serious problems with our security and banking sectors. These nefarious practices which I will outline are happening under our noses and nothing is being done about them. How else can one explain the profiteering of over US $25 million on a relatively small loan of US $61 million? How else can one explain the financial rape of small Caribbean economies by Trinidad and Tobago banks on what should have been simple securities transactions?

Sen. Browne: Will the Member give way?

Sen. V. Seereeram: Sure.

Sen. Browne: Thanks very much for giving way. I would like to have clarification with regard to the transaction that you are talking about because you are referring to a transaction. I do not think that we have the understanding of what or how you are speaking about.

Sen. V. Seereeram: Thank you. This information has been provided to the Securities and Exchange Commission. I am quite happy to quote the name. I have no reservation on that, if it is okay. There was a matter concerning two bonds done for the government of Dominica by two Trinidad and Tobago banks. Those matters were subject to court. I can quote several others. I have a significant amount of information. Maybe, at this time I will declare that I am a financial consultant. I have investigated several securities matters that involve fraud to the highest extent. I have done review transactions in Trinidad and Tobago and the Caribbean islands as well.

These involved bonds issued by the government but arranged by Trinidad banks. The information could be made available. I want to emphasize that contrary to popular belief there are serious problems with our security and banking sector. These nefarious practices which I outlined are happening under our noses and nothing is being done about them.

How can one explain the unconscionable profit of over TT $75 million on a simple interest rate swap transaction? The bank's profit was 12 times over the normal profit. Would anyone buy a $100,000 car for $1.2 million and be happy

about it? This is taxpayers' money about which I am speaking. How can one explain the indiscriminate use of a sinking fund bond structure to exploit unsuspecting issuers that ultimately led to their demise? How can one explain the indiscriminate use of phantom collateral—phantom meaning to say that it is there in paper, but when you look for it, it is not there; this is security on bond—on oppressive bond transaction and the inaction of regulators? They have been given all details to deal with the deception and fraud and bring the perpetrators to justice. There has been no action.

How can one explain the manipulation of a bank to influence a company to move the current auditor, put in an auditor that the bank wants to work with and thereafter, engage in deception and fraud regarding bond transaction with that client? How can one explain the rampant practice whereby the bond arrangers also act as trustee, paying agent and registrar? The inherent conflict of interest leads to many problems. How will the Securities Bill, 2009 address this problem of conflict of interest and wearing many hats?

How can one explain the sale of part of the issuer's bond to the issuer as a security on the bond? Such incestuous transactions were rampant in the region from 1998 until recently. Those bonds have placed the issuers into a desperate position of perpetual poverty. A good case in point is what a Trinidad bank has done to the country of Belize. They are in a state of debt where they would probably not recover except they get debt forgiveness. Evidence is there before us. It is for us to read, understand, interpret and act on it. The perpetuators of these wrongful acts did not have the sense to cover their tracks. It was a cookie monster eating cookies and the crumbs were dropping exactly.

How can one explain an issuer participating—this is an issuer of a bond—in a meeting called by the trustee of the bond at the time of default? In other words, the bond went into default. How can one explain the issuer participating in a meeting called by the trustee at the time of the default to decide on the course of action including the calling of the bond? In other words, the ridiculous situation has often arisen where the issuer is asked to adjudicate on placing itself in the hands of a receiver. There is blatant evidence of it.

How can one explain the situation where bonds are securitized and sold in the market before the issuance of the primary issue? We are stripping out the bonds, selling them in the market and the primary issue has not been consummated. That is contrary to the bond agreement. When an arranger signs an agreement with an issuer, the agreement states clearly that the arranger will sell these bonds to the classes of parties identified. They never got the permission to securitize the bond and then sell it.

How can one explain the hidden secret profit by the arranger without the knowledge of the issuer? How can one explain kickbacks given by the arranger—meaning to say the bank that is arranging financing for others—to the issuers who are raising the bond, who would have engaged a financial consultant to help them raise the bond? How can one explain an arranger paying the advisor of the issuing company after the bond has been consummated? All this evidence is in the hands of the Securities and Exchange Commission. All this evidence is there.

Sen. Browne: On a point of order. Mr. Vice-President, Standing Order 35(1), whilst I am sure that there may be some valid issues here, it is not clear to me that the issues that are being raised are directly relating to the Bill which is under discussion.

Sen. Mark: What is your point of order?

Sen. Browne: Relevance. I would like to find out where we are going with regard to the specific clauses of the Bill? [*Crosstalk*]

Mr. Vice-President: Silence! I will allow the Senator a little more leeway and see exactly where he is going with his form of argument.

Sen. V. Seereeram: Thank you, Mr. Vice-President. The purpose of laws is to enable the administrators of those laws, so that they will have the power, necessary knowledge, et cetera, to prevent such acts from happening in the market. [*Desk thumping*] The point I wish to make later in my contribution and which I made already, is that no amount of laws will give us the protection if we do not have the platform ready and prepared for implementation. [*Desk thumping*] We would all be wasting our time preparing wonderful legislation, well bounded in the Queen's English, but it would have no effect if we do not establish within the Bill, the requirement of a platform to ensure implementation. [*Desk thumping*]

If I may continue. How can one explain the fudging of the books of a publicly trading company going undetected by regulators when ample evidence to warrant an investigation was also presented in the audited accounts? In other words, an audited account was there and a student of finance would have seen so many red flags, to say wait a minute, this needed to be investigated. This is a public company where they fudged the account for TT $2 million to show a profit in that year. The evidence is there.

As a regulator they must also develop the analytical skills to pick up a book, review it and determine whether based on the red flag, there are issues to be addressed. In the United States as well as here, the legislation says that you cannot fudge your books and report fictitious profit. That is market manipulation to the highest.

5.20 p.m.

Extremely important as well is that we have to determine how the regulator will deal with the auditors and their role in material misrepresentation. The Bill covers these positions. Are you prepared to go up by one of the big trees of the big five and say: “Guys, come on, I’ll pull your licence if you do not comply”; or, “A fee of X amount is now demanded from you”?

Mr. Vice-President, brick and mortar do not commit crime and unlawful acts. People do. The question remains, how will the Securities Bill, 2009 assist in addressing these issues?

[MR. PRESIDENT *in the Chair*]

I had mentioned that to ensure appropriate legislation there must be in-depth knowledge and understanding of the actors, their behaviour, their motivation and so on. Before you regulate a market, you have to know how the actors think. You have to go into their minds, just as they are going into the minds of the regulators to determine their next course of action. It is a common thing in the capital market. You have to get into the minds of your customers. Similarly, as regulators, we will be remiss if we do not get into the minds of the participants and actors in the capital and securities market.

Let me expand this point. In this regard, we do not need to reinvent the wheel, but we can look at the research and information emanating from writers in the developed capital market. We can get a peek behind the scenes as to what has happened. What is the psyche of traders and investment bankers? Traders and investment bankers are very different animals from the bankers we knew in years gone by. If we do not understand how they think, we will be unable to regulate the market.

In his book, one that I will recommend if I am allowed to recommend it, *Liars Poker* by Michael Lewis, gives a fascinating story of inside Salomon Brothers; a fascinating story. In his book Michael Lewis said:

> “I am now convinced that the worst thing a man can do with a telephone without breaking the law”—he never knew that he was also breaking the law—“is to call someone he doesn't know and try to sell that person something he doesn't want.”

That is common practice in the financial market and if you do not understand that—that is the premise upon which traders operate. Those of us who may have studied the case of Bankers’ Trust will know that there were several litigations that brought down that large bank and it is now classified as operational risk.

Mr. Lewis wrote about his early days in Salomon Brothers. I quote:

> "I was niggled by the feeling of being a charlatan. I kept blowing people up."—he means selling them bad investments—"They blow up. It has become normal. Afterwards you say, 'Boy, the market change'.
>
> I kept blowing people up. I did not know anything. I had never managed money, yet was holding myself up as the great expert on matters of finance. I was telling people what to do with millions of dollars when the largest financial complication I ever had was a $325 overdraft in my account at Chase Manhattan Bank."

Mr. President, this situation is also applicable to Trinidad and Tobago. There is no question about it. The evidence is abundant. [*Crosstalk*]

Hon. Senators: Tell us where to go please!

Sen. Mark: Mr. President, I would like your protection for the new Senator. He is making his maiden contribution and Senators on the other side are distracting him. I seek your protection for him to make his contribution in silence.

Sen. V. Seereeram: Mr. President, does that sound familiar? It is my humble opinion that the situation is no different in Trinidad and Tobago. I wish to emphasize that if we do not understand the mind, method and behaviour of participants, we will be unable to draft proper legislation to deal with it. There are too many people in the industry selling things they do not understand.

The Clico debacle is a case in point. High risk investment was being sold without a keen understanding by the agent or the investors. If this is not addressed—it is addressed to some extent where the proposed legislation suggests that any investment must be appropriate. I wish to endorse that, but there should be an emphasis on that point. You cannot sell anything that is inappropriate and the test of whether an investment is suitable is that there should be a clearly defined and appropriateness test. How do I know it is appropriate to the investor?

The other point is that the pricing must be at market. Those are two fundamentals on the capital and securities market when you are selling things. It must be appropriate and it must be priced at market. The problem here is that many of the sellers of security are driven by commission and therein lies the conflict of interest. When last have you heard an insurance agent try to sell term insurance? They will never put it before you for consideration because the premium is small and therefore the commission is small. There must be laws against that.

How do you determine what is appropriate? It affects all of us. Do not think it ends here. We have children and we will have grandchildren. Those of us who are bankers may feel smug in that environment, but I always tell my banker friends that their children are not guaranteed a job in the bank.

In our country, there are armies of unqualified and inexperienced people employed to sell financial products they do not understand. In such a case, there is bound to be misinformation and deception in the marketplace. There is considerable misunderstanding about simple money market funds. I notice a bank recently trying to correct years of misinformation by placing prominent advertisements in the news media explaining the nature of these funds. Remember, an act of deception comprises, not only what is said or printed, but also what is not said or printed. Omission is a major aspect in deception.

Investors make decisions for a variety of reasons. The right name could influence a decision. For example, calling a bond a Reggae Bond instead of a Jamaican Government Bond could have a favourable impact on the man. Selling Bwee shares as owning a part of history could also influence the man. I have met investors who were proud to be a part of this thing, but now they are crying. They have lost everything.

John Perkins in his book, *Confessions of an Economic Hit Man*, wrote:

> "Economic hit men are highly paid professionals who cheat countries around the globe out of trillions of dollars. Their tools include financial reports, rigged elections, pay-offs, extortion, sex and murder. They play a game as old as the empire; one that is taking on a terrifying dimension during this time of globalization."

Does this apply to us?

I have seen bankers operate; one of them good cop, the other bad cop. They are sending conflicting information to the client to confuse them into making a decision. This may be extreme, but where big money is involved anything can be expected—lies, cheating, deception, pay-offs, conspiracy and other legal terms; such behaviour all part of the landscape. Without understanding that behaviour, we are unable to regulate the market.

A fundamental requirement to regulate the market is to understand the nature of the creature that you are dealing with. Unless you understand these basic truths, you will not be able to deal with issues in the securities market effectively.

There are other fascinating books to read and I will encourage you all to read so that you get an insight: *Conspiracy of Fools* by Kurt Eichenwald; *Enron: The Rise and Fall* by Lauren Fox, and *What Goes Up* by Eric J. Weiner.

Mr. President, in the securities market, it is the principle that the seller beware; not the buyer beware. In other words, you cannot misrepresent. The question is: Where in the Bill does it provide for appropriate resources, meaning qualification of persons to detect these malpractices? Where does it provide a platform to create a very potent Securities and Exchange Commission? Maybe I am missing the point that I wish to emphasize. Without the provision for a strong platform for launching that Bill, we will be remiss.

With specific reference to the document before us, page 11, I would like to suggest a few things for consideration. The objective of the Bill should be expanded to include the protection of, not only investors—there is a focus on investors. I also suggest that we include issuers and other participants in the capital market. Everyone should be protected, not just investors. Issuers are a major part of the capital market—there are those who issue bonds—and there should be provisions to include them.

On pages 26 and 27, the definition of "security" excludes a certificate or document constituting evidence of any interest in a deposit with insurance companies. I raise that issue and Sen. Mark raised that issue as well. The question arises: Are insurance companies allowed to issue deposits?

I have seen evidence where insurance companies issue annuities and the companies which have invested in those annuities could not put their stamp on that document because they are designed for individuals, so they got the manager to sign off in his name on behalf of the company. Clearly, if you have to get a manager to sign off on behalf of the company that deposit is in the name of the manager according to the insurance company. Something is dramatically wrong.

On page 39, clause 10, regarding membership, this is the key to effective regulation of the securities and capital market. The composition of the commissioners seems to be at the discretion of His Excellency George Maxwell Richards, the President of Trinidad and Tobago. I suppose on the advice of—

Sen. Mark: The Prime Minister, Mr. Manning, is in charge.

5.35 p.m.

Sen. V. Seereeram: Mr. President, I believe that the appointment of the commissioner is at the heart of getting a successful implementation of this Bill. There should be rigorous screening for potential candidates for the commissioner's position. If that is inadequately filled, I am not a betting man, but I could bet you the failure. If the SEC is not appropriately staffed, you are going to guarantee failure.

The inclusion—and Sen. Mark touched on this subject—of an attorney-at-law is crucial, but may not be good enough if that person is not specialized in securities and banking law. Those are very special areas of expertise, and just having an attorney-at-law—I have over the last 10 years interacted with many attorneys, and no disrespect to them, but I had to be teaching them about bond issues, how to interpret trustees and so on. You have to be in it. May I suggest that the Bill provide for a specialized attorney-at-law? May I also suggest that there be two such attorneys-at-law in the commission for the simple reason that the quorum requires three personnel and, at least, one of them should be an attorney-at-law versed in securities and securities law?

In addition to all of that, the Bill should attempt to stipulate the qualification and experience of the general manager. You cannot leave that to chance for the general manager. Whilst the general manager is a line position, they must also have a good working knowledge of the securities market, because it is based on their recommendation that they could employ consultants, but if you do not know the timing and when a consultant is needed, then their functions would not be appropriately discharged. This is too crucial to pass by. In this regard, I would suggest that the selection process be strengthened and, perhaps, be placed with an independent body to be engaged in the hiring process.

Mr. President, I wish to remind the Senate that if we had a properly functioning Securities and Exchange Commission, many of the wrongdoings that I cited before would not have occurred. You must have the ability to see the red flag; you must have the courage to go and investigate it; and you must have the strength to pursue the matter to its logical conclusion. [*Desk thumping*] Without that aspect in the process, I think this is an exercise in futility.

Mr. President, in reference to clause 13, this clause seeks to indemnify commissioners and any employee for an act done in good faith. However, an act done in good faith can still be negligent where the individual may not have taken the time to educate himself or herself. You cannot just say that I have taken a decision or made a contribution in good faith and that is the end of it. The onus must be on the commissioners to educate themselves. If they do not know that they have the privilege of engaging a consultant—the point I am making is just to say that the act was done in good faith and to wash your hands, I do not think this practice complies with the companies laws. The onus on the directors, according to the Companies Act is far more rigorous than this. So, maybe we can use that as a pattern.

Mr. President, clause 18(4) attempts to confine conflict of interest for commissioners to matters relating to a relative residing in the same dwelling. That is a very confined interpretation of conflict of interest. I suggest good sense prevail. To confine conflict of interest to such a narrow definition may not be adequate. In this regard, the definition should be left open and include all situations that may influence the objectivity of the commissioner's decision.

Clause 50 deals with the handling of complaints. I believe that a time frame for the commission to handle complaints should be specified in the Bill, failing which the commission may drag its feet on matters indefinitely. The Bill should specify that adequate resources, personnel and money resources be provided for dealing with complaints expeditiously and, certainly, complaints should be able to be investigated within 90 days unless there are extenuating circumstances. Certainly, a 90-day period is reasonable.

I know of a case where a complaint was lodged with the commission in July this year, and the only response so far is that they are looking at it. What comfort does that give a plaintiff? Whether he is an investor, issuer or a participant or an actor in the financial market, what comfort does that give? This is precisely the reason for the establishment of an overall supervisory body for all regulatory agencies. Such a supervisory body would give the comfort to market actors and the invested public at large that institutions have been established to address their complaints and any dissatisfaction.

With reference to Part VI which deals with the registration of market actors, issuers and securities, clause 53(1)(a), to register as an applicant:

> "…is considered by the Commission to be fit and proper for registration or reinstatement of registration in the category applied for;"

Mr. President, my question is: What will be the process to determine "fit and proper"? Anyone can interpret fit and proper. There is an attempt to say what are the guidelines for fit and proper, but let us say that a complaint had been made against a certain individual and that information went to the commission, how would the commission handle and determine "fit and proper"? What level of investigation will they go through? Would they rely on the decision by a court before they could determine fit and proper or could they look at the events or the facts of a transaction and determine from that, without getting a ruling from the court, whether it is fit and proper? So, I am saying that they should have the capacity and the independence to look at the facts of a case and determine whether that individual is fit and proper, notwithstanding that there was no court case in the matter.

Mr. President, to whom will the commission be accountable? It was not certain in the Bill whether it is the Ministry of Finance or whether it is an independent body as I am suggesting. There is no need to reinvent the wheel in this matter. We can look at best practices in the world today and see where a regulatory body, if so required, should reside, because that is critical for ensuring objectivity and independence.

In summary, it is my belief that without adequate and appropriate staffing at the commission, all the good work put in by this honourable Senate would be wasted. That is my honest opinion. The establishment of an independent body for the selection of commissioners and senior staff should address this requirement. I also believe that the establishment of a supervisory body over the regulatory agencies will enhance good governance and accountability.

I wish to thank you and the honourable Senate. [*Desk thumping*]

The Acting Prime Minister and Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, as I indicated earlier, I do not intend to conclude the debate today, and I would like, at this point, to adjourn the debate to next week, and move on to the Motion dealing with the amendments from the Lower House on the Evidence (Amdt.) Bill.

EVIDENCE (AMDT.) BILL

House of Representatives Amendments

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I beg to move that the House of Representatives amendments to the Evidence (Amdt.) Bill, 2009 listed in Appendix II, be considered.

Question proposed.

Question put and agreed to.

Clause 6.

House of Representatives amendment read as follows:

A. In paragraph (a)(iii) delete the proposed paragraph (f) and substitute the following:

‘‘(f) is fearful and no reasonable steps can be taken to protect the person or others or to protect him or others from financial loss.’’; and

B. In paragraph (c), after the proposed subsection (5), insert the following subsection:

‘‘(6) A condition set out in any paragraph of subsection (1) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—

(a) by the person in support of whose case it is sought to give the statement in evidence; or

(b) by a person acting on his behalf, in order to prevent the person who made the statement giving oral evidence in the proceedings, whether at all or in connection with the subject matter of the statement."

Sen. Jeremie SC: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment. Did you read everything?

The Clerk: Yes.

Sen. Jeremie SC: Okay. Mr. President, I think it is self-explanatory, but we decided in the other place that we should expand on what was meant by "fearful" especially in light of the decision of the Privy Council in *Grant v the Queen*. The Privy Council in *Grant v The Queen* held that in respect of a similar proviso that it was important to introduce a requirement that reasonable steps should be taken to secure the attendance of witnesses. So that takes care of the first one.

The second provision is also self-explanatory. It treats with circumstances where witnesses are not available because the accused has put the witness in fear. So, the intent of the provision is to prevent the accused from manipulating the process and threatening witnesses.

Question proposed.

Sen. Mark: Mr. President, I would have liked the Attorney General to also explain the following subsection (6), which arises, I would imagine, from the previous (f). I do not know if you would like to clarify.

Sen. Jeremie SC: I spoke to it.

Sen. Mark: You spoke to this as well?

Sen. Jeremie SC: You said that the intent of that section is to prevent the accused from manipulating the process and threatening witnesses. So that we have introduced a new subsection to treat with instances where the unavailability of the witness is caused by the person in support of whose case it is sought to give the statement in evidence or by a person acting on his behalf.

5.50 p.m.

Sen. Mark: Mr. President, when we refer to "no reasonable steps can be taken to protect the person or others or to protect him or others from financial loss", what are we really talking about here?

In other words, we are saying that, for instance, somebody would not have to give or do not have to appear as a witness in a matter if for instance that person is fearful and that the State can take no reasonable steps to protect the person or others. When we say: "No reasonable steps can be taken to protect the person", who is to determine that reasonable steps cannot be taken to protect that person? Is it the State? Is it the Government? What is to determine a witness—this is saying from what I understand from the Bill before us when we dealt with it, that a witness does not have to appear in court if he is fearful and you have now made some adjustments to say, the reason or the qualification if "no reasonable steps can be taken to protect the person or others or to protect him or others from financial loss". I am not too clear in my mind what it is.

Sen. Jeremie SC: Mr. President, one question I discern in Sen. Mark's contribution, "Who is to determine this question?" It is for the court to determine whether or not reasonable steps had been taken and it is an added safeguard to the integrity of the process, so you are not going to be allowed to say I am fearful—simpliciter—you are going to have to go further. The State is going to have to go further to show—and I thought Sen. Mark would welcome this with open arms.

Sen. Dr. Dick-Forde: He has to open it first. [*Laughter*]

Sen. Jeremie SC: The State is not going to be allowed to simply say that X is fearful.

Sen. Mark: Tell that lady to go to Copenhagen.

Sen. Jeremie SC: She is going to Copenhagen.

Sen. Mark: She is going?

Sen. Jeremie SC: Well, she is duty bound to go to Copenhagen and she is not taking you.

Sen. Mark: No, she is taking the Prime Minister, I understand.

Sen. Jeremie SC: Mr. President, the clause is not going to bite—[*Interruption*] Okay, if Sen. Mark understands then—

[*Sen. W. Mark gets up and turns and points to Sen. D. Seetahal SC*]

At last, I beg to move. [*Laughter*]

Sen. Seetahal SC: Mr. President, I merely wanted to point out that now, in addition to the prosecution being required to prove that the witness is fearful, they must also show that, probably, for example the Witness Protection Programme is not suitable or the witness has refused to go into the programme.

But, above and beyond, you have the new subclause (6) which introduces an additional condition which is similar to what is in the Criminal Justice Act, 2003 of England, which was not there before, that the party who is seeking to put in this statement—remember this all goes back to the statement of a witness, a written statement, unsworn statement going into evidence. If the witness is dead, out of the country, fearful and so on, so you are now saying that if that person contrived the absence of the witness then that person or someone on his behalf, then the statement would not go in, which is a safeguard that is in the 2003 Act and we had not had this, so, apparently it is now included to make it extra, extra certain and more in line with what Sen. Mark has been arguing for, it appears. Thank you very much.

Sen. Jeremie SC: Mr. President, I beg to move. I beg several times. [*Laughter*]

Question put and agreed to.

Clause 7

House of Representatives amendment read as follows:

A. In the proposed section 15I, in subsection (1) —

(i) insert after paragraph (e), the following:

"(f) the video recording was made in the presence of an adult chosen by the witness"; and

(ii) renumber paragraphs (f) and (g) as paragraphs (g) and (h);

B. In the proposed section 15N in subsection (3), delete the words "(d) or (1)(g)"; and

C. In the proposed section 15W in subsection 2(b),

delete the words "[including a ruling on an application under section 15N (3)]".

Sen. Jeremie SC: Mr. President, in respect of the first amendment to clause 7, that is 15I, I am going to propose a further amendment. In respect of (B) that is the proposed section 15N, the deletion of the words "subsection (1)(d) or (1)(g)" and the substitution of the words "subsection (1)".

The explanation for that is that 15N(3) provides that:

"the court shall not admit evidence of the bad character of an accused person under subsection (1)(d) or (1)(g) where it would have an adverse effect on the fairness of the proceedings."

The Government considers that 15N(3) should be amended to give the court a general power to exclude bad character evidence for unfairness under all of the seven gateways rather than just in the case of sections 1(d) or 1(g). This will ensure that the same standard is used for all seven gateways when determining whether evidence of an accused person's bad character should not be admitted.

This amendment will guard against the risk of evidence which is admitted pursuant to 15(1)(a) to (c), (e) and (f) will be held to have caused unfairness to the trial which may result in a conviction being quashed. In respect of (c), that is the proposed 15W, the deletion of the words including a ruling on an application under section 15N(3), that is merely a consequential amendment following up on the amendment to section 15N(3). [*Interruption*]

That, I propose to amend further as circulated. So that proposed section would be on the list which has just been circulated.

Sen. Mark: Where is that list? I have not seen that list.

Sen. Jeremie SC: It is one section.

Sen. Mark: I do not have it.

Sen. Jeremie SC: Everyone has it apart from you, Sen. Mark.

What we are doing is proposing to substitute the House of Representatives amendment, "the video recording was made in the presence of an adult chosen by the witness". Those words are too wide, so the new (f) would read "the witness is a child and the video recording was made in the presence of an adult chosen by the witness". That, I think is self explanatory.

Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Question proposed.

Sen. Mark: Mr. President, here it is, again, the Government is seeking to amend the relevant section and where we have the video recording was made in the presence of an adult chosen by the witness, the Government is now deleting and substituting this particular amendment and there is a new 7(f), "the witness is a child and the video recording was made in the presence of an adult chosen by the witness;"

So the witness, we have been told, is a child and the video recording that is being made, is being made in the presence of an adult chosen by—is it a child, Sir?

Sen. Seetahal SC: [*Inaudible*]

Sen. Mark: "Yeah", so what was the purpose of making this change, Attorney General?

Sen. Jeremie SC: Sen. Mark, we do not want to have a situation—the words as drafted in the other place would have allowed for adult witnesses to have adult cronies being present, strictly speaking, that would have been captured, that was not our intention. Our intention was to allow for a child witness to have an adult present, not an adult witness to have an adult present when being questioned.

Sen. Mark: Why, for instance an adult who is appearing as a witness and is giving a statement, to ensure that statement is accurately recorded and it is not manipulated, why this person cannot have someone present? I do not know if it has to be a lawyer or an adult, they are entitled to that, but what I am saying is I am trying to understand the rationale for making the amendment. Why is it for instance you are saying—

Sen. Jeremie SC: It is too wide.

Sen. Mark: It is too wide? You are saying because it is too wide you are now narrowing it down to a child and you are saying a child would have a witness.

Mr. President, these amendments, although they are not being rushed because I know they came with the Order Paper, but I would have needed more time to study these things. Having regard to the fact that the Government is now moving these things, I would not be able to support these measures, so in those circumstances we shall abstain on those matters.

Sen. Seetahal SC: Could I say something? Mr. President, this amendment, really, was a measure introduced in the House of Representatives which is not contained in similar legislation, that is in England. I understand the purpose is to probably ensure the integrity of the process, but what are we dealing with? We are not dealing with the video recording of a confession of an accused person, which, if that would have happened then you would expect to have a responsible person such as a Justice of the Peace or a representative being present. This is a regular witness, ordinary prosecution witness whose evidence is being taped or video recorded as it were, there is no need in my view for any other person to be present. If you did that then you would never ever get evidence.

So, supposing you are the lone eyewitness and you are there ready to give a statement, the police have to go now and look for somebody to come and be there, that person might very well want to stop your introduced elements when your are

giving evidence. This is a witness you know; it is not an accused person. It is a witness. But if we are dealing with a child, currently when a child gives a statement he would do so in the presence of an adult, so what you are doing is saying, just as when you write a statement of a child you have an adult present, so too if you are video-recording a statement you have an adult present, so you give the child that protection. But if you are dealing with an adult—I was not going to say an adult human being there present—why would you need to have another person present?

Bearing in mind that under the legislation it is proposed that if a witness—it is already in this legislation—gives the court certain views, any views of the witness as to whether his evidence in chief should be given orally or by means of the video or audio-recording. In other words, the court before it admits that video of the witness will take into account the witness who is present before the court, saying, "Look, I do not want you to admit that video, I prefer to give the evidence viva voce". So there is provision in the law for that, so there is a safeguard already. So in other words, it makes no difference because we went through that, the video-recording is just evidence in chief, so I think that is why it needs to be revised.

Sen. Jeremie SC: Mr. President, I beg to move. I should point out that what we are doing here with respect to 15I(f) is amending, not agreeing with the House of Representatives amendment. We are amending the amendments made in the House of Representatives, which is possible under Standing Order 59(3).

Mr. President, I beg to move.

Question put and agreed to.

6.05 p.m.

ADJOURNMENT

The Acting Prime Minister and Minister in the Office of the Prime Minister (Sen. The Hon Dr. Lenny Saith): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, December 15, 2009 at 1.30 p.m., at which time we will continue the debate on the Securities Bill, and at which time the Leader of Government Business will be here to give effect to whatever arrangement has been made, and also to continue the debate on the Integrity legislation. I think it is item four. [*Interruption*]

Sen. Mark: The Attorney General withdrew that Bill.

Sen. The Hon. Dr. L. Saith: Item four on the Order Paper.

Sen. Mark: Mr. President, before you adjourn, may I engage you for a moment? Crave you indulgence. I just want to get your guidance on the following matter. I have a number of matters on the Motion for the Adjournment which you have approved. They are close to about eight outstanding. I have gotten the approval of your good self, and having spoken to the Leader of Government Business, he has given me a commitment on two occasions that at least one of my seven to eight matters would be addressed, and that is, the non-appointment of the Solicitor General, and for some strange reason, my hon. Attorney General is escaping that responsibility.

Mr. President, I do not want to stand here with your leave to just raise a Motion and get no reply. But I am getting a bit concerned that after negotiating for so many weeks to get this matter debated and off the sheet, I am still in trouble, and then the impression I am getting is that shortly we may end up going into recess and at least I have seven matters. Now is 6.10 p.m.; we normally close at 6.30 p.m./6.20 p.m., at least we could have had an agreement this evening to deal with one matter on the Motion for the Adjournment. I have seven.

So, Mr. President, I am serving notice that if the Government is not ready at the next sitting to deal with my matters, I am prepared with your leave to raise my matter and I will take my seat. But I will put it on the record.

Mr. President: Well, Senator, you know that the issue of having motions raised on the Adjournment is primarily a question of time management. According to the Standing Orders, we really cannot take anything like that after 6.30 p.m. It has been the practice in recent times to allow certain discretion and to go over, and it has been my practice not to take matters on the adjournment beyond 8.00 p.m. That is late enough I think for most Senators who have long days already, busy schedules and careers, and therefore, it really is a question of time management. Beyond that, if you wish to have those situations where we can take those matters at 8.00 p.m., then that is a matter for you to discuss with the Government. But if the debate runs on until 8.30 p.m., 9.00 p.m. and 10.00 p.m. as it most often does—it is rare that we are able to adjourn at 6.30 p.m.—then it becomes difficult.

I agree entirely with you that these matters ought to be heard, and that Senators have a right to raise these issues. We are constrained by the Standing Orders, and therefore, I would urge both sides to look at the time management issues, so that we can conclude debates on Bills by 8.00 p.m., so that we can deal with these matters. Usually we will do two, which take us then until 9.00 p.m. and some of the Senators live very far away, and therefore, it is unfair to keep these

things running until very late hours of the night. Therefore, I will try to petition both sides to pay attention to the time management issues and let us see how we can get the business of the Senate done as efficiently as possible, and you know that we have had this conversation as to how we could achieve that.

Hon. Attorney General, you wanted to say something?

Sen. Jeremie SC: Yes. Mr. President, only to say that subject to what you have said in terms of time management, I am prepared to discuss any matter, any one of the 27 or 28 matters which Sen. Mark has on the motions of the adjournment, certainly those in respect of me, at anytime, anywhere, any place.

Thank you.

Mr. President: Then I look forward to your co-operation with the Leader of the Opposition. [*Desk thumping*]

Hon. Senators, before I put the question for the adjournment, it was Sen. Seereeram's maiden contribution this afternoon and we ought to congratulate him and welcome him to the Senate. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.12 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Fees to Senior Counsels

158. Could the hon. Attorney General provide the Senate with the quantum of legal or consultancy fees paid to Senior Counsels appointed after January 01, 2005 by any State Enterprise, Municipal Corporation, Statutory Authority, government Ministry or other State Agency from the period of their respective appointment to June 16, 2009?

The following reply was circulated to Senators:

The Attorney General has written to the Corporation Sole requesting the required information in respect of each of the numerous entities covered by the question and over the five year period covered by the question.

The information which is available immediately in respect of the Ministry of the Attorney General is as follows:

Deborah Peake SC	$ 138,000.00
Elton Prescott SC	$ 507,150.00
Dana Seetahal SC	$5,378,000.00